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COMPARATIVE STUDY

ON

BLOCKING, FILTERING AND TAKE-DOWN OF ILLEGAL INTERNET CONTENT

Excerpt, pages 248-260

This document is part of the Comparative Study on blocking, filtering and take-down of illegal Internet content in the 47 member States of the Council of Europe, which was prepared by the Swiss Institute of Comparative Law upon an invitation by the Secretary General. The opinions expressed in this document do not engage the responsibility of the Council of Europe. They should not be regarded as placing upon the legal instruments mentioned in it any official interpretation capable of binding the governments of Council of Europe member States, the Council of Europe's statutory organs or the European Court of Human Rights.

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National reports current at the date indicated at the end of each report.

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I. INTRODUCTION

On 24th November 2014, the Council of Europe formally mandated the Swiss Institute of Comparative Law ("SICL") to provide a comparative study on the laws and practice in respect of filtering, blocking and takedown of illegal content on the internet in the 47 Council of Europe member States.

As agreed between the SICL and the Council of Europe, the study presents the laws and, in so far as information is easily available, the practices concerning the filtering, blocking and takedown of illegal content on the internet in several contexts. It considers the possibility of such action in cases where public order or internal security concerns are at stake as well as in cases of violation of personality rights and intellectual property rights. In each case, the study will examine the legal framework underpinning decisions to filter, block and takedown illegal content on the internet, the competent authority to take such decisions and the conditions of their enforcement. The scope of the study also includes consideration of the potential for existing extra-judicial scrutiny of online content as well as a brief description of relevant and important case law.

The study consists, essentially, of two main parts. The first part represents a compilation of country reports for each of the Council of Europe Member States. It presents a more detailed analysis of the laws and practices in respect of filtering, blocking and takedown of illegal content on the internet in each Member State. For ease of reading and comparison, each country report follows a similar structure (see below, questions). The second part contains comparative considerations on the laws and practices in the member States in respect of filtering, blocking and takedown of illegal online content. The purpose is to identify and to attempt to explain possible convergences and divergences between the Member States' approaches to the issues included in the scope of the study.

II. METHODOLOGY AND QUESTIONS

1. Methodology

The present study was developed in three main stages. In the first, preliminary phase, the SICL formulated a detailed questionnaire, in cooperation with the Council of Europe. After approval by the Council of Europe, this questionnaire (see below, 2.) represented the basis for the country reports.

The second phase consisted of the production of country reports for each Member State of the Council of Europe. Country reports were drafted by staff members of SICL, or external correspondents for those member States that could not be covered internally. The principal sources underpinning the country reports are the relevant legislation as well as, where available, academic writing on the relevant issues. In addition, in some cases, depending on the situation, interviews were conducted with stakeholders in order to get a clearer picture of the situation. However, the reports are not based on empirical and statistical data, as their main aim consists of an analysis of the legal framework in place.

In a subsequent phase, the SICL and the Council of Europe reviewed all country reports and provided feedback to the different authors of the country reports. In conjunction with this, SICL drafted the comparative reflections on the basis of the different country reports as well as on the basis of academic writing and other available material, especially within the Council of Europe. This phase was finalized in December 2015.

The Council of Europe subsequently sent the finalised national reports to the representatives of the respective Member States for comment. Comments on some of the national reports were received back from some Member States and submitted to the respective national reporters. The national reports were amended as a result only where the national reporters deemed it appropriate to make amendments. Furthermore, no attempt was made to generally incorporate new developments occurring after the effective date of the study.

All through the process, SICL coordinated its activities closely with the Council of Europe. However, the contents of the study are the exclusive responsibility of the authors and SICL. SICL can however not assume responsibility for the completeness, correctness and exhaustiveness of the information submitted in all country reports.

2. Questions

In agreement with the Council of Europe, all country reports are as far as possible structured around the following lines:

1. What are the legal sources for measures of blocking, filtering and take-down of illegal internet content?

Indicative list of what this section should address:

- Is the area regulated?
- Have international standards, notably conventions related to illegal internet content (such as child protection, cybercrime and fight against terrorism) been transposed into the domestic regulatory framework?

- Is such regulation fragmented over various areas of law, or, rather, governed by specific legislation on the internet?
- Provide a short overview of the legal sources in which the activities of blocking, filtering and take-down of illegal internet content are regulated (more detailed analysis will be included under question 2).

2. What is the legal framework regulating:

2.1. Blocking and/or filtering of illegal internet content?

Indicative list of what this section should address:

- On which grounds is internet content blocked or filtered? This part should cover all the following grounds, wherever applicable:
  - the protection of national security, territorial integrity or public safety (e.g. terrorism),
  - the prevention of disorder or crime (e.g. child pornography),
  - the protection of health or morals,
  - the protection of the reputation or rights of others (e.g. defamation, invasion of privacy, intellectual property rights),
  - preventing the disclosure of information received in confidence.
- What requirements and safeguards does the legal framework set for such blocking or filtering?
- What is the role of Internet **Access** Providers to implement these blocking and filtering measures?
- Are there soft law instruments (best practices, codes of conduct, guidelines, etc.) in this field?
- A brief description of relevant case-law.

2.2. Take-down/removal of illegal internet content?

Indicative list of what this section should address:

- On which grounds is internet content taken-down/ removed? This part should cover all the following grounds, wherever applicable:
  - the protection of national security, territorial integrity or public safety (e.g. terrorism),
  - the prevention of disorder or crime (e.g. child pornography),
  - the protection of health or morals,
  - the protection of the reputation or rights of others (e.g. defamation, invasion of privacy, intellectual property rights),
  - preventing the disclosure of information received in confidence.
- What is the role of Internet Host Providers and Social Media and other Platforms (social networks, search engines, forums, blogs, etc.) to implement these content take down/removal measures?
- What requirements and safeguards does the legal framework set for such removal?
- Are there soft law instruments (best practices, code of conduct, guidelines, etc.) in this field?
- A brief description of relevant case-law.

