

**CoE Steering Committee on Media and Information Society**  
**List of Questions and Answers on implementation of CoE standards related to safety of**  
**journalists and other media actors**

**Question 1: Which are the existing mechanisms to ensure investigation and prosecution of attacks against journalists and other media actors?**

**Answer:** The Criminal Code of Georgia (CCG) provides the criminal responsibility for intentional light injury (Art. 120 of CCG), beating (Art. 125 of CCG), violence (Art. 126 of CCG), intentional less grave injury (Art. 118 of CCG) and intentional grave injury (Art. 117 of CCG). The above-mentioned provisions extend to any person, including the journalists and media actors.

Article 154 of CCG establishes the separate criminal liability for illegal interference in the professional activities of journalist.

The commission of any of the above-mentioned acts against journalist is subject to criminal investigation and prosecution.

Article 24 (1) of the supreme law of Georgia – the Constitution of Georgia – acknowledges that everyone within the jurisdiction of Georgia has the inevitable freedom “to receive and disseminate information, to express and disseminate his/her opinion orally, in writing or otherwise”. The same provision further envisages that “mass media shall be free” and “censorship shall be inadmissible” and prohibits the monopolization of mass media or dissemination of information by anybody including state. The para 4 of the Article reserves the possibility of restriction of the proclaimed freedom which may be exercised “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”.

Criminal Code of Georgia (CCG) contains number of provisions aimed at promotion safe and enabling environment for journalists to perform their work independently and without undue interference. Thus, Article 153 of CCG – “Encroachment upon the freedom of speech” – criminalizes the illegal interference into exercising the right to freedom of speech i.e. the right to receive and spread information that has resulted in a considerable damage or has been committed by misusing official authority.

CCG in its Article 154 also prohibits “Illegal interference into professional activity of journalist”. The para 1 of the Article is read as follows: “Preventing illegally a journalist from carrying out his/her professional duties, i.e. his/her coercion to disseminate or to refrain from dissemination of information shall be punishable by fine or community service from one hundred and twenty to one hundred and eighty hours in length or by corrective labour for up to a two-year term.” Para 2 of the Article sets aggravating circumstances of the crimes and prescribes that the same action committed with the threat of violence or with the misuse of official authority carries heavier penalties, in particular a perpetrator may be sentenced to up to two-year imprisonment or/and deprivation of the right to hold office or pursue a particular activity up to three-year period.

The obligation not to impede the work of journalists is also prescribed in the Law of Georgia On Assemblies and Demonstrations. Article 2 (4) of this statute envisages that “the organisers of assemblies or demonstrations and representatives of law-enforcement bodies shall be obliged not to

obstruct professional activity of journalists with identifying signs covering the assembly or demonstration.”

**Question 2: Are there any non-judicial mechanisms, such as parliamentary or other public inquiries, ombudspersons, independent commissions, as useful complementary procedures to the domestic judicial remedies guaranteed under ECHR, specifically dealing with threats and crimes targeting journalists and other media actors?**

**Answer:** the office of the Public Defender (Ombudsman) of Georgia is the institution which has the responsibility of overseeing and observing the human rights and freedoms in Georgia. Among other topics, rights of journalists and different media actors are the issues the office is actively dealing with.

At the outset, it should be mentioned that the existence of the Ombudsman institution is an essential factors for guaranteeing protection of human rights and represents a crucial element of democratic state. In Georgia the Public Defender is the constitutional institute, which supervises protection of human rights and freedoms within the territory of Georgia, reveals the facts of violations, and facilitates restoration of violated rights. The Article 43.1 of the Constitution of Georgia says: “the protection of human rights and fundamental freedoms within the territory of Georgia shall be supervised by the Public Defender of Georgia (...).” According to the organic law on the Public Defender of Georgia, (Article 2) “The Public Defender of Georgia shall monitor the protection of human rights and freedoms in the territory of Georgia and under its jurisdiction.”

The Public Defender (Ombudsman) surveys applications/complaints about violation of human rights and fundamental freedoms, submitted to the Public Defender’s Office and adopts appropriate reports/recommendations/proposals about violation of rights. Furthermore, the office of Public defender deals with analysis of laws and bills in the spheres under its competence and prepares respective recommendations/proposals, constitutional complaints concerning the normative acts issues in the spheres under its competence.

