

# TECHNICAL PAPER:

## LAW AND PRACTICE IN GEORGIA WITH REGARD TO THE PROTECTION AND SAFETY OF JOURNALISTS



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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## **LAW AND PRACTICE IN GEORGIA WITH REGARD TO THE PROTECTION AND SAFETY OF JOURNALISTS**

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Author of the study: Peter Noorlander, Council of Europe expert

Cover design and layout: Giorgi Kinkladze

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# 1. INTRODUCTION

This review has been carried out in the framework of the Council of Europe Project “Strengthening Media Freedom, Internet Governance and Personal Data Protection in Georgia”, at the request of the Public Defender of Georgia.

The safety of journalists<sup>1</sup> has been an issue of increasing concern in many countries around Europe as well as in the rest of the world. Successive reports drawn up by freedom of expression watchdog organisations as well as by the Secretary General of the Council of Europe have shown a worrying deterioration over the last decade. Given the important role that the media play in democracy and the pivotal importance of the right to freedom of expression to the realisation of other rights, this is an issue of strong concern. In 2016, the Council of Europe Committee of Ministers adopted Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors, which makes recommendations for the improvement of this situation.<sup>2</sup> Since then, several countries have taken steps to implement this Recommendation and improve the protection of journalists in their territory and under their jurisdiction.

In Georgia, the safety of journalists has been an issue of increasing concern since 2020. **This report reviews the legal and policy framework of Georgia and relevant practices with regard to the protection and safety of journalists against the standards set in Recommendation CM/Rec(2016)4. It makes recommendations for improvement based on the Recommendation and drawn from practices across Europe as well as from countries in other parts of the world with relevant experience.**

The remit of Recommendation CM/Rec(2016)4 addresses a broad range of safety-related issues, including not only the direct physical and digital safety of journalists but also the broader legislative framework that impacts on media freedom (civil as well as criminal laws, and including defamation law), access to information, the confidentiality of journalistic sources, and the use of surveillance against journalists, to name but a few. While all of these are relevant to the Georgian context, this report focuses on four specific areas of concern that were identified following stakeholder interviews and desk research carried out during March-April 2022:<sup>3</sup>

- ▶ the investigation and prosecution of cases of violence against journalists;

1. The term ‘journalist’ in this report is defined broadly as including all who regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication, in line with the Council of Europe Recommendations CM/Rec(2000)7 and CM/Rec(2016)4; the UN Plan of Action on the Safety of Journalists; and UN Human Rights Committee General Comment No. 34. Given the broad range of actors who carry out journalistic functions, particularly since the advent of the internet, and the number of journalists who freelance, it is considered best practice not to define ‘journalist’ as encompassing only those who are employed by media outlets. For a comparative overview of definitions of ‘journalist’ in different European countries, including several countries that do not have a strict definition or a very broad one, see the Explanatory Memorandum to PACE Report [The status of journalists in Europe](#), doc. 14505, 26 February 2018.

2. Recommendation CM/Rec(2016)4, adopted by the Committee of Ministers on 13 April 2016. For the full text of the Recommendation and the Implementation Guide, see <https://www.coe.int/en/web/freedom-expression/implementation-of-recommendation-cm/rec-2016-4>.

3. Interviews were carried out with Representatives from the Public Defender’s office; Representatives from civil society organisations concerned with the protection of journalism and the safety of journalists; Representatives from the media and journalists; Representatives from the Ministry of Internal Affairs; Representatives from the General Prosecutors Office; a representative from the Special Investigation Service of Georgia; and a representative from the Human Rights Secretariat of the Government Administration. The interviews were facilitated by Council of Europe staff in Georgia and were conducted in Georgian with simultaneous interpretation except for the interview with the Representative from the Human Rights Secretariat, which was conducted in English. A small number of materials were shared by stakeholders following the interviews, which will be referred to as appropriate. The author of this report wishes to thank all for their invaluable assistance.

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- ▶ capacity of law enforcement institutions in relation to ensuring the safety of journalists (institutional capacity as well as training needs)
- ▶ the safety of journalists during demonstrations; and
- ▶ the capacity and knowledge of media of their rights and responsibilities in relation to safety matters.

This review first provides an overview of the media freedom situation in Georgia generally, providing context for the following section, which discusses international standards and good practices in the four areas of concern and analyses Georgian law and practices against these. The review finishes with recommendations for improvement.

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## 2. SUMMARY

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This review identifies areas of **strong concern in terms of the legal and policy framework of Georgia with regard to the protection and safety of journalists, as well as issues of practice**. It highlights a sharp deterioration in the situation since 2019 along with a legal and regulatory framework that – although it contains several positive elements – does not sufficiently protect journalists. Over the last few years, the media freedom situation has deteriorated. The number of alerts concerning Georgia on the Council of Europe Platform on Safety of Journalists has risen sharply, from zero alerts in 2017-2019 to sixteen in 2020-2022, and in 2022 Georgia has slid to 89<sup>th</sup> on the annual media freedom rankings compiled by Reporters without Borders (down 29 places on its position of the previous year; in Europe, only Russia, Belarus, Ukraine, Turkey, Azerbaijan, Bulgaria, Greece, and Albania).

**The overarching recommendation of this review is the establishment of a multi-stakeholder committee**, chaired by an independent and respected person or entity but with high-level political authority, **with a mandate to research and devise a National Plan of Action on Safety of Journalists, which the government will commit to implement**. It is recommended that, as a sign of commitment, **high level elected politicians, at the national level as well as locally, speak out against anti-media violence and hatred and themselves refrain from anti-media rhetoric**.

This review has focused on four distinct issues in particular: the investigation and prosecution of violence against journalists; the capacity of law enforcement agencies (institutional capacity as well as training needs); the safety of journalists during demonstrations; and capacity and knowledge of safety issues among journalists and media personnel.

Improvement in the investigation and prosecution of violence against journalists is sorely needed. **While instances of violence and threats of violence against journalists have increased in recent years, there have been serious shortcomings in the investigation and prosecution of these offences**; and in those cases where convictions have been achieved, too often lenient sentences have been imposed. **To improve the investigation and prosecution of cases of violence against journalists, it is recommended to reform Article 154 of the Penal Code to encompass all incidents of violence or threats against individuals or legal persons linked to their journalistic activity**. Furthermore, it is advisable to undertake **a systematic internal inquiry into the quality of performance in the investigation of offences against journalists, with the involvement of media representatives and other stakeholders**, followed by the specific and detailed guidance to all law enforcement agencies on the investigation of violence against journalists. Also, it is proposed to **collect all-encompassing statistics, including disaggregated data by a number of criteria**, on all incidents of violence or threats against individuals or legal persons linked to their journalistic activity so as to provide a full picture of the problem and enable an evaluation of the effectiveness of law enforcement responses; it is recommended that specific and detailed guidance is issued to all law enforcement agencies on the investigation of violence against journalists; and sentences imposed for offences against individuals or legal persons linked to their journalistic activity become stronger so as to reflect the gravity of the offence against democracy.

The capacity of law enforcement authorities needs to be bolstered. It is recommended that **specific units are established within the police and the General Prosecutor's Office for the investigation and prosecution of violence against journalists and a dedicated training plan is developed**. The review of the resources within various law enforcement agencies is advisable

**SUMMARY**

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for the protection and safety of journalists, and where there are shortfalls, these should be made up. It is recommended that journalists themselves receive training about what to expect in the criminal investigation of crimes in which they are victims, and what is expected of them in terms of providing information. It is proposed that the mandate of the human rights department within the Ministry of Internal Affairs is updated to include a focus on the safety of journalists.

**To improve the safety of journalists during demonstrations, it is recommended to amend the Law on Assemblies and Demonstrations to remove the requirement for journalists to wear identifying signs; and law enforcement and journalists representing a cross-section of the media community should set up a working group to agree guidelines on the media coverage of demonstrations and other major events, based on international best practice. It is proposed that meetings take place between journalists and law enforcement ahead of demonstrations and other major events such as elections, protests, or big sports events, to discuss any safety concerns and to jointly agree a safety protocol.**

**The safety practices of media organisations fall short of international good practices and need to be improved by designing and implementing safety protocols and providing safety equipment as well as training to all media personnel as well as any freelancers whose work they publish.** Journalists themselves should also be encouraged to invest in their own safety, by attending relevant courses and gaining the knowledge to ensure their own safety especially as regards digital risks.