3. Procedural Aspects: What bodies are competent to decide to block, filter and take down internet content? How is the implementation of such decisions organized? Are there possibilities for review?

Indicative list of what this section should address:

- What are the competent bodies for deciding on blocking, filtering and take-down of illegal internet content (judiciary or administrative)?
- How is such decision implemented? Describe the procedural steps up to the actual blocking, filtering or take-down of internet content.
- What are the notification requirements of the decision to concerned individuals or parties?
- Which possibilities do the concerned parties have to request and obtain a review of such a decision by an independent body?

4. General monitoring of internet: Does your country have an entity in charge of monitoring internet content? If yes, on what basis is this monitoring activity exercised?

Indicative list of what this section should address:

- The entities referred to are entities in charge of reviewing internet content and assessing the compliance with legal requirements, including human rights – they can be specific entities in charge of such review as well as Internet Service Providers. Do such entities exist?
- What are the criteria of their assessment of internet content?
- What are their competencies to tackle illegal internet content?

5. Assessment as to the case law of the European Court of Human Rights

Indicative list of what this section should address:

- Does the law (or laws) to block, filter and take down content of the internet meet the requirements of quality (foreseeability, accessibility, clarity and precision) as developed by the European Court of Human Rights? Are there any safeguards for the protection of human rights (notably freedom of expression)?
- Does the law provide for the necessary safeguards to prevent abuse of power and arbitrariness in line with the principles established in the case-law of the European Court of Human Rights (for example in respect of ensuring that a blocking or filtering decision is as targeted as possible and is not used as a means of wholesale blocking)?
- Are the legal requirements implemented in practice, notably with regard to the assessment of necessity and proportionality of the interference with Freedom of Expression?
- In the case of the existence of self-regulatory frameworks in the field, are there any safeguards for the protection of freedom of expression in place?
- Is the relevant case-law in line with the pertinent case-law of the European Court of Human Rights?

For some country reports, this section mainly reflects national or international academic writing on these issues in a given State. In other reports, authors carry out a more independent assessment.

GEORGIA

1. Legal Sources

The number of Internet users is progressively increasing in Georgia. By 2015, the amount of Internet penetration totaled 43 percent.[1] Along with the increase of the number of websites and, accordingly, the volume of content placed therein. As per research conducted by Freedom House, Georgia retains the status of "free" in terms of the Internet.[2]

The rate of Internet development is fast, but the legislation, due its nature, fails to keep up with the concomitant development in the majority of cases. In Georgia, where the practice of legal drafting was initiated just 20 years ago, there is no special legislation primarily focusing on the Internet, which means that no single state vision or concept exists as to what Internet regulation should be. There are separate norms in various legislative acts (Law of Georgia on Electronic Communication Act, No. 1514, LHG;[3] Law of Georgia on Freedom of Speech and Expression, Act No. 220, LHG; Criminal Code of Georgia, Act No. 2287 LHG), directly or indirectly regulating the legal relations that may appear during the Internet usage. The results of the analysis of such legal regulation and norms describe Georgia as a **country with no specific regulation on these issues** (B category). It should be mentioned as well that as a contracting state to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), general safeguards on freedom of expression apply, including in the field of Internet.

In addition, the country has ratified several conventions adopted by the Council of Europe relevant for this topic. Those include the Convention on Cybercrime (CETS No. 185) which was mainly transposed into the Criminal Code[4] (but Georgia has not signed the Additional Protocol of this Convention[5]). Moreover, Georgia ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No.: 108) transposed into the Law on Personal Data Protection[6] and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No.: 201).

The essence of international conventions is reflected in the internal legislation. Issues of blocking/removal are mostly reflected in the Law on Electronic Communications.[7] The supervision on the enforcement of the given law, as well as the sphere of electronic communications in general, is realized by the Georgian National Communications Commission (GNCC). On the basis of the Law on Electronic Communications, the Commission adopted "Regulations in respect to the Provision of Services and Protection of Consumer Rights in the Sphere of Electronic Communications",[8] which concerns the protection of the rights of Internet users in detail, defines their commitments and regulates the content.

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1 Freedom House, Freedom on Net, available at: https://freedomhouse.org/report/freedom-net/2014/georgia (22.08.2015).

2 Freedom House, Freedom on Net, *op. cit*.

3 Legislative Herald of Georgia (LHG).

4 Criminal Code of Georgia Act No. 2287 LHG, 41(48), 13/08/1999, Chapter XXXV.

5 Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No.: 189).

6 Law of Georgia on Personal Data Protection, Act No. 5669-რს, LHG Website, 16/01/2012.

7 Law of Georgia on Electronic Communications, Act No. 1514, LHG 26, 06/06/2005.

8 Regulations in respect to the Provision of Services and Protection of Consumer Rights in the Sphere of Electronic Communications, Act No. 3, LHG, 39, 23/03/2006.

Personal data of citizens online and offline is protected by the Law of Georgia on Personal Data Protection[9] (), which entitles a person to require deletion or correction data about him/her.