Bearing in mind the fact that the independent and secure media is vital pillar in any democratic society the Public Defender of Georgia is permanently interested in safety issues connected to media. The Office of Public Defender, as an institution committed to look after human rights, analyses and exchanges information on violation of journalists or other media actors. The annual reports, which include the separate chapter dedicated to freedom of expression, clearly reflect the mentioned interest. It is crucially important to mention, that the Public Defender of Georgia always expresses interest in the process of the investigation of cases regarding journalists and in such cases Ombudsman of Georgia immediately prepares the relevant proposals or/and recommendations for the respecting institutions. Furthermore, the Ombudsman makes the public statements in order to raise the awareness and spread the information. Monitoring the protection of journalists' rights gives a possibility to provide immediate answers, which create profound basis for reinforcing the protection of journalists and other media actors’ rights.

**Question 3: Is the confidentiality of Journalists’ sources of information protected in both law and practice?**

**Answer:** Under Art. 50 of the Criminal Procedure Code of Georgia, journalist is exempted from obligation to testify as a witness and to submit objects, documents, substances or other items

containing information significant to the criminal case, if the information was obtained through his/her professional activities.

According to Article 3 of the Law on Freedom of Speech and Expression the state recognizes and protects the right to freedom of speech and expression as inherent and supreme human value. Furthermore, in Article 3 (1) the Law stipulates that everyone, save an administrative body, shall have a freedom of expression and defines this freedom as, inter alia, the right of a journalist to protect the confidentiality of the source of information.

Procedural guarantees to ensure the effectiveness of such protection are provided in Article 11 of the Law, para 1 of which prescribes that “the sources of professional secrets shall be protected by an absolute privilege, and nobody shall have the right to require disclosure of the source. In litigation on the restriction of the freedom of speech, the respondent shall not be obliged to disclose the source of confidential information.”

The terms “absolute privilege” and “professional secret” are defined in Article 1 of the mentioned Law as follows: absolute privilege – a complete and unconditional release of a person from liability provided for by law; professional secret - the secret of confession, information disclosed to a member of parliament, doctor, journalist, human rights defender, or advocate in the course of their professional activity, as well as information of professional value, which became known to a person under the condition of privacy protection in relation to carrying out his/her professional duties and the disclosure of which may damage the person’s professional reputation; information, which does not contain any personal data, a state or trade secret, as well as information on an administrative body shall not be a professional secret.

Finally, to exclude any possibility of pressure on journalist, the Law envisages that in litigation on restriction of the freedom of speech the respondent’s denial to disclose a professional secret or its source shall not become the sole ground for making an adverse decision for the respondent (Article 7(7)).

**Question 4:** Does the domestic legislation in your country regarding defamation/libel include criminal law provisions?

**Answer:** Defamation/libel is not criminalized under the Criminal legislation of Georgia. The Criminal Code of Georgia provides the criminal responsibility for false denunciation (communication of false information concerning the commission of crime to the law enforcement authorities), after the person providing information is notified about the criminal liability for the false denunciation respectively (Art 373 of CCG).

According to Articles 13 and 14 of the Law on Freedom of Speech and Expression a person who makes defamatory statements may incur only civil liability. No criminal sanction is prescribed for defamation in Georgia.

**5. What are the procedural guarantees included in the civil and/or criminal legislation related to defamation?**

**Answer:** First of all it should be mentioned that according to the Law “the burden of proof for limitation of freedom of speech shall lie with the initiator of the limitation. Any reasonable doubt that cannot be confirmed under the procedure established by the law shall be resolved against the limitation of the freedom of speech<sup>1</sup>”. Furthermore, any limitation of the rights recognized and protected by the Law shall be based on incontrovertible evidence and any doubt on limitation of these rights, which cannot be confirmed under the procedure established by the law, shall be resolved against the limitation of these rights.<sup>2</sup>

As to the defamation suits they may be filed with the court within the period of 100 days after a person got or may have got acquainted himself with a statement he/she considers as defamatory.

Presumption of good faith is also provided for in the Law. Thus, according to its Article 16 a person shall be released from liability for defamation, if he/she did not know and could not have known that he/she was disseminating defamation.