*Detailed recommendations covering each of these topics are found in Section 5 of this review.*

Failing a demonstrable improvement in the investigation and prosecution rate of violence against journalists within a year of publication of this review, establishment of a public commission of inquiry is recommended in order to investigate the causes of violence against journalists and the inadequate law enforcement response.



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## 3. CONTEXT: MEDIA FREEDOM IN GEORGIA

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On paper, Georgia's legal and regulatory environment appears to be protective of media freedom and journalists' safety. The Constitution explicitly guarantees freedom of expression, media freedom, the independence of the public broadcaster as well as the media regulator, and Internet freedom.<sup>4</sup> Georgia's Law on Freedom of Speech and Expression<sup>5</sup> contains guarantees that are modelled on United States law which provides robust protection to the right to freedom of speech, and the overall legislative environment is among the most progressive in the region.<sup>6</sup>

Yet, over the last few years the media freedom situation has deteriorated. The number of alerts concerning Georgia on the Council of Europe Platform on Safety of Journalists has risen sharply, and Georgia has slid on the annual media freedom rankings compiled by organisations such as Reporters without Borders.<sup>7</sup> According to 2022 report, it was ranked 89<sup>th</sup> out of 180 countries, down 29 places on its position of the previous year and among the lowest scoring countries in Europe (only Russia, Belarus, Ukraine, Turkey, Azerbaijan, Bulgaria, Greece, and Albania were rated worse). Violence against the media is a serious concern, as this report will elaborate, but it is far from the only one. Other concerns voiced during stakeholder interviews and included in recent reports concerning media freedom in Georgia include the following:

- ▶ the (threat of) dismissal of journalists as a way of influencing their journalistic output;
- ▶ the bringing of so-called SLAPPs to silence critical voices (the acronym stands for Strategic Lawsuits Against Public Participation and indicates the bringing of lawsuits as a form of harassment);
- ▶ threats against the protection of sources, including through searches of media premises and seizure of journalistic materials;
- ▶ possible surveillance of journalists;
- ▶ selective denial of access to information to some journalists, as well as denial of access for some journalists to press conferences;
- ▶ interferences with the editorial independence of the media and independent journalists;
- ▶ the polarised media landscape;
- ▶ ties between large media conglomerates, businesses, and politicians;
- ▶ the state broadcaster's fragile independence;
- ▶ an underdeveloped advertising market;
- ▶ the impact on the media of societal tensions around issues such as religion, LGBTQI+ rights, and Russian influence.

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4. Constitution of Georgia, as most recently amended 2 April 2018

5. Law of Georgia On Freedom of Speech and Expression, 2004.

6. CSO Meter 2021: Georgia Country Report, p.35.

7. See <https://rsf.org/en/country/georgia>.

**CONTEXT: MEDIA FREEDOM IN GEORGIA**

Assessments by other international and national watchdog organisations raise similar concerns.<sup>8</sup>

In June 2022, the EU Commission voiced concern that recent developments had undermined progress on issues of democracy and human rights. As a precondition to being granted candidate status, the Commission urged the Georgian authorities to, among other things, “undertake stronger efforts to guarantee a free, professional, pluralistic and independent media environment, notably by ensuring that criminal procedures brought against media owners fulfil the highest legal standards, and by launching impartial, effective and timely investigations in cases of threats against safety of journalists and other media professionals”.<sup>9</sup>

Looking at Georgia’s achievements over a longer period, the Council of Europe’s Parliamentary Assembly has welcomed achievements since 2014 but also voiced concerns. In a Resolution adopted in April 2022 on “[t]he honouring of obligations and commitments by Georgia”, PACE welcomed “continuous and marked progress” but highlighted several shortcomings and concerns, particularly in the fields of electoral reform, parliamentary oversight, the independence of the judiciary, the fight against corruption, media freedom, and protection of the LGBTIQ+ community.<sup>10</sup>

According to stakeholders interviewed for this report, the most pressing concerns are around safety. As of January 2023, the Council of Europe Platform on Safety of Journalists held 16 active alerts on Georgia, State replies to 12 of these alerts, and a resolution in relation to only three.<sup>11</sup> The active alerts date mostly from the 2020-2022 period and concern mainly attacks on the physical safety and integrity of journalists, and incidents of harassment and intimidation of journalists.<sup>12</sup> The five-year trend for Georgia in terms of Platform alerts shows a sharp rise, going from zero alerts in 2017-2019 to sixteen in 2020-2022.

Civil society and media stakeholders interviewed for this review reported that there had been a deep deterioration in the protection of journalism and journalists’ safety over the last few years in Georgia. All pointed to the violence caused by far-right protestors at the July 2021 Pride manifestation during which more than 50 journalists were attacked. One of the affected media representatives passed away few days later. While UNESCO included him in the list of killed journalists,<sup>13</sup> according to the report of the Levan Samkharauli National Forensics Bureau, his death was caused by acute cardiovascular and respiratory failure due to drug intoxication.<sup>14</sup> Civil society and media stakeholders described the attacks on 5-6 July 2021 as a black day for media freedom which had left deep marks. In relation to violent acts of June 5-6, 31 individuals were prosecuted. All were found guilty; 27 were sentenced to imprisonment varying from 1 to 5 years.<sup>15</sup> However, civil society and media stakeholders point out that this does not mean that all those responsible for the attacks have been brought to justice and furthermore point out the attacks had not been an isolated incident:

8. Transparency International describes the media environment as “harshening”, raising the alarm about threats, violence, polarisation, a lack of financial sustainability, disinformation, and questions around the independence of the media regulator (see Transparency International, *Georgian Media Environment in 2016-2020*; as well as Transparency International Georgia, *Media - Target of Violence and Illegal Surveillance: Assessment of the Pre-election Media Environment*). Freedom House has raised concerns about the government’s “increasingly aggressive” attitude towards journalists, violence, denial of access of some journalists to government press events, surveillance of journalists, and the dismissal of journalists critical of the government (*Freedom in the World 2022, Georgia*). Other civil society groups have made similar findings, including the Georgian Young Lawyers’ Association (*Assessment of the Human Rights Situation in Georgia in 2021*, p.14-15); the Georgian Democracy Initiative (*Freedom of Media in Georgia*, May 2022, and *Report on SLAPP cases in Georgia*, 2022); and the Coalition for Equality, *The Right to Non-Discrimination in Practice for Various Groups in Georgia*, 2020, p.103.

9. [Opinion on the EU membership application by Georgia](#), 17 June 2022.

10. [Resolution 2438 \(2022\)](#), 28 April 2022.

11. See <https://fom.coe.int/en/pays/detail/11709512>.

12. See <https://fom.coe.int/en/alerte?typeData=1&idPays=11709512&time=1652174470180>.

13. See [https://www.unesco.org/en/safety-journalists/observatory/grid?hub=72609&f%5B0%5D=countries%3A10d20f41-9d26-5d5a-bba7-2c9e73b685de&f%5B1%5D=dataset\\_filters%3Ad4a028c7-b988-44c4-9fcd-ef76810a0974#toggle-facets](https://www.unesco.org/en/safety-journalists/observatory/grid?hub=72609&f%5B0%5D=countries%3A10d20f41-9d26-5d5a-bba7-2c9e73b685de&f%5B1%5D=dataset_filters%3Ad4a028c7-b988-44c4-9fcd-ef76810a0974#toggle-facets)

14. Public Defender of Georgia, [Report on the State of Protection of Human Rights and Freedoms in Georgia](#), 2020, page 137

15. According to information received from the Prosecutor’s Office. See also <https://cpj.org/2022/04/georgia-convicts-26-people-over-2021-attack-on-journalists-by-anti-lgbt-protesters/>

**CONTEXT: MEDIA FREEDOM IN GEORGIA**

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they had come in the wake of previous violent incidents and amidst a climate of hatred and negative rhetoric against the media fuelled by senior politicians as well as public officials and religious figures.

Government and law enforcement stakeholders who were interviewed for this review did not fully share the civil society analysis of the causes of violence, but did acknowledge that violence against journalists was a major issue. They opined that there was a lack of awareness among journalists of their rights as well as responsibilities, and that journalists could be “too insistent” when trying to get answers which led to escalations. Some law enforcement stakeholders also complained of a lack of cooperation by journalists in the investigation of crimes against them.