Furthermore, the content may be removed because of a violation of the Law of Georgia on Copyright and Related Rights,[10] which entitles the author to ban spreading of his/her production, including through the Internet. The country joined to Berne Convention for the Protection of Literary and Artistic Works,[11] and to special treaty under the given convention - the World Intellectual Property Organization Copyright Treaty (WIPO).[12]

Additionally, the country has been actively engaged in cyber security-related activity since 2012, after the ratification of the Convention on Cybercrime (CETS No. 185). That was followed by the adoption in 2012 of the Law on Georgia on Information Security,[13] whose purpose is to define rights and responsibilities for public and private sectors in the field of information security maintenance, and identify the mechanisms for exercising state control over the implementation of information security policy. In 2013, the Legal Entity under Public Law (LEPL) Cyber Security Bureau was established, primarily aimed at the implementation of unified cyber-security policy.

For the conclusion, we can say that legislation in Georgia contains norms for the monitoring of Internet content and there are some regulations regarding protection of the rights of users. It should be stressed though, that the content is only monitored after publishing, therefore, blocking as well as the takedown of content, takes places solely in the case that it violates the legislative requirements. The legislation does not provide for the preliminary filtering of content prior to its publication.

2. Legal Framework

2.1. Blocking and/or filtering of illegal Internet content

2.1.1. Legislation on Freedom of Expression

Freedom of expression is a constitution-protected right in Georgia - everyone shall be free to receive and disseminate information, to express and disseminate his/her opinion orally, in writing, or otherwise.[14] Georgia has ratified the ECHR Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No.: 005). Article 10 of this Convention protects the freedom of expression equally online as well as offline.

According to The Constitution of Georgia (Act No. 786) mass media shall be free, Censorship shall be inadmissible (Article 24). The Law of Georgia on the Freedom of Speech and Expression[15] defines the media as „printing or electronic means of mass communication including the Internet" (Article 1). Accordingly, the freedom of expression is secured and the censorship is inadmissible even on the Internet.

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9 Law of Georgia on Personal Data Protection Act No. 5669-რს, LHG Website.

10 Law of Georgia on Copyright and Related Rights, Act No. 2112, LHG, 28(35), 08/07/1999.

11 Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, amended on September 28, 1979.

12 WIPO Copyright Treaty adopted in Geneva on December 20, 1996.

13 Law of Georgia on Information Security, Act No. 6391-Iს, LHG Website, 19/06/2012.

14 Constitution of Georgia, Act No. 786, Departments of the Parliament of Georgia, 31-33, 24/08/1995, Article 24.

15 Law of Georgia on Freedom of Speech and Expression, Act No. 220, LHG 19, 15/07/2004.

However, the freedom of expression does not pertain to the category of absolute rights, and according to the ECHR and Georgian Constitution (Act No. 786) its restriction is only possible in certain cases for legitimate purposes.

According to the Constitution of Georgia (Act No. 786), freedom of speech and expression "may be restricted by law, to the extent and insofar as is necessary in a democratic society, in order to guarantee state security, territorial integrity or public safety, to prevent crime, to safeguard rights and dignity of others, to prevent the disclosure of information acknowledged as confidential, or to ensure the independence and impartiality of justice" (article 24).

The grounds for restriction of the freedom of expression are also prescribed in the Law of Georgian on the Freedom of Speech and Expression (Act No. 220, LHG 19). Article 8 of the given law reads – "Any restriction of the rights recognized and protected by this Law can be established only if it is introduced by a clear and foreseeable, narrowly tailored law, and good protected by the restriction exceeds the damage caused by the restriction".

According to Article 9 of the Law on Freedom of Speech and Expression (Act No. 220, LHG 19) content regulation of the freedom of speech and expression can be established by law if it concerns: a) defamation b) obscenity c) direct abuse d) incitement to commit a crime e) threat f) personal data, a state, trade or professional secret g) advertising, teleshopping, or sponsorship h) freedom of speech and expression of military personnel, an administrative body, as well as its official, member or employee i) freedom of speech and expression of an imprisoned person or a person with restricted freedom.

Content regulation may be implemented only in the form of viewpoint of neutral, non-discriminatory restrictions (Act No. 220, LHG 19, Article 9 (2)). Any restriction of the rights recognised and protected by this Law may be established only if it is prescribed by a clear and comprehensive, narrowly tailored law and the benefit protected by the restriction exceeds the damage caused by the restriction. A law restricting the rights recognised and protected by this Law shall be: a) directly intended to attain legitimate aims; b) critically needed for the existence of a democratic society; c) non-discriminatory; d) proportionally restrictive article (Act No. 220, LHG 19, Article 8).

Each of the aforementioned terms (defamation, obscenity) is more defined in the Law on the Freedom of Speech and Expression (Act No. 220, LHG) or/and in other laws. In addition, the Georgian parliament passed amendments to the Criminal Code (Act No. 2287 LHG, 41(48)) in January 2015, and through Article 239^{1} considered punishable "the public call, either verbally or in writing, for dissent or violent actions among and towards various groups on the basis of their racial, religious, national, regional, ethnic, social, political, language and/or other identity, in case that ensues an obvious, direct and substantial threat of committing a violent act". As there is no separate law for the regulation of the freedom of expression through the Internet, the aforementioned legitimate restrictions with respect to the freedom of expression are applied to the Internet as well.

2.1.2. Legislation on Electronic Communications

The legal and economic framework of activity through electronic communication networks and other related means is defined by the Law on Electronic Communications (Act No. 1514, LHG 26) the enforcement of which is supervised by the Georgian National Communications Commission (GNCC).
Regulations in respect to the Provision of Services and Protection of Consumer Rights in the Sphere of Electronic Communications[16] were adopted by GNCC on the basis of the Law on Electronic

[16] Regulations in respect to the Provision of Services and Protection of Consumer Rights in the Sphere of Electronic Communications, Act No. 3, LHG, 39, 23/03/2006.

