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“JUSTICE AND THE MEDIA”

National report

**prepared by
the delegation of Georgia**

Over the last decade a new legal system, mainly meeting European standards, has been created in Georgia. Soviet era laws were replaced with new laws, drafted with the help of ongoing consultations with and the active cooperation of European experts. As a result of this collaboration, Georgia adopted new Civil, Administrative, Company, Criminal and other laws. In 1999 new legislation governing the judiciary came into force. The implementation of these new laws raised the question of the need for institutional reform, an integral part of which was considered to be judicial reform. As a result of these reforms, the judiciary was freed from control, dependence and subordination to the executive branch of government. This promoted and strengthened the independence of the judiciary. A new court instance – appellate courts - was created. The competences between courts of different instances were clearly defined and separated. The rules for the competences and jurisdiction of the courts are now prescribed by law and are no longer dependent on the will and decisions of the chairmen and chairwomen of the courts.

– Transparency of the court process has become a characteristic of the Georgian judiciary. All decisions of the Courts are published and accessible for all interested individuals. An organization called the “Media Group” at the Courts is staffed with representatives of mass media and civil society. These representatives, together with judges discuss issues that face the judiciary. Representatives of the mass media are always provided with information concerning cases prior to the proceedings.

They thus have the opportunity to select and attend the proceeding that they want to hear. Georgia has a rich experience of cooperating and coordinating its reform activities with international donor organizations.

These organizations has worked with the courts in establishing anti-corruption measures, judicial transparency, and judicial outreach to the community. Another good example of this collaboration with donor organizations is the Concept for the Reform of Security and other Law Enforcement Agencies, drafted with the support of experts from the European Commission, the Council of Europe and other European and American organizations. Our experience ensured us that, without the basic reform of these agencies, it would be meaningless to talk about the normal functioning of the judiciary.

On 24 June 2004 the Georgian Parliament adopted the Law on Freedom of Speech and Expression, which came into force on 15 July 2004. This law is an important fact in itself given the urgency of the scope of its regulation. Freedom of speech and expression is one of the basic human rights and thus strengthening and protection of this right is one of the most important tasks of the state.

This law strengthened the legal framework in the field of the protection of human rights. It secures freedom of political speech and debates, search for, receipt and dissemination of any information, inadmissibility of censorship, freedom of study, art and creation and the right to speak any language. Furthermore it lists every case, when freedom of speech and expression may be restricted. This first of all derives from public interest to maintain the stability of the democratic system. When a certain statement or appeal may endanger state security, public safety, territorial integrity, violate another persons' rights and dignity, the law provides for restrictions and conceptual regulation of freedom of speech and expression, if this concerns defamation, abuse, threat, state, commercial and professional secrecy, etc. The law also strengthens the protection of professional secrecy and its source and provides responsibility for the disclosure of secrecy. Exempted is the case when an individual is relieved of the liability for the disclosure of secrecy, when such a disclosure is aimed at the protection of public legal interests or when protected wealth exceeds the caused damage.

Through the adoption of this law, the Law of Georgia on the Press and Mass Media was invalidated. The scope of application of the old Law was narrower and provided for the procedure of establishment, registration only of press and other means of mass media, regulated relations between the founders, editors, journalists and state authorities and provided for their rights and obligations. The new law on Freedom of Speech and Expression expands the scope of regulation that itself is appreciable. It gives the classification and hierarchy of the terms: idea, statement, appeal and protects an idea with absolute privilege. This is a complete and unconditional release from responsibility, and appeal – with qualified privilege, that partially or conditionally releases an individual from responsibility.

According Georgian legislation:

- The main trial session shall be public and oral. All witnesses are required to give evidence orally during the trial except in cases prescribed by the law. The conduct of certain proceedings

in closed session shall be permitted only in cases specified by the law. The decisions rendered at the main trial session shall be announced publicly if no interests of under-aged parties are violated. The main trial session shall be open to the public. Television or radio broadcasts, as well as photos, filming, video, and audio recording of the main trial session shall be permissible only with the consent of the court hearing the case.

- The court may hold a part of or an entire hearing *in camera* if:

- a. There is a threat to national security;
- b. The defendant is a juvenile;
- c. The life, health, or liberty of a witness or other person is under threat;
- d. The subject of the hearing concerns conduct related to sexual relations;
- e. The subject of the hearing deals with state, professional, or trade secrets, the public consideration of which may jeopardize interests protected by law;
- f. Private circumstances of parties to the proceedings, witnesses, or victims are being heard, and their public exposure would seriously endanger the enforceable interests of those persons, and these persons do not oppose holding the main trial session *in camera*;
- g. If a person under the age of sixteen is a witness.

- The issue of hearing a case *in camera* shall be considered at a public hearing. If the decision upon hearing a case *in camera* requires the consideration of an issue that should not be known to the public, then this issue shall be considered at a hearing *in camera*. The court decision on hearing the entire or part of the case *in camera* shall be announced at a public session. It shall be grounded.

The ruling shall specify which part of the hearing shall be held *in camera*. The court shall be empowered to authorize specific individuals to attend the hearing *in camera*. The court shall be empowered to oblige persons present at the hearing *in camera* not to disclose the information that became known at the hearing. The ruling may not be appealed. The trial record shall indicate the commencement of the hearing *in camera* and the renewal of the public hearing.

- The court verdict shall in all cases be pronounced in public. Persons participating in the proceedings may be indicated in the verdict only by means of initials if disclosing their identity shall significantly infringe upon their personal integrity. The court shall be authorized to preclude persons under the age of sixteen (16) and any person who appears in the courtroom in a condition unsuitable for court from attending the hearing. An armed person shall be admitted in the

courtroom only with the permission of the presiding judge. The presiding judge and persons empowered by him/her shall have the right to attend the hearings *in camera* in order to exercise their professional supervision.