Civil society and media stakeholders interviewed for this review further pointed out that their concerns around safety needed to be seen in the context of other concerns in relation to media freedom, as listed above.

The overall context against which the concerns described in this review should be read is complex and needs to be taken into account when devising solutions.

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## 4. ISSUES OF CONCERN

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This Chapter focuses on the following four issues:

1. the investigation and prosecution of cases of violence against journalists;
2. capacity of the law enforcement institutions in relation to ensuring the safety of journalists (institutional capacity as well as training needs);
3. safety of journalists during demonstrations;
4. capacity and knowledge of media of their rights and responsibilities in relation to safety matters

### 4.1. The investigation and prosecution of cases of violence against journalists

#### 4.1.1. *International standards and good practices*

Violent attacks against journalists raise issues under several provisions of the European Convention on Human Rights (hereinafter: the Convention), including the right to life, the right to be free from degrading treatment, the right to respect for private life, and the right to freedom of association as well as the right to freedom of expression.

Through its case law, the European Court of Human Rights (hereinafter: the Court) has developed a number of principles that elucidate the various duties on States in relation to the safety of journalists. These principles can be summarised as follows.<sup>16</sup>

Generally speaking, the Court has emphasised that the Convention not only requires States to refrain from unjustified interferences with freedom of expression, but that it also creates an obligation on States to create an environment in which everyone can participate in public debate without fear, even when the opinions expressed are annoying, shocking, or contrary to those held by a significant section of the public.<sup>17</sup> This is sometimes referred to as the duty on States to create an 'enabling environment' for the exercise of the right to freedom of expression. In relation to the issue of safety, it means that:

- (1) States must have in place effective criminal law provisions to deter the commission of offences;
- (2) the criminal law provisions must be backed up by effective and independent law enforcement machinery and (suspected) violations are investigated promptly; and
- (3) States must take preventive operational measures to protect individuals whose lives are at risk.<sup>18</sup>

#### *Effective criminal law provisions*

Without an effective criminal law framework, the investigation of attacks against journalists is bound to fail.

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16. For further detail on the Court's case law, see the Council of Europe [Factsheet on Impunity against Perpetrators of Physical Attacks on Journalists](#), January 2020.

17. See for example the Court's judgments in *Dink v. Turkey*, 14 September 2010, application nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, in particular par. 137; and *Özgür Gündem v. Turkey*, 16 March 2000, application no. 23144/93, paras 42-46.

18. See, for example, *Gongadze v. Ukraine*, 8 November 2005, 34056/02, par. 164.

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The Committee of Ministers has elaborated on these principles through its Recommendation CM/Rec(2016)4, a standard-setting document which was the product of a long process of consultation and deliberation.<sup>19</sup> This Recommendation provides (excerpts):

“Member States should put in place a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear ... The legislative framework, including criminal law provisions dealing with the protection of the physical and moral integrity of the person, should be implemented in an effective manner, including through administrative mechanisms and by recognising the particular roles of journalists and other media actors in a democratic society. The legislative framework and its implementation should guarantee effective protection of female journalists and other female media actors from gender-related dangers in the course of their work.”

The Joint Declaration on Crimes Against Freedom of Expression issued by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information requires that crimes against freedom of expression should be recognised in criminal law, either explicitly as a separate category or as an aggravated circumstance leading to heavier penalties.<sup>20</sup>

Several European countries have specific provisions in their penal codes criminalising violence against journalists, or against freedom of expression more broadly. Of these, the Ukrainian criminal code is the most specific and elaborate. It was extensively amended in 2015 and 2016 to provide for the following provisions:

- ▶ Article 163 provides an enhanced penalty for the interception of communications of journalists (mail, telephone, electronic, other). Penalty: a term of three to seven years;
- ▶ Article 171 criminalises the interference with professional activities of journalists, defined as including illegal seizure of journalistic materials, illegal denial of access to information, illegal prohibition to cover certain topics or individuals and “any other intended preclusion of a journalist’s lawful professional activity”. The offence extends to exerting “any influence on a journalist in order to prevent him/her from performing his/her professional duties or to harass a journalist in connection with his/her lawful professional activity”. Penalty: fine, arrest for a term of up to six months, restriction of liberty for a term of up to three years (up to five years, with or without deprivation of the right to hold certain positions or engage in certain activities for up to three years, if perpetrator is a public official or a group)
- ▶ Article 345-1 criminalises
  - ▶ threats or violence against a journalist, their property or their family in connection with the journalist’s professional activity. Penalty: correctional labour for a term of up to two years, arrest for a term of up to six months, restriction of liberty for a term of up to three years, or imprisonment for up to three years (or seven to fourteen years when committed by an organised group);
  - ▶ intentional infliction of battery, minor bodily injury or bodily injury of medium gravity on a journalist or their family in connection with the journalist’s professional activity. Penalty: restriction of liberty for a term of up to five years, or imprisonment for the same term (or seven to fourteen years when committed by an organised group);

19. See the [Recommendation as well as the Implementation Guide](#).

20. See [Joint declaration on crimes against freedom of expression of 25 June 2012](#).

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- ▶ intentional infliction of grievous bodily harm on a journalist or their family in connection with the journalist's professional activity. Penalty: imprisonment for a term of five to twelve years (or seven to fourteen years when committed by an organised group);
- ▶ Article 347-1 criminalises intentional destruction or damage to a journalist's property or that of their family in connection with the journalist's professional activity. Penalty: fine, arrest for a term of up to six months, or restriction of liberty for a term of up to five years (six to fifteen years if committed by means of arson, explosion or other globally harmful means, or when resulting in the death of people or any other grave consequences).
- ▶ Article 348-1 criminalises murder or attempted murder of a journalist or their family in connection with the journalist's professional activity. Penalty: imprisonment for a term of nine to fifteen years or life imprisonment.
- ▶ Article 349-1 criminalises taking a journalist or their family hostage in order to induce that journalist to take or refrain from taking any action as a condition of release. Penalty: imprisonment for a term of eight to fifteen years.

A formal explanatory note to the Criminal Code provides that,

"[P]rofessional activity of a journalist shall mean systematic activity of a person related to the collection, receipt, creation, distribution, storage or other use of information for the purpose of its distribution among an indefinite circle of persons through print media, television and radio organisations, news agencies, the Internet. The status of a journalist or his/her affiliation with a mass medium shall be confirmed by an editorial or service certificate or other document issued by a mass medium, its editorial office or a professional or creative union of journalists."

Article 138 of the Serbian penal code provides enhanced punishment for endangering the safety of a person, or threaten to do so, if the target is a journalist (penalty: six months to five years imprisonment). Article 148 criminalises "unlawfully denying or restricting form of speech" (penalty: a fine or imprisonment up to one year); and Article 149 criminalises the prevention of printing and distribution of printed material and broadcasting (penalty: a fine or imprisonment up to one year).

Other European countries with specific criminal provisions include:

- ▶ Sweden, where the offence is "unlawful coercion or making an unlawful threat with intent to influence the formation of public opinion ... and thereby endangers freedom of speech, assembly or association". Penalty: imprisonment for up to six years;
- ▶ Armenia, where the offence is hindering journalistic work or forcing journalists to disseminate or not to disseminate information. Penalty: a fine, or, when committed by a public official, imprisonment for up to three years, with or without deprivation of the right to hold certain positions or to engage in certain activities for a term of up to three years. When the offence has been committed through the threat of violence, the penalty is imprisonment for a term of three to seven years;
- ▶ France, where the penal code criminalises "interference with the exercise of freedom of expression in a concerted manner and with threats" and "hindrance, in a concerted manner and by means of beatings, violence, assault, destruction or degradation, to the exercise of freedom of expression". Penalty: up to three years' imprisonment and a fine of up to 45,000 euros along with a prohibition on exercising a public function. The French penal code additionally criminalises exposing private information relating to journalists, allowing him or her to be

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identified or located and potentially exposing them to direct risk of harm (penalty: five years' imprisonment and a fine of 75,000 euros).

Annex 2 contains the full text (in English translation) of the relevant provisions.