Communications (Act No. 1514, LHG 26). Those regulations provided detailed description of additional types of content not allowed to be published on the Internet, and were prescribed to follow to all internet providers.

Despite of the fact that the Regulation (Act No. 3, LHG, 39) adopted by GNCC additionally defines types of internet content, which shall be blocked or removed, any decision regarding this issue should comply with requirements of the Constitution and the Law on Freedom of Speech and Expression (Act No. 220 LHG 19).

The concept of **"inadmissible production"** was introduced by the same Regulations (Act No. 3, LHG, 39), and implies the type of production to be taken down. The inadmissible production is defined as – production transmitted by means of electronic communications, such as pornography, items featuring especially grave forms of hatred, violence, invading on a person's privacy, as well as slanderous, insulting, violating the principle of presumption of innocence, inaccurate, and other products transmitted in violation of intellectual property rights and the Georgian Legislation" (Act No. 3, LHG 39, 23/03/2006, Article 3 (42).

Also, as per the given regulations (Act No. 3, LHG 39), Article 10^{6} reads the following: "entertaining service or/and advertisement of erotic nature must not contain any offer or indication in respect to the use by minors of the services of such kind".

The above clarifications clearly define that the restrictions prescribed by the regulations pertain to the interpretation of the GNCC. Considering the absence of relevant cases, it is hard to determine in advance the type of content, which may be restricted. These circumstances may make arise a risk of inappropriate restriction of freedom of expression. Therefore, it would be better to adopt relevant amendments in the regulation, which will reduce a danger of arbitrary interpretation by the state body. Nowadays, as the Constitution and the Law on Freedom of Speech and Expression (Act No. 220 LHG 19) are higher hierarchical normative acts than GNCC Regulations (Act No. 3, LHG 39), they ensure that any restrictions should be in compliance with the Constitution.

According to the Regulations (Act No. 3, LHG 39), the **liability for the fulfillment of those norms rests upon both the Issuer of an Internet domain and Internet Service Provider (ISP).** They're responsible to respond to the received information concerning the allocation of inadmissible production and adopt appropriate measures in order to take it down (*see* section 2.2.).

2.1.3. Criminal Code

The Criminal Code (Act No. 2287 LHG, 41(48) article 255) provides punishment for **illegal pornographic production, with further spreading, advertising and selling.** Accordingly, the given restriction also applies to the Internet, yet there is no clear definition of what is considered as pornography, so the issue is a subject of interpretation.

For instance, the foretasted issue became topical after the Ministry of Internal Affairs (MIA) detained 40 persons, which had obtained pornographic video files, including footage of minors, for the purpose of website popularization, and later uploaded them on public websites.[17] The MIA banned the hosting and blocked the users access to the websites. The accused admitted their guilt and signed procedural agreement with the Prosecutor's Office.

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[17] The Ministry of Internal Affairs of Georgia(MIA) identified 40 persons involved in illegal dissemination of pornographic content, available at: http://police.ge/ge/shss-m-pornografiuli-natsarmoebis-ukanonod-gavrtselebis-faqtze-40-piri-gamoavlina/8100 (17.08.2015).

In 2012, Georgia ratified the Convention on Cybercrime (CETS No. 185), which obligates states to prevent through national legislation the involvement of children in pornography, and restrict the offer of children pornography and its availability via computer systems. After the ratification of the Convention, Article 255^1 was added to the Criminal Code (Act No. 2287 LHG, 41(48) in 2013, defining the implication of minors in pornographic products and in the illegal production and selling of pornographic items as a separate crime. The pornographic product is more defined in relation to the minors and specifies what is a pornographic product featuring minors. According to information of the MIA,[18] investigation on 17 cases was launched in 2012-2015, as provided by Article 255 (production and selling of pornographic content and the related items (Criminal Code, Act No. 2287 LHG, 41(48)).

Apart from pornography, a set of norms safeguarding minors from harmful influence in the web-space is represented by Regulations in respect to the Provision of Services and Protection of Consumer Rights in the Sphere of Electronic Communications". Its Article 10^7 reads – "it shall be inadmissible to provide minors with such products, advertisement or services, that harm or may harm their mental or/and physical health, their moral and social development, or pose a threat thereof or/and misuse their confidence, lack of experience and loyalty".

The minors are also protected under the Law on the Protection of Minors from Harmful Influence.[19] However, it does not contain any provision that would somehow restrict dissemination through Internet of undesirable content for minors. Such restriction is neither imposed by the Law of Georgia on Advertising,[20] which we can consider as a legal shortcoming.

The Internet content may be blocked for cyber security purpose. The country does not have special national legislation in the sphere of cyber-security. However, after ratification of the Convention on Cybercrime (CETS No. 185), followed by the creation of Georgia's 2013-2015 strategy for cyber-security and its implementation plan, which prescribed "it is important to form a legislative base in the sphere of cyber-security". The cyber-crime itself is covered by Criminal Code (Act No. 2287 LHG, 41(48), chapter XXXV). According to the MIA,[21] in 2012-2015 unauthorized access to computer systems was the most frequently committed cybercrime,[22] with overall number of investigations launched totaling 452.

The Criminal Code of Georgia (Act No. 2287 LHG, 41(48) penalises a specific offence of cyberterrorism as well (Article 324^1), which implies illegal seizure, the use or threat of use of cyber information protected by law, that creates threat of giving rise to grave consequence, undermines public security, strategic, political or economic interest, perpetrated to intimidate the population or put pressure upon a governmental body.