Furthermore, as Article 15 of the Law stipulates a person may be granted a partial or conditional release from a liability provided for by law for a statement containing a substantially false fact if:

- a. he/she took reasonable measures to verify the accuracy of the fact, but was unable to avoid a mistake, and took effective measures in order to restore the reputation of the person damaged by the defamation;
- b. he/she aimed to protect the legitimate interests of the society, and the benefits protected exceeded the damage caused;
- c. he/she made the statement with the consent of the plaintiff;
- d. his/her statement was a proportional response to the plaintiff's statement against him/her;
- e. his/her statement was a fair and accurate report in relation to the events attracting public attention.

**Question 6: In the domestic legal framework, are state officials protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty?**

**Answer:** The legislation of Georgia does not provide any protection to the state officials against criticism or insult at a higher level than the ordinary people.

At the outset it should be highlighted that Law on Freedom of Speech and Expression was designed to incorporate international standards and principles in the field of protection of the freedom to speech and expression into the Georgian domestic legislation. This may be demonstrated by referring to Article 2 of the Law which reads as follows: “This Law shall be interpreted according to the Constitution of Georgia, international legal obligations undertaken by Georgia, including the European Convention on Human Rights and Fundamental Freedoms and case law of the European Court of Human Rights.”

The allusion to the case law of the European Court of Human Rights (ECHR) is not incidental here. In line with the ECtHR's approach that “freedom of political debate is at the very core of the concept of a democratic society” and that “the limits of acceptable criticism are accordingly wider as regards a

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<sup>1</sup> The Law of Georgia On Freedom of Speech and Expression, Article 7.

<sup>2</sup> Ibid.

politician as such than as regards a private individual”<sup>3</sup>, the Law stipulates that a statement made in course of political debates shall not incur liability for defamation<sup>4</sup> as well as sets higher standards for determining liability of those who criticize public officials. In particular, in order a fact of defamation to be established with regard to a private person it is suffice for a plaintiff to prove in a court that the statement of the respondent contains a substantially false fact in relation to the plaintiff, and that the plaintiff suffered damage as a result of this statement<sup>5</sup>. In contrast, Article 14 of the Law envisages that: “a person shall bear responsibility under the civil law for defamation of a public figure if the plaintiff proves in a court that the statement of the respondent contains a substantially false fact in relation to the plaintiff, and that the plaintiff suffered damages as a result of this statement, and the falseness of the stated fact was known to the respondent in advance, or the respondent acted with apparent and gross negligence, which led to spreading a statement containing a substantially false fact”. As it can be seen from this wording in addition to two common elements of defamation (falseness of the statement and damage suffered by a plaintiff) a public official additionally has to prove that person whom he/she sues for defamation has acted in mala fide or negligently while making allegedly defamatory statement.

**Question 8: are the following instruments translated into the national language and disseminated widely, in particular brought to the attention of judicial authorities and police services? Are these made available to representative organizations of lawyers and media professionals?**

- Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, 21 September 2011
- Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (2011)
- Recommendation 1876 (2009) of the Parliamentary Assembly on the state of human rights in Europe: the need to eradicate impunity
- Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted on 26 September 2007
- Recommendation CM/Rec(2004)16 of the Committee of Ministers to member States on the right to reply in the new media environment
- Recommendation CM/Rec(2000)7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information

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<sup>3</sup> *Lingens v. Austria*, application no. 9815/82, §42, 8 July 1986.

<sup>4</sup> The Law of Georgia “On freedom of speech and expression”, Article 5.

<sup>5</sup> *Ibid*, Article 13.

- Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns
- Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content
- Recommendation No. R (2003) 13 on the provision of information through the media in relation to criminal proceedings
- Belgrade Conference of Ministers Resolution n° 3 Safety of Journalists

**Answer:** In 2014-2015 number of joint training activities with the participation of prosecutors and journalists has been organised by the Office of the Chief Prosecutor of Georgia. The said activities covered the recommendations and principles enshrined in Committee of Ministers Recommendation No. R (2003) 13 on the provision of information through the media in relation to criminal proceedings.

These instruments are available on internet in English. “The Guidelines of the Committee of Ministers of the Council of Europe on eradication impunity for serious human rights violations (2011)” has been translated into Georgian. The translations of other instruments are in the process in cooperation with the Council of Europe Office in Georgia.