#### *Investigation and prosecutions*

When attacks against journalists do take place, or when threats are made, States are under an obligation to carry out a prompt, independent, and effective investigation aimed at bringing those responsible to justice. The Court has emphasised that this investigation and a subsequent prosecution should be prompt; that the investigation should investigate possible links between the attack and the exercise of the right to freedom of expression; and that the journalist or his or her family should be involved and have access to the case file.<sup>21</sup>

Recommendation CM/Rec(2016)4 provides (excerpts):

"Investigations into killings, attacks and ill-treatment must be effective and therefore respect the essential requirements of adequacy, thoroughness, impartiality and independence, promptness and public scrutiny ...

Investigations must be effective in the sense that they are capable of leading to the establishment of the facts as well as the identification and eventually, if appropriate, punishment of those responsible. The authorities must take every reasonable step to collect all the evidence concerning the incident. The conclusions of the investigation must be based on thorough, objective and impartial analysis of all the relevant elements, including the establishment of whether there is a connection between the threats and violence against journalists and other media actors and the exercise of journalistic activities or contributing in similar ways to public debate ...

Investigations should be carried out by specialised, designated units of relevant State authorities in which officials have been given adequate training in international human rights norms and safeguards."<sup>22</sup>

The Implementation Guide to Recommendation (2016)4 elaborates on how these recommendations can be best implemented. It emphasises the following points:

- ▶ **Adequacy:** The investigation must be adequate in the sense that it must be capable of leading to the identification and punishment of those responsible. Authorities must take reasonable steps to secure all the relevant evidence concerning the incident including, among others, eyewitness testimony, forensic evidence, and, where appropriate, an autopsy providing a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death.
- ▶ **Thoroughness:** The investigation should be comprehensive in scope and address all of the relevant background circumstances, including any racist, gender-based or other discriminatory motivation, any political motivation, and any possible link between the violence and the exercise of journalistic activities by the victim.<sup>23</sup> It should also be capable of identifying any systematic failures that had led to the violation. This requires taking all reasonable steps to secure evidence, such as identifying and interviewing the alleged victims, suspects and eyewitnesses; the examination of the scene of the alleged violation for material evidence; and the gathering of forensic and medical evidence by competent specialists. The evidence should

21. See, for example, *Yaşa v. Turkey*, application no. 22495/93, 2 September 1998; *Najafli v. Azerbaijan*, application no. 2594/07, 2 October 2012; *Emin Huseynov v. Azerbaijan*, application no. 59135/09, 7 May 2015; *Huseynova v. Azerbaijan*, application no. 10653/10, 13 April 2017.

22. Paragraphs 18-27, excerpts.

23. See also *Adali v. Turkey*, no. 38187/97, 31 March 2005.

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be assessed in a thorough, consistent, and objective manner. Where there is some evidence that the crime at issue may be a crime against freedom of expression, the investigation should be conducted with the presumption that it is so, until proven otherwise and relevant lines of inquiry related to the victim's journalistic activities have been exhausted.

- ▶ **Promptness:** Investigations must be prompt. Any delay in investigating and in trying threats or violent crimes towards journalists and other media actors gives a sign that such crimes are assigned a low priority. This in turn leads to a sense of impunity among perpetrators and helps perpetuate the acceptance of such violence.
- ▶ **Duty to investigate even when complaint is withdrawn:** The authorities must act of their own motion once the matter has come to their attention and should not require the initiative of the next of kin to instigate an investigation. The fact that the victim does not wish to lodge an official complaint, later withdraws their complaint, or decides to discontinue the proceedings does not absolve the authorities from their obligation to carry out an effective investigation.<sup>24</sup>
- ▶ **Scrutiny and accountability:** The victim or the next of kin should in practice be able to receive information on the investigation, including having access to the case file, and to present evidence.<sup>25</sup>

If a perpetrator of violence is convicted, it is important that the sentence that is imposed reflects the gravity of the offence. If only light penalties are imposed on the perpetrators of crimes against journalists, this will feed the perception that such crimes are not taken seriously and will therefore contribute to the climate of impunity.

Recommendation CM/Rec(2016)4 also provides that when investigations and prosecutions do not result in bringing to justice the perpetrators of attacks against journalists, States should consider setting up special inquiries into specific cases or independent specialised bodies to conduct such inquiries on an ongoing basis. These can be multi-stakeholder bodies and include respected media or civil society figures as well as legal practitioners (ranging from lawyers to prosecutors and judges).<sup>26</sup> A recent examples of such a committee that was able to highlight the circumstances that led to the assassination of a high-profile journalist is the Public Inquiry that was set up to investigate the assassination of Daphne Caruana Galizia in Malta.<sup>27</sup>

Finally, in order to be able to effectively tackle violence against journalists, it is vital to understand the extent of the problem and evaluate the effectiveness of the current law enforcement response. Statistics are a crucial element of this. The UN Sustainable Development Goals therefore encourage States to collect data on violence against journalists,<sup>28</sup> and the UN Human Rights Council has recommended that States establish information-gathering and monitoring mechanisms on threats, attacks, or violence against journalists.<sup>29</sup>

#### 4.1.2. Analysis of practices in Georgia

As described in Section 2 of this report, the number of attacks against journalists has sharply increased in recent years. Whilst some of those responsible for these attacks have been brought to justice, this has not been the case in relation to all instances of violence and civil society and

24. See also *Yasa v. Turkey*, application no. 22495/93, 2 September 1998, par. 100.

25. See also *Huseynova v. Azerbaijan*, application no. 10653/10, 13 April 2017.

26. Paragraph 25.

27. See ARTICLE 19's July 2022 [Tackling Impunity: Lessons from the Public Inquiry into the Assassination of Daphne Caruana Galizia](#).

28. Indicator 16.10.1.

29. UN Human Rights Council's Resolution on "The safety of journalists", no. A/HRC/39/L.7, adopted at the 39th session, 10–28 September 2018, page 4.



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media organisations interviewed for this report expressed strong concerns about the effectiveness of investigations and prosecutions.

#### 4.1.2 (i) *The overall legislative framework*

The main legislative instruments in relation to the investigation and prosecution of attacks against journalists are the Criminal Code and the Code of Criminal Procedure. Article 154 of the Criminal Code is of particular relevance. This criminalises “unlawful interference with the journalist’s professional activities, i.e. coercing a journalist into disseminating or not disseminating information”. Threatening violence or committing the act from an official position is an aggravating circumstance.<sup>30</sup> It is important to note that Article 154 applies only to cases where a journalist is either coerced to disseminate information against their will, or expressly stopped from disseminating information – for example, when a journalist is threatened or attacked in the middle of a live broadcast.

Attacks against journalists that do not fall under Article 154 are prosecuted under several other provisions of the Criminal Code, including the following:

- ▶ The infliction of grave injury, less grave injury or light injury<sup>31</sup> is punishable under Articles 117, 118, and 120 of the Criminal Code;
- ▶ Beating or other violence that does not result in serious medical consequences but that does cause physical pain is punishable under Article 126 of the Criminal Code;
- ▶ Damaging or destroying a person’s property resulting in substantial damage is punishable under Article 187 of the Criminal Code;
- ▶ Threatening violence or destruction is punishable under Article 151 of the Criminal Code.

In addition, Article 156 creates the offence of “persecution of persons because of their speech, opinion, conscience, faith or creed, or political, social, professional, religious or scientific activities”. In relation to all offences, Article 53-1 provides that discrimination on any grounds is an aggravating factor in deciding the length of custodial sentences.<sup>32</sup>

While the legislative framework does cover all instances of violence against journalists, the limited wording of Article 154 in particular was criticised by the majority of stakeholders interviewed for this report, including law enforcement. Article 154 applies only to a small set of scenarios, and there appears to be confusion over a grey area of cases where it is not clear whether or not Article 154 applies. For instance, when a journalist was attacked and had his camera broken on election day, 30 October 2020, it was only after strong civil society pressure that police launched an investigation under Article 154 as well as under the criminal code provision for damage to property.<sup>33</sup> Lower courts have held that swearing, spitting, and shouting at journalists constitute acts of interference and fall within the scope of Article 154;<sup>34</sup> the Supreme Court has held that threatening retaliation should a journalist publish something also falls under Article 154.<sup>35</sup> However, in 2015 the Supreme Court held that grabbing a journalist’s camera did not fall under Article 154 but instead constituted

30. [Criminal Code](#), as last amended 25 May 2022.

31. The degree of injury is determined by a forensic medical expert.

32. According to information received from the Prosecutor’s Office, discrimination on basis of status as a journalist is included under the category “other forms of discrimination”.