In 2013, the Law on Information Security[23] was adopted, with the purpose to promote the efficient and effective maintenance of information security and identify the mechanisms for exercising state control over the implementation of information security policy. Except cyber attack, the given law (Act No. 6391-Iს, LHG Website), also defines the following priority cyber-security issues: any action that, based on its nature, purpose, source, scale or quantity, or the amount of resources required for its prevention, contains sufficient threat for proper functioning of the critical information system"

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18 MIA letter 18 August 2015, #1809722.

19 Law of Georgia on the Protection of Minors from Harmful Influence. Act No. 1081 LHG, 28, 15/10/2001.

20 Law of Georgia on Advertising, Act no. 1228, Parliamentary Gazette, 11-12, 18/02/1998.

21 MIA letter, 18 August 2015, # 1809722.

22 Criminal Code of Georgia, Act No. 2287 LHG, 41(48), 13/08/1999, Article 284.

23 Law of Georgia on Information Security, Act No. 6391-Iს, LHG Website, 19/06/2012.

(Act No. 6391-Ის, article 8). And for the purpose of handling of computer incidents Emergency Response Team of the Data Exchange Agency (CERT) was established.

On the basis of the Law on Information Security (Act No. 6391-Ის, LHG Website,), Cyber-Security Bureau was created in 2013, primarily oriented towards the defense sphere, and aimed at the creation and enhancement of stable, efficient and safe information and communications technologies in this direction.

This Law only applies to a state body or a legal person whose uninterrupted operation of the information system is essential to the defense and/or economic security of the State, as well as to the maintenance of state authority and/or public life (Act No. 6391-Ის, article 2 (g)).

Therefore, the Law on Information Security (Act No. 6391-Ის, LHG Website,) does not include great risk of restriction of freedom of expression and speech thus there are not reflected any applicable provisions to safeguard it.

The recent most resonant incident of blocking on the Internet in Georgia is related to cyber-security, which was the blocking of Russian websites in Georgia during the 2008 war with Russia. There was not any legal basis to block domains. It was the result of appeals and recommendations from the regulatory body and independent experts. The goal was to protect population from negative information, which could cause panic among citizens. Even though only one provider has obeyed to the appeals (Caucasus Online), and there were no sanctions for those who did not, it still had significant result since Caucasus Online was by that time the leader of the market, with about 70-80% of coverage.[24] It is worth mentioning that during the restriction of access to information Georgia was in the state of martial law.[25]

2.1.4. The Law on Personal Data Protection

Information may also be blocked on the Internet in case it contains **personal data**, which is protected by the Law on Personal Data Protection (Act No. 5669-რს, LHG Website). According to the mentioned Law a data processor shall be obliged to correct, update, add, block, delete or destroy the data or inform the data subject of the grounds for refusal.

Data deletion refers only to the particular information, which violates rights to privacy and does not imply website blocking.

The decision to block data shall be attached to the relevant data for as long as the reason of blocking the data exists (Act No. 5669-რს, LHG Website, Article 23). This Law shall not apply to processing of data by media for public information, also to processing of data in the fields of art and literature.

2.2. Take-down/removal of illegal Internet content

The take-down of content is regulated by the same legislation that regulates the blocking. However, as compared to the blocking, the number of take-downs is higher in the country.

As stated above, Internet content is regulated by the Regulations in respect to the Provision of Services and Protection of Consumer Rights in the Sphere of Electronic Communications (Act No. 3, LHG, 39). Along with the blocking, the uploaded content may as well be removed on the basis of the

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[24] T. Iakobidze, T. Turashvili, Internet Freedom in Georgia-Report N2, available at: https://idfi.ge/en/internet-freedom-in-georgia-report-n2-54 (22.08.2015).

[25] President's decree N 402, 9 August 2008

given regulations. Such information may be insulting or pertain to the category of inadmissible production.

The web-page owner, the domain issuer, and the provider of Internet service have certain obligations regarding inadmissible production.

An owner of an Internet site shall examine any link allocated on an Internet site in order to ascertain that the Internet site/page referred to by means of the link concerned does not contain any offensive or inadmissible production; on finding such information, he shall take appropriate measures to eliminate them (Act No. 3, LHG 39 Article 10^2). This provision does not regulate social media platforms and social networks registered abroad.

Issuer of an Internet domain shall periodically examine the contents of the Internet sites registered by him in order to prevent the allocation of inadmissible production on such Internet sites. On finding such production, the issuer of an Internet domain must immediately take following appropriate measures to eliminate them: (a) to warn the possessor of domain and identify the time limit for the removal of inadmissible production; and (b) to block the Internet site in case the warning is ignored" (Act No. 3, LHG 39, Article 10^3).

Internet service providers shall be obliged to respond to the information on the placement of inadmissible production, and take appropriate measures for the purpose of its elimination (Act No. 3, LHG 39, Article 25). ISP can take down inadmissible production on the basis of:

- Monitoring conducted by itself;
- Request of any person – in such case ISP examine itself requested information is inadmissible production or not;
- Decision of the Court or GNCC.

If a person considers that deleting his/her content is a restriction of his/her freedom of expression, he/she is allowed to apply to City Court, which will examine if the removal of content was or not in compliance with the Constitution and the Law of Freedom of Speech and Expression (Act No. 220, LHG 19).

Georgia also has a Public Defender of Consumers Interests under GNCC, who examines complaints of the customers. There are several cases when the defender demanded removal of certain information from websites. For instance, on 24 April 2013, on the basis of customer request, the Public Defender demanded in writing from Pro Service LLC, GS Group and Caucasus Online LLC to remove from internet portals: Video.com, Svideo.ge and Tvali.ge videos showing violence against animals. Based on the written request of the Ombudsman, Caucasus Online removed the aforementioned footage.

The basis of the take down was the Regulations (Act No. 3, LHG 39, Article 3 (42)), which prohibits publishing inadmissible content including items featuring especially grave forms of hatred and violence.

Also, GNCC launched administrative proceedings on the basis of another request against Online Caucasus LLC, which provided an adult channel (+18) with inappropriate coding to customers during its broadcasting transit. GNCC imposed a sanction-issued a written warning to the company, as it ruled out that the company had violated "Regulations in respect to the Provision of Services and Protection of Consumer Rights in the Sphere of Electronic Communications", that bans transmission of such production without coding.[26] It should be stressed that GNCC did not make any decisions in

[26] Georgian National Communications Commission on the complaint of Ucha Nebieridze, available at: http://gncc.ge/ge/legal-acts/commission/solutions/2014-631-18.page(22.08.2015).

2012-2015 forcing a subject to take down content from a website due to the violation of the regulations.
Development of social media over the recent period saw the emergence of a problem concerning the removal of citizens' critical comments from the Facebook pages of governmental agencies. Part of those agencies blocks users or deletes the undesired comments written by them, even if such comments do not contain hate speech, as well as insulting elements or calumny, and neither infringe the inviolability of privacy. However, due to the absence of the relevant regulations in the country, such facts remain without response. As it comes to pages of state agencies not private one, freedom of users' expression is restricted by deleting their comments.

2.2.1. Legal basis on Defamation

It is important to underline that **defamation is not considered a crime in Georgia since 2004**. Therefore freedom of expression is enhanced on the Internet. It is only possible to initiate a civil litigation for defamation. According to the Law on the Freedom of Speech and Expression (Act No. 220, LHG 19, Article 13), a person bears civil liability for defamation if the complainant proves in a court that the defendant's statement contains essentially wrong facts about the complainant and has caused damage to him/her.

The complainant is entitled to demand the take-down of wrong information in accordance to the given law and the norms provided for by the Civil Code of Georgia,[27] and the relevant court decision may oblige the defendant to remove the information published on the Internet.

2.2.2. The Law on Copyright

The Law of Georgia on Copyright and Related Rights, as well as protection of intellectual property, **may also become the basis for the take-down of content published on the Internet**. According to the law, the author is entitled to decide whether and when the work will be disclosed and demand removal of the production published without permit, as well as the right of recall of work, which implies a right to ask for the cessation of using of work. In this case, the author shall announce the recall publicly[28] (Article 17).

Non-commercial legal entity Georgian Copyright Association was established on the basis of the Law of Georgia on Copyright and Related Rights (Act No.2112, LHG, 28(35), Article 63) to protect the Authors' property rights. The Association has the right to "perform acts necessary for protecting or exercising the rights transferred to the organisation for management, including the right to represent the rights holder in a court and the right to use all the rights granted by the procedural legislation of Georgia" (Act No. 2012, LHG, 28(35), Article 65 (f)).

The given organization had several cases of production take down from the Internet due to copyright protection. For instance, an online edition published a painter's work without permit. The Association launched negotiations with the violator, but the attempt failed to yield the results, so it became necessary to resort to the court, which then obliged the violator to pay out compensation to the author for the violation of copyright.[29]

Yet another agency functioning in the country is the National Intellectual Property Center of Georgia "Sakpatenti". The purpose of the organization is protection of intellectual property and the copyright. Inter-agency coordination council for execution of property rights was also established in

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27 Law of Georgia Civil Code of Georgia, Act No. 786, Parliamentary Gazette, 31, 24/07/1997, article 18.
28 Law of Georgia on Copyright and Related Rights, Act No.2112, LHG, 28(35), 08/07/1999 article 17.
29 Letter of Copyright Protection Association, 4 August 2015.

the Center. By the government's decree, the given organization was tasked with coordination[30] of special events for the purpose of protection and execution of intellectual property rights related to the holding of the UEFA Super Cup match on August 11, 2015. The council's warning said that any kind of commercial proposal of the tickets, including via the Internet, was banned, which was the requirement of UEFA. The control, for that matter, was assigned to a group staffed with employees of Tbilisi City Hall and the Ministry of Internal Affairs (MIA) of Georgia. The group's task was to identify and prevent the illegal selling of tickets for the Super Cup match. According to the Council's request, all the proposals of ticket selling published on advertisement website mymarket.ge were removed.[31]

The legal basis was the Law on Advertising,[32] according to it: "within the framework of the Union of European Football Associations (the "UEFA") Super Cup 2015 and the related events, any advertising or other activities (except for the sports review programmes disseminated by the broadcasters) done by unauthorised persons to gain a benefit using the credibility of UEFA shall be prohibited. Offering UEFA Super Cup 2015 tickets for sale or their usage in any commercial events shall also be prohibited". It is notable that the entry appeared in the law two months prior to the holding of the match, on 12 June 2015.

In this case, UEFA protected its copyright; therefore, freedom of expression was not restricted.

2.2.3. Personal Data Protection

To protect personal data is another goal, which may become a ground for removing content from the Internet. If the Personal Data Protection Inspector (called thereafter the Data Protection Authority or DPA) detects a violation of the Law on Personal Data Protection (Act No. 5669-რს, LHG Website) or other normative acts that regulate data processing, he/she shall be authorised to require temporary or permanent termination of data processing (Act No. 5669-რს, LHG Website, Article 39). Apart from that, the data subject has the right to obtain information on his/her personal data processed, request their correction, updating, addition, blocking, deletion and destruction (Act No. 5669-რს, LHG Website, Article 15). Naturally, the given article also applies to data published on the Internet.