33. Media Advocacy Coalition, [Media Environment in Georgia](#), p.22, 2020. According to information received from the Prosecutor’s Office, an investigation was launched initially under Article 187 (damage or destruction of property) of the Criminal Code of Georgia (CCoG). This was subsequently changed to an investigation under Article 154. Eventually, one individual was charged under Article 154 as well as under Article 126 (violence) and found guilty.

34. See, for example, Tbilisi City Court judgments of 9 September 2019 and 27 August 2019.

35. Supreme Court judgment of 3 October 2019.

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the crime of 'arrogation'.<sup>36</sup> This kind of confusion over the scope of what should be a crucial provision in Georgia's Criminal Code clearly hinders law enforcement in the investigation and prosecution of crimes, and stakeholders including in the General Prosecutor's Office, the Special Investigation Service, and the Human Rights Secretariat in the Government Administration all agreed that law reform would be welcome.

Journalists' professional activities extend far beyond the act of "disseminating information", as mentioned in the current wording. Other professional activities include, but are not limited to, conducting interviews, newsgathering, and journalistic investigations. The latter includes desk research as well as field research, including visiting particular locations. For example, in *Szurovecz v. Hungary* the European Court of Human Rights held that a refusal to grant a journalist access to an asylum-seeker centre violated their right to engage in newsgathering activities, an integral part of the right to freedom of expression. The Court emphasized that, "gathering of information is an essential preparatory step in journalism and is an inherent and protected part of press freedom."<sup>37</sup> It is suggested that the Ukrainian legislation, which goes into some level of detail as regards the types of activities covered whilst also leaving scope to include "any other professional activities" (in recognition of the fact that it is impossible to list, in legislation, all activities that might be regarded as part of journalism), is studied to provide inspiration for law reform in Georgia.<sup>38</sup>

It is recommended to reform Article 154 accordingly to criminalise all attacks against legal<sup>39</sup> as well as natural persons in relation to all journalistic activity. It is important that the offence is sufficiently broad to encapsulate attacks on the offices of media outlets as well as violence and threats against all individuals linked to their journalistic activity – including citizen journalists, bloggers, artists, photographers, film makers and others who may from time to time engage in journalistic activities. It is also proposed that the maximum sentence available is strengthened to bring Article 154 into the category of 'particularly serious' offences, reflecting the harm that such offences cause to democracy and not just the material or physical harm to the victim. This would send a strong signal to society at large that attacks against journalists are incompatible with democratic standards and will not be tolerated.

#### 4.1.2 (ii) *The lack of all-encompassing statistics*

Good statistics are essential in understanding the scale of the problem of violence against journalists and evaluating the effectiveness of the law enforcement response. Unfortunately, at present Georgia lacks all-encompassing statistics on this point.

Data is available only for offences under Article 154: while there are statistics on offences under other provisions of the Criminal Code, these are not disaggregated by profession of the victim. At the request of Public Defender's Office, a number of law enforcement agencies, including, General Prosecutor's Office, collects information about other offences committed against journalists. This is subsequently published in the annual reports of the Public Defender.<sup>40</sup> Nevertheless, this data does not qualify as all-encompassing statistics since it lacks disaggregation by various criteria such as gender, age, territory and other. The data about crimes committed against journalists on the ground of discrimination are also collected in the framework of the Joint Report of Data on Crimes Committed on Grounds of Intolerance with Discrimination. However, this data is also not helpful

36. Supreme Court judgment, 12 June 2015. Article 360 of the Criminal Code defines the crime of 'arrogation' as "the exercise of one's actual or supposed right in violation of the legally established order, which has resulted in substantial damage."

37. Application no. 15428/16, judgment of 8 October 2019, par. 52.

38. The legislation is summarised in the section on international standards and good practices, above, and included in full in Annex 2.

39. It is recommended that 'legal persons' are included so as to capture attacks against media companies.

40. Public Defender of Georgia, [Report on the State of Protection of Human Rights and Freedom in Georgia](#), 2021, pp. 135-137

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since offences against journalists are collected and published under the category “other signs of discrimination”<sup>41</sup> without further disaggregation. This prevents a full assessment of the problem. The issue is serious because anecdotal evidence and research by other entities suggests that the scale of the problem is far bigger than the Article 154 statistics suggest. In 2021 alone, the Office of the Public Defender recorded dozens of cases of possible criminal acts or violations committed against media representatives, including not only interference with professional activities but also preparation of intentional murder, threat or assault; damage to property; and abuse of official authority.<sup>42</sup> Previous years saw similar offences.<sup>43</sup>

According to statistics from the Ministry of Internal Affairs, the Special Investigation Service,<sup>44</sup> and the Prosecutor’s Office, during 2015-2022 the following number of Article 154 investigations and prosecutions was commenced:

year	Number of investigations	Number of prosecutions
2015	0	1
2016	6	1
2017	2	0
2018	12	2
2019	13	4
2020	7	2
2021	13	34
2022 (Jan-June)	9	4

Over the years, the number of investigations has increased but the prosecution rate is low (the higher numbers in 2021 correspond with investigations and prosecutions related to the violence around the Pride March – but note that even in this case, not all responsible or engaged in the violence have been brought to justice).

Not nearly all offences against journalists fall under Article 154, and so the statistics quoted above do not begin to represent the full picture of violence against journalists. According to information received from the Prosecutor General’s Office, during 2016-2022, 35 persons were prosecuted for unspecified “other crimes committed against journalists”. It has been claimed that cases that could fall under Article 154 are instead investigated under other criminal code provisions in order to depress the Article 154 statistics.<sup>45</sup> Regardless of this, the lack of comprehensive statistics on crimes committed against journalists prevents a full understanding of the issue and makes it very difficult to evaluate the effectiveness of law enforcement responses.<sup>46</sup> Consideration should be given to producing statistics that go beyond Article 154 and that include all criminal acts committed against

41. The Joint Report is prepared based on the Memorandum of Understanding signed between the Ministry of Internal Affairs, the Prosecutor General's Office, the Supreme Court and the National Statistics Office (Geostat). See the Report of 2022 published by Geostat at [https://www.geostat.ge/media/51738/Hate\\_2022.pdf](https://www.geostat.ge/media/51738/Hate_2022.pdf)

42. Public Defender of Georgia, [Report on the State of Protection of Human Rights and Freedoms in Georgia](#), 2021, pp. 172-173 and 175-176.

43. Public Defender of Georgia, [Report on the State of Protection of Human Rights and Freedoms in Georgia](#), 2020, pp. 233-237; Public Defender of Georgia, [Report on the State of Protection of Human Rights and Freedoms in Georgia](#), 2018, pp. 155-157; Public Defender of Georgia, [Report on the State of Protection of Human Rights and Freedoms in Georgia](#), 2016, pp. 441-443.

44. As of 1 March 2022, the Special Investigation Service has been the designated investigative authority for Article 154 offences. It should be noted that the number of persons prosecuted may exceed the number of investigations because a single investigation may result in several prosecutions.

45. As reported in IREX’s [Media Sustainability Index 2017](#), pp.6-7.

46. Public Defender of Georgia, [Report on the State of Protection of Human Rights and Freedoms in Georgia](#), 2021, pp. 172-173.

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journalists as well as media companies in relation to their professional activities. This could perhaps build on the collection of statistics on hate crimes that was started in 2021, mentioned above.

The statistics that are available for Article 53-1 indicate that this provision is only rarely invoked in Article 154 cases. While there has been a strong increase in the use of Article 53-1 generally (the number of cases in which this provision has been invoked rose from 44 to 83 between 2016-2021),<sup>47</sup> only two of these 83 cases were initiated under Article 154.<sup>48</sup>

#### 4.1.2 (iii) Investigations and prosecutions

Serious criticism was levelled by media and civil society stakeholders interviewed for this report as well as in civil society reports at shortcomings in the investigation and prosecution of violence against journalists.<sup>49</sup>

First, it is alleged that in many cases, investigations have not been 'prompt' or 'effective', as required under the international standards set out above. Article 103 of the Criminal Procedure Code requires that investigations must be carried out "within a reasonable period". Under Article 71 of the Criminal Code, this can be up to six years, and it does appear that in practice many investigations are prolonged and ineffective. Based on an analysis of the data for 2015-2020, the Public Defender has concluded that numerous investigations are ongoing in which law enforcement agencies have not identified the perpetrator or established a motive; and that in some cases, no investigation has been launched.<sup>50</sup> The Public Defender has criticised the investigation as "not meet[ing] the standards of effective investigation in terms of thoroughness or timeliness"; the prosecution for failing to charge "the organizer or leader of the group violence"; and the courts for failing to take into account the crimes committed by specific persons in the past or their personality when determining the punishment.<sup>51</sup> Other national and international press freedom watchdogs have similarly criticised the failure of the authorities to conduct prompt and effective investigations into all violent incidents and prosecute all involved to the full extent of the law, including any organisers for incitement to violence.<sup>52</sup>

Second, because Article 154 and related offences are classified as less serious crimes, law enforcement agencies are not able to use all investigative methods at their disposal. In particular, they are unable to use covert investigative actions such as phone taps.<sup>53</sup> This can hinder the investigation of attacks against journalists where it is suspected that a group of people was involved. Until very recently, law enforcement was for the same reason also unable to obtain information stored in a computer system or on a memory disk for Article 154 and related offences;<sup>54</sup> only on 24 May 2022 was the Criminal Procedure Code amended to allow police access to this data regardless of the category of the crime.

47. Natia Merebashvili: [As a Result of the Reforms Implemented at the Prosecutor's Office, in 2021 the Highest Rate of Identifying Crimes Committed on the Ground of Intolerance Due to Discrimination was Recorded](#), 17 February 2022.

48. The General Prosecutor's Office of Georgia, [Analysis of Hate Crimes](#), 2020 and 2021.

49. Media Advocacy Coalition, [Media Environment in Georgia](#), p.18, 2020.

50. Investigation and/or administrative proceedings were not initiated in 12 cases of alleged illegal actions identified by the Office of the Public Defender of Georgia, [Report on the State of Protection of Human Rights and Freedoms in Georgia](#), 2021, p. 136.

51. Public Defender, [Results of Examination of July 5 Case](#), 6 December 2022.

52. International Partnership for Human Rights, [Failures by the Georgian Government to Address Hate Speech and Attacks on LGBTQI+ Activists and Journalists](#), 2021; Georgian Young Lawyers' Association, [Chronology and Legal Assessment of the Events of July 5-6, 2021](#); Social Justice Center, [Legal Assessment of the Events of July 5-6, 2021](#); Georgian Democracy Initiative, [March without Dignity](#), 2021.

53. As provided under Chapter XVI of the Criminal Procedure Code.

54. As provided under Article 136 of the Criminal Procedure Code.

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Third, it has been alleged that law enforcement authorities have been unwilling or slow to take action against politicians who commit offences against the media, or who incite crimes.<sup>55</sup> Moreover, the Council of Europe Platform for Safety of Journalists shows that alerts related to politicians' offences against the media remain unsolved.<sup>56</sup>

Fourth, access to case files is insufficient. Although the Criminal Procedure Code provides that a person who has been granted victim status has a right to access case materials,<sup>57</sup> in practice victims are met with bureaucratic obstacles<sup>58</sup> and Georgian courts do not follow the jurisprudence of the European Court of Human Rights as regards granting victim status, for example failing to recognise several of the journalists who were severely injured during the dispersal of June 20-21 protests as victims.<sup>59</sup> The insufficient involvement of victims results in relevant information not being taken into account, which means that the investigation is not as effective as it should be.

Research for this report found hardly any guidance to either prosecutors or investigators on the investigation of crimes or threats of crimes against journalists. The issue is touched on only as a brief section (consisting of four paragraphs only in the English translation) in the official *Recommendation on Investigation and Procedural Guidance of Cases Involving Human Rights Defenders*,<sup>60</sup> but this is limited to generalities and little if any practical guidance. Given the increased violence and harassment and the importance of the issue further guidelines specifically focused on investigation and prosecution of crimes against journalists are necessary to the Police,<sup>61</sup> the Special Investigation Service,<sup>62</sup> or to Prosecutors.

In response to the criticism levelled at them, law enforcement stakeholders complained of a lack of cooperation from journalists, including the withdrawal of complaints and journalists stopping to cooperate with police investigations.

#### 4.1.2 (iv) Sentencing

There is real concern that sentences can be light, particularly under Articles 154 and 156 which provide for community service and fines as well as imprisonment. Sentencing law requires that even when there is a prosecution for multiple offences, such as damage to property as well as an attack against a person, for first time offenders only one sentence is imposed and the lighter sentence is 'absorbed' in the more severe one.<sup>63</sup> The use of fines or community service also decreases the deterrent effect of Article 53-1, which provides that discrimination is an aggravating factor only in the determination of custodial sentences.

55. Public Defender of Georgia, [Report on the State of Protection of Human Rights and Freedoms in Georgia](#), 2021, p. 174.

56. Platform Alert 240/2021, [Mestia Mayor Kapitol Zhorzholiani Threatens Journalist Ema Gogokhia with Death](#), 22 December 2021 and Alert 239/2021, [Tbilisi Mayor Kakha Kaladze Openly Insults the Press](#), 22 December 2021.

57. Article 57, Criminal Procedure Code.

58. Transparency International Georgia, [First Complaints Concerning the Wiretapping Case in 2021 have been Sent to the European Court](#), 18 July 2022; [Georgian Young Lawyers' Association, Rights of Victims in Criminal Proceedings](#), 2016; Georgian Young Lawyers' Association, [Chronology and Legal Assessment of the Events of July 5-6](#), p. 36. 2021.

59. As [reported by GYLA](#), and in contrast with ECtHR judgments such as *Oğur v. Turkey*, application no. 21594/93, 20 May 1999 (Grand Chamber) par. 92, and *Betayev and Betayeva v. Russia*, application no. 37315/03, 29 May 2008, par. 88. According to the Prosecutor's Office, 15 journalists were granted victim status as a result of the June 20-21 violence.

60. As was shared for the purposes of this report by the General Prosecutors Office.

61. According to the information provided by the Ministry of Internal Affairs it applies the Recommendation on the methodology of investigation of the crimes committed on the ground of intolerance and discrimination in relation to cases related to journalists. As reported, this is an internal document, which could not be analysed for the purposes of present Review. Hence, relevance of above-mentioned Recommendation to offences committed against journalists needs further analysis.

62. Special Investigation Service plans to develop methodology guidelines for investigating crimes within its competence (information provided by the Service in May 2023).

63. Article 59(3) of the Criminal Code provides that only when an individual has been previously convicted for a crime, the court may impose that sentences are to be served consecutively.

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Practice suggests that lenient sentences tend to be imposed in most cases of crimes against journalists. Examples include the following:

- ▶ Tbilisi City Court judgment of 4 February 2020 imposing a GEL 500 (approximately €175) fine for violations of Articles 154 and 126 of the Criminal Code;
- ▶ Tbilisi City Court judgment of 9 September 2019 imposing a GEL 1,000 (approximately €350) fine for a violation of Article 154 of the Criminal Code (the perpetrator plead guilty which was taken as a mitigating factor);
- ▶ Tbilisi City Court judgment of 27 August 2019 imposing 120 hours community service for a violation of Article 154 of the Criminal Code;
- ▶ Tbilisi City Court judgment of 25 August 2021, imposing 6 months imprisonment for a group of three who physically assaulted and verbally abused of a journalist, far short of the maximum sentence that could have been imposed (one of the defendants received an additional fine for threatening to kill the journalist). The sentence resulted in the immediate release of the perpetrators who had already served six months in pre-trial detention.<sup>64</sup>

In one case, the Supreme Court in 2019 upheld a two-year sentence on an individual who had threatened a journalist.<sup>65</sup>

Heavier sentences have been imposed on some of those recently found guilty of violence during the 2021 Pride March: six were sentenced to five years prison for violent interference with journalistic activities and participating in organised group violence, another 21 received sentences ranging from one to three years, and four persons were fined GEL 5,000 (approximately €1,750).<sup>66</sup>

### 4.1.3. Recommendations

While instances of violence and threats of violence against journalists have increased in recent years, there have been serious shortcomings in the investigation and prosecution of offences. In those cases where convictions have been achieved, too often lenient sentences have been imposed. This feeds the impression of impunity: that perpetrators of offences against journalists can, literally, “get away with it”. The chances of them ‘getting caught’ are low, and even if they are, sentences are not sufficient to constitute a deterrent.