According to information received from the DPA, on 5 June 2014 a citizen applied to the Inspector and requested removal of two materials mentioning his previous convictions from an online edition. According to the applicant, in 2007, when the information was published on the outlet's resource, he was indeed convicted. However, he was no longer listed on the convict database, and thus wanted that information on his criminal record could not be found in the Internet. Despite that the Georgian Law on Personal Data Protection (Act No. 5669-რს, LHG Website) shall not apply to processing of data by media for public information, the Inspector sent a letter to Georgian Times media holding, which had published the information, asking for the restriction of the availability of the applicant's special category data. The media holding fulfilled the inspector's request and removed the article from its web-page. Meanwhile the function of searching the material by the applicant's full name on the National Library catalog has been restricted, though the article itself has not been removed.[33]

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30 Legal Entity of Public Law Sakpatent- statement of the Georgian National Intellectual Property Center Sakpatent's Inter-agency Cooperation Council of Execution of Intellectual Property Rights, available at: http://www.sakpatenti.org.ge/index.php?lang_id=GEO&sec_id=17&info_id=1071 (22.08.2015).

31 Broadcasting company Rustavi 2, announcements of dealers removed from Mymarket- the webpage speaks about sanctions, available at: http://rustavi2.com/ka/news/20764 (26.08.2015).

32 Law of Georgia on Advertising, Act no. 1228, Parliamentary Gazette, 11-12, 18/02/1998, Article 22 (7).

33 Letter of the DPA, 3, August 2015, #613/01.

Data which can be deleted is exhaustively defined by the Law on Data Protection (Act No. 5669-რს, LHG Website) so, there is not a risk of inappropriate restriction of freedom of expression if DPA request a deletion of data on the basis of the mentioned Law.

3. Procedural Aspects

As it has already been mentioned, the blocking of content on the Internet, its filtering or removal is reflected in various legislations. Accordingly, there are different procedures and decision-takers.

Monitoring of the fulfillment of Regulations on the Providing of Services in the Field of Electronic Communications and Protection of Consumers' Rights is the commitment of the **Georgian National Communications Commission** (GNCC). Therefore, imposition of sanctions for the non-fulfillment of these norms and placement of inadmissible production on the Internet, as well as the right to require removal of such products, is also the prerogative of GNCC.

The consumer is entitled to submit a complaint directly to the service provider's consumer complaint department, the Public Defender Service for Customer Rights at GNCC, or to court.[34]

The Public Defender of Customers' Interests functioning under the GNCC has a right to examine complaints following consumer right violations in the Internet, including placement of inadmissible content. In case of the violation of the regulations, the Defender appeals to the relevant companies with the request of removing the violation, and forwards the information to GNCC for the examination of the case.

Disputes between a service provider and a consumer based on the applications and complaints of consumers, as well as on the statement of the Public Defender of Consumers Interests, shall be considered by the Commission by means of verbal hearing, in conformity with the rules of Formal Administrative Proceedings, except for the cases when the solution of the points at issue does not require the conduct of an organized procedure.

The Commission is entitled to issue a written warning to the violator, and in the case of continuous breach, failure to remove within the deadline set by the GNCC, or in the case of single breach during a year- impose a fine to the amount of 0,5 percent of the authorized person's income for the last 12 months, but no less than 3000 GEL and no more than 30000 GEL.[35] The parties will be informed of the decision taken by the Commission, and will be entitled to appeal against it to court (Act No. 1514, LHG 26, Article 19 (1) (E)).

The Prosecutor's Office launches investigation over facts of cybercrime and illegal production or selling of pornographic products or other items, and the cases are examined by City Court finally.
A defamed person can apply to City Court. A decision of City Court may be appealed to Appeal Court. Last instance for appealing is the Supreme Court and its decision cannot be appealed.

In the meantime, **the Computer Emergency Response Team of the Data Exchange Agency** (CERT.GOV.GE) provides the management of the incidents against information security in the cyberspace of Georgia, as well as other related activities aimed to coordinate information security that serves to eliminate priority cyber security threats.

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[34] Regulations in respect to the Provision of Services and Protection of Consumer Rights in the Sphere of Electronic Communications, Act No. 3, LHG 39. 23/03/2006, article 26 (4).

[35] Law of Georgia on Electronic Communications, Act No. 1514, LHG 26, 06/06/2005, Article 45.

The copyright is protected by the Georgian Copyright Association. The organization is not an administrative body entitled to examine and take decision on a certain fact of violation. But it is a non-profit (noncommercial) legal union, created on the basis of "Georgian Law on Copyright and Related Rights" to implement and protect the rights of its member authors and performers, or their successors. That implies the organization's right to file a lawsuit in the court for the protection of authors' rights, which requires the author/owner of the right to apply to the association.

Protection of personal data is the responsibility of the **Personal Data Protection Inspector**, which acts in accordance with the Law on Personal Data Protection (Act No. 5669-რს, LHG Website), and is authorized to require termination of data processing, their blocking, deletion, destruction or depersonalization if he/she believes that the data processing is conducted unlawfully.[36]

The Inspector is obliged to review an application of a data subject in relation to data processing and take measures under the given Law. Within 10 days, the Inspector decides which measures to take and notify the applicant (Act No. 5669-რს, Article 34 (2)).