While Articles 154 and 156 of the Criminal Code – coercing a journalist into disseminating or not disseminating information, and persecution on the grounds of professional activities – send a signal that violence against journalists is not tolerated, it is not a strong one. First, both are classified as ‘less serious’ offences, the lowest of three categories of offences in the Criminal Code.<sup>67</sup> Second, the scope of the Article 154 offence is very narrow. Third, sentences imposed are often very light. Reform is sorely needed.

The following recommendations are made to bring law and practices in Georgia in line with European standards as developed by the European Court of Human Rights and as further elaborated in guidance from the Committee of Ministers:

64. The sentences were criticised by civil society organisations including Media Advocacy Coalition ([Justice was not Properly Served in the Case of Vakho Sanaia](#)) and Transparency International Georgia ([Releasing Vakho Sanaia's Attackers is Another Attempt to Incite Violence Against Journalists](#)).

65. Supreme Court judgment, 3 October 2019.

66. As reported in [Seven More Sentenced over July 5 Violence](#), 6 April 2022, and according to information received from the General Prosecutor's Office

67. Article 12 of the Criminal Code distinguishes three categories of crimes, namely less serious, serious and particularly serious crimes. An intentional crime or a crime of negligence for the commission of which the maximum sentence provided for under this Code does not exceed 5 years of imprisonment shall constitute a less serious crime.

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- (1) To the extent that it is necessary to provide a definition of “journalist”, any such definition is functional rather than determined by formal accreditation or employment and, in line with international best practice, includes all who regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication, in line with the Council of Europe Recommendations CM/Rec(2000)7 and CM/Rec(2016)4; the UN Plan of Action on the Safety of Journalists; and UN Human Rights Committee General Comment No. 34.<sup>68</sup>
- (2) Reform Article 154 in order to:
  - ▶ encompass all incidents of violence or threats against individuals or legal persons linked to their journalistic activity. While it is not possible for legislation to list all activities that can be regarded as ‘journalistic’, the law should give examples of common journalistic activities to illustrate the broad range covered, such as newsgathering, conducting interviews, journalistic investigations, and accessing particular locations, whilst explicitly mentioning “other lawful journalistic activities” so as to ensure that the law does not end up constraining journalism; and
  - ▶ elevate it into the category of ‘particularly serious’ offences and provide for harsher penalties, including imprisonment;

The relevant criminal law provisions of Ukraine and other legislation included in Annex 2, and accompanying practices in these countries, could serve as the inspiration in this law reform.

- (3) Following up on the Joint declaration on crimes against freedom of expression by the OSCE Representative on Freedom of the Media and her counterparts at the UN, OAS, and ACHPR, and in line with the approach of Article 53-1, consideration should also be given to recognising an attack on the right to freedom of expression of the victim as an aggravating factor whenever a crime is committed, leading to heavier penalties for such crimes;
- (4) Collect **all-encompassing** statistics on incidents of violence or threats against individuals or legal persons linked to their journalistic activity so as to provide a full picture of the problem and enable an evaluation of the effectiveness of law enforcement responses;
- (5) Undertake a public inquiry into the quality of performance in the investigation of offences against journalists, with the involvement of media representatives and other stakeholders. This inquiry should be conducted by an entity independent from investigation and prosecution services, have a mandate to provide strong and practical recommendations to improve the investigation and prosecution of violence against journalists, have the power to compel witnesses and documents to be produced before it, and its proceedings should be open to the public;<sup>69</sup>
- (6) Acting on the findings of such an inquiry, it is recommended to improve the investigation and prosecution of all incidents of violence or threats against journalists to meet the ‘prompt, effective, and thorough’ standard that is required;

68. Given the broad range of actors who carry out journalistic functions, particularly since the advent of the internet, the number of journalists who freelance, as well as the journalistic role performed by watchdog organisations, it is considered best practice not to define ‘journalist’ as encompassing only those who are employed by media outlets. For a comparative overview of definitions of ‘journalist’ in different European countries, including several countries that do not have a strict definition or a very broad one, see the Explanatory Memorandum to PACE Report [The status of journalists in Europe](#), doc. 14505, 26 February 2018.

69. The terms of reference of the Public Inquiry into the assassination of Maltese journalist, Daphne Caruana Galizia, can be taken as inspiration. See the ARTICLE 19 2022 report, [Daphne Caruana Galizia: Lessons from the Public Inquiry into her murder](#), for an English translation of the ToR and lessons learned from the process.

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- (7) Issue specific and detailed guidance to all law enforcement agencies on the investigation of violence against journalists, covering at least the following points:
- ▶ the importance of properly taking into account any evidence of a link with a journalist's professional activities, and any discriminatory element;
  - ▶ the need to be aware of and investigate gender-specific aspects of violence, both off-line and online;
  - ▶ an emphasis on investigating and prosecuting not only those who commit acts of violence, but also those who incite or instigate violence;
  - ▶ the requirement for law enforcement authorities to act of their own motion, once a matter has come to their attention, without requiring a journalist or next of kin to launch a complaint;
  - ▶ ensuring that the victim or the next of kin are able to receive information on the investigation/prosecution and present evidence;
  - ▶ ensuring that investigative procedures are gender sensitive so that women journalists are not dissuaded from reporting attacks against them and are provided with adequate support, including psychosocial support;
  - ▶ the right of journalists not to reveal their confidential sources of information;
  - ▶ guidance on how to investigate online threats and offences against journalists, highlighting that threats and harassment online that amount to criminal offences must be prosecuted and treated like offline offences and that threats to life and physical integrity, including rape threats, should be prioritised for prosecution.
- (8) Investigate all instances of incitement, committing, or threatening to commit acts of violence against journalists, including – and especially – when incitement or threats are uttered by high profile individuals including politicians and public officials;
- (9) Grant access to case files to journalists and, where relevant, their next of kin without delay or obstacle. It is recommended that courts follow the standards set by the European Court of Human Rights in granting victim status;
- (10) Strengthen sentences imposed for offences against individuals or legal persons linked to their journalistic activity so as to reflect the gravity of the offence against democracy;
- (11) Failing a demonstrable improvement in the investigation and prosecution rate of violence against journalists within a year of publication of this report, establish a public commission of inquiry to investigate the causes of violence against journalists and the inadequate law enforcement response.

## 4.2. Capacity of law enforcement institutions in relation to ensuring the safety of journalists (institutional capacity as well as training needs)

### 4.2.1. International standards and good practices

The Implementation Guide to Recommendation CM/Rec(2016)4 states that establishing specific units within the police, as well as in the prosecutor's office, with specific expertise in human rights and the safety of journalists can significantly improve the effectiveness and impartiality of investigations. Such units exist in several countries. For example, in Kosovo an especially trained police unit has been set up to investigate attacks against journalists, while countries such as Colombia and Mexico have specialised departments within the office of the prosecutor that lead the prosecution



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of crimes against journalists.<sup>70</sup> In Estonia, a specialised court for online harassment has been set-up and specific expertise has been provided to judges and law enforcement officials. Sweden, Serbia, Montenegro, Netherlands, and Ukraine have all issued guidelines and provided training to law enforcement on the investigation and prosecution of crimes against journalists.<sup>71</sup>

It is of course vital that such units are not only established, but that they are provided both the training and the resources necessary for them to fulfil their mandate: they need to be resourced for success. The Implementation Guide to Recommendation CM/Rec(2016)4 states that training should be informed by human rights standards and European Court of Human Rights case law, and that specific attention should be paid to the following topics:

- ▶ raising awareness about the “public watchdog” role played by journalists in a democratic society;
- ▶ the role played by journalists in a democratic society by covering public demonstrations, reporting from conflict zones, in times of crisis (including during states of emergency), and ways to prevent any hindrance to such coverage;
- ▶ the right of journalists not to reveal their confidential sources of information and the necessary procedural safeguards in this regard;
- ▶ the fact that journalists often face specific risks and discrimination, and that the pursuit of particular stories can expose them to threats, attacks, abuse, and harassment by state actors as well as by non-state actors;
- ▶ the prevention and detection of violence against women, equality between women and men, the needs and rights of victims, as well as how to prevent secondary victimisation;
- ▶ the need to ensure timely access to law enforcement authorities when there is a serious risk or threat of violence against journalists;
- ▶ the provision of information on the assistance, support, protection and compensation that victims can obtain as of their first contact with law enforcement authorities;
- ▶ the need to issue protection to journalists when warranted;
- ▶ the characteristics of an effective investigation, the need to consider every possible link between the crime and the journalist’s professional activities, gender-related issues, and a possible link between racist attitudes and the act of violence;
- ▶ improving the understanding of law enforcement authorities of how to investigate threats and other criminal offences that take place online, including those that are gendered;
- ▶ the role of the media at demonstrations.<sup>72</sup>

The Implementation Guide also suggests that States should explore the potential of cooperating with national human rights institutions in the training of judges and prosecutors, so as to avoid the arbitrary application of restrictive legislation with regard to journalists.<sup>73</sup>

### 4.2.2. *Analysis of practices in Georgia*

During the interviews that were conducted for this report with representatives of various law enforcement authorities (the Ministry of Internal Affairs, the General Prosecutors Office, and the

70. As described in the Implementation Guide, page 52.

71. As described in the Implementation Guide, pages 51-53.

72. As described in the Implementation Guide, pages 22-23 and 35.

73. Idem.

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Special Investigation Service of Georgia), questions were asked about the capacity and training of these authorities in relation to the safety of journalists. The responses that were received showed shortcomings in relation to both.