The person processing the data and the authorized person are liable to fulfill the request of the Inspector within the deadline set, and inform him/her of the results. In case the person processing the data and the authorized person fail to comply with the Inspector's requests, the latter is then entitled to apply to the court. The decision taken by the Inspector is subject to obligatory fulfillment, and it is only possible to appeal it to city court in compliance with the rule defined by the law.

Analyzing these procedures shows that in case of blocking or removing content from Internet by GNCC or DPA an addressee should be informed of what is the legal basis of the decision. Everyone has a right to appeal the decision made by any state body to court. The court will examine the compliance of decision with the Constitution or the Law on Freedom of Expression and Speech (Act No. 220, LHG 19). It should be stressed that neither GNCC nor DPA analyse the compliance of decisions with the restriction basis of freedom of expression stated by the Constitution.

4. General Monitoring of Internet

There is no single body in Georgia, which would be in charge of the full monitoring of all Internet content. As we have mentioned previously, partial supervision of the content is carried out by GNCC, which ensures the removal from the Internet of inadmissible content based on the application received. It should be mentioned that according to the legislation, the owner of the web page and Issuer of Internet domain are obliged to conduct periodical monitoring of his webpage, for the purpose of preventing from placement of inadmissible production. In practice, the given liability essentially is not fulfilled and inadmissible production is removed only on the basis of GNCC request (which initiates proceedings upon reception of the application).
In Georgia, there is no special branch of the police in charge of crimes committed through the Internet.

5. Assessment as to the case law of the European Court of Human Rights

Protection of the freedom of expression enjoys high quality in Georgia, being ensured by both the legislation, which contains in-depth specification of the pre-conditions and grounds for restricting the

[36] Law of Georgia on Personal Data Protection, Act No. 5669-რს, Act No. 5669-რს, LHG Website, 16/01/2012, Article 39(1) (C).

freedom of expression, and Georgian constitutional legal practice, with its clarifications complying with the case law of the ECtHR.

Ensuring of the freedom of expression on the Internet and the safeguards should be generally considered from the freedom of expression standpoint, as sharing of content via Internet represents one of the forms of expression. In addition, the Constitutional Court of Georgia stresses in its judgment the importance of the Internet and says: "the importance of the Internet is substantial for the development of modern democratic society, and is growing on a daily basis and constitutes a very efficient and convenient means for communication and opinion exchange".[37]

As already mentioned there are some legal acts (Regulations Act No. 3, LHG 39, Criminal Code, Act No. 2287 LHG, 41(48)), that on the one hand provide restriction of freedom of expression (inadmissible production, pornography, etc.) and on the other hand they do not include reservations which are mandatory for restrictions by the Constitution and are implemented in Constitutional Court's practice.

For instance, Article 24 of the Georgian Constitution defines the pre-conditions of the freedom of expression. Commenting on the article, the Constitutional Court of Georgia stresses that it should be clarified as provided by the practice established by the ECtHR, which implies that in order to intervene in the freedom of expression it is necessary that: a) the intervention be provided by the law; b) intervention be aimed at one or several interests prescribed by the article; c) intervention should be obligatory in a democratic society.[38]

Considering the above mentioned the Constitutional Court plays a crucial role to prevent inappropriate restriction of freedom of expression. If a person thinks that his/her expression was restricted illegally, can apply to court and refer to the Constitution, its practice and the Law on Freedom of Expression and Speech (Act No. 220, LHG 19), which clarifies pre-conditions of restrictions.

Therefore, the Constitutional Court of Georgia and its practice provide that the restrictions to freedom of expression comply with ECHR standards. The Constitutional Court practice analysis shows that for restriction of expression, existence of all pre-conditions: foreseeability, accessibility, clarity and precision are mandatory. Otherwise decisions concerning restriction of expression, made by state bodies will not comply with the Constitution and will be disaffirmed by Court in case of complain.

Unlike other laws the Law of Georgia on the Freedom of Speech and Expression clarifies that- "any restriction can only be imposed if that's provided for by a clear, foreseeable, narrow-purpose law, and if the good preserved by the restriction exceeds the harm inflicted". The given law corresponds to the European legal practice, which stresses that "prescribed by law" implies two conditions: Firstly, the law must be adequately accessible, and secondly, "a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail".[39]

The Constitutional Court of Georgia also defines additional requirements for intervention in the freedom of expression, and stresses that intervention should be applied in case it is "inevitable for

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37 Decision of the Constitutional Court of Georgia, 24 October 2012 # 1/2/519.

38 Decision of the Constitutional Court of Georgia, 6 June 2006 #2/2/359.

39 *The Sunday Times v The United Kingdom*, Application no. 6538/74, 26 April, 1979.

the achievement of legitimate purpose defined by the constitution, and that the state should resort to a more proportional and less restrictive measure for that purpose".[40]

We have already mentioned that the relevant legislative acts contain full specification as to when a restriction of the freedom of expression can be used, or what restrictions may be applied to content published on the Internet (inadmissible production). Apart from that, there also exist various categories of inadmissible productions (for instance, with elements of hatred and violence of especially grave forms, or of insulting nature) which may be defined by the state inappropriately. Therefore, for the purpose of safeguarding against the given risk, the Constitutional Court of Georgia says that "the scope of the state's discretionary authority with respect to the imposition of content restriction is substantially limited".[41]

As the conclusion we can say that not all legal acts, but the main ones (The Constitution of Georgia, The Law on Freedom of Expression and Speech (Act No. 220, LHG 19) and the legal practice fully comply with the Case Law of the ECtHR.

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[40] Decision of the Constitutional Court of Georgia # 1/1/468 from April 11, 2012.

[41] Decision of the Constitutional Court of Georgia #2/482,483,487,502 from April 11, 2011.