Capacity and the lack of dedicated units within either the police or the prosecution service is a real concern. The Ministry of Internal Affairs confirmed that there is no dedicated unit within the police or prosecutor's department that investigates and prosecutes all crimes against journalists. This means that neither frontline police nor prosecutors build up the specialised internal capacity that is needed to ensure the safety of journalists. While there is a human rights department within the prosecution service, this does not lead prosecutions but instead has a mandate to ensure cooperation between relevant other bodies, including internationally, analyse international court decisions and recommendations, propose recommendations to effectively fight against crimes committed against human rights and freedoms, and carry out related analyses and studies.<sup>74</sup> Additionally, the Human Rights Protection Department of the Ministry of Internal Affairs has a mandate to monitor, study, ensure cooperation between stakeholders, and recommend improvements. Its mandate specifies a focus on "family crime, violence against women, discrimination based on intolerance, trafficking, crimes committed by/against minors", but currently there is no focus or specific expertise with regard to crimes against journalists, which is also a shortcoming.<sup>75</sup>

Although the Special Investigation Service has been given the responsibility of investigating Article 154 cases (which, as detailed above, does not cover all offences against journalists), there is a concern about resources.<sup>76</sup> Given the very high incidence of violence against journalists in the country, providing capacity and ensuring that one of the main investigative authorities is suitably equipped to provide an effective response is a matter of priority.

It was not possible to review full training modules but instead law enforcement stakeholders were asked to describe the training. While, as they described it, the training appeared to cover all the basics including some attention to human rights issues, the curriculum would seem to lack depth and specificity as regards offences against journalists. The MIA shared that the safety of journalists is built into the overall training for police but did not give any details. The Prosecutor's Office also shared that safety of journalists is included in the modules on human rights protection that is taken by all prosecutors, and that from time to time there are ad-hoc courses on specific issues. It appeared that budget restrictions were an important part of the reason why more specific training was not available, but that if funding were available, they would be more than happy to incorporate relevant modules. The interviews with law enforcement bodies also demonstrated that many human rights training modules were financed by external bodies such as USAID or the Council of Europe, and were only offered on an occasional basis. Despite experience in other Council of Europe countries being available, there did not appear to be any sustained effort to engage in peer-learning on the safety of journalists. The lack of training opportunities coupled with a lack of international peer exchange and learning opportunities has not allowed law enforcement personnel charged with investigating and prosecuting violence against journalists to gain the necessary knowledge and experience for their task. This has hindered their ability to launch prompt and effective investigations, as described in the previous section.

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74. Prosecutor General of Georgia, Order No. 008, March 4, 2022, On the approval of the regulation of the Department of Human Rights Protection of the General Prosecutor's Office of Georgia.

75. Minister of Internal Affairs of Georgia, Approval of the Regulation of the Human Rights Protection Department of the Ministry of Internal Affairs of Georgia, Order No. 1, 12 January 2018.

76. This concern had been raised by the UN country team when the mandate was created, stating that "the substantial broadening of the list of crimes falling within the mandate of a newly created Special Investigation Service entails a serious risk of overburdening the agency" ([United Nations concerned over the decision of Georgian authorities to abolish the State Inspector's Service](#), 14 January 2022).

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There is no doubt that with sustained training as well as investment in capacity, which currently is very low, law enforcement results can be significantly improved. For example, from 2018-2022, there has been a sustained effort to train prosecutors and other law enforcement staff on the issue of hate crime. As a result, 150 employees of the Prosecutor's Office of Georgia have been specialised, namely, prosecutors, investigators and managers of the Prosecution Service and witness and victim coordinators.<sup>77</sup>; the quality and effectiveness of measures taken by them has improved; and – as described above – the number of individuals prosecuted has gone up from 44 in 2016 to 1172 in 2022.<sup>78</sup>

### 4.2.3. Recommendations

Law enforcement agencies responsible for the safety of journalists need sufficient resources to successfully fulfil their mandate. This includes, but is not limited to, receiving training. The following recommendations are made:

- (1) Review of the resources (including financial as well as human resources, what qualifications, expertise and experience staff have, access to equipment, and training received and available) needed within various law enforcement agencies for the protection and safety of journalists, and making up the shortfalls, where relevant. This should include a review of the capacity and resources (also including financial as well as human resources, what qualifications, expertise and experience staff have, access to equipment, and training received and available), of the Special Investigative Service in relation to its mandate under Article 154;
- (2) Establish dedicated units within the police and the General Prosecutor's Office for the investigation and prosecution of violence against journalists and provided with the necessary resources (financial, human, equipment, training) to do so;
- (3) In addition to the establishment of dedicated police and prosecution services, it is recommended to update the mandate of the human rights departments within the Ministry of Internal Affairs to include a focus on the safety of journalists. It is further recommended that the department is given the resources to implement this enhanced mandate;
- (4) In case there is no possibility for establishment of a unit dedicated to prosecuting crimes against journalists in the General Prosecutor's Office, it is advisable that the mandate of the existing human rights department in the General Prosecutor's Office is updated to include a focus on the safety of journalists, and the department should be given the resources to implement this enhanced mandate;
- (5) Carry out a comprehensive review of Training Curricula for law enforcement on the safety of journalists, resulting in a training plan for all law enforcement agencies akin to that which appears to have successfully trained law enforcement personnel on hate crimes. Such a plan should include dedicated training modules on the safety of journalists for police and prosecutors, covering, at a minimum, the following points:
  - ▶ raising awareness about the "public watchdog" role played by journalists in a democratic society;
  - ▶ the role played by journalists in a democratic society by covering public demonstrations, reporting from conflict zones, in times of crisis (including during states of emergency), and ways to prevent any hindrance to such coverage;

77. According to the information received from General Prosecutor's Office in May 2023.

78. Statistics on prosecutions from [https://www.geostat.ge/media/51738/Hate\\_2022.pdf](https://www.geostat.ge/media/51738/Hate_2022.pdf).

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- ▶ the right of journalists not to reveal their confidential sources of information and the necessary procedural safeguards in this regard;
  - ▶ the fact that journalists often face specific risks and discrimination, and that the pursuit of particular stories can expose them to threats, attacks, abuse, and harassment by state actors as well as by non-state actors;
  - ▶ the prevention and detection of violence against women, equality between women and men, the needs and rights of victims, as well as how to prevent secondary victimisation;
  - ▶ the need to ensure timely access to law enforcement authorities when there is a serious risk or threat of violence against journalists;
  - ▶ the provision of information on the assistance, support, protection and compensation that victims can obtain as of their first contact with law enforcement authorities;
  - ▶ the need to issue protection to journalists when warranted;
  - ▶ the characteristics of an effective investigation, the need to consider every possible link between the crime and the journalist's professional activities, gender-related issues, and a possible link between racist attitudes and the act of violence;
  - ▶ improving the understanding of law enforcement authorities of how to investigate threats and other criminal offences that take place online, including those that are gendered;
  - ▶ the role of the media at demonstrations;
- (6) Consideration could be given to engaging in exchanges and peer-learning with police forces in other countries that have made successful advances in protecting the safety of journalists and prosecuting offenders.

### 4.3. Safety of journalists during demonstrations

#### 4.3.1. *International standards and good practices*

Public demonstrations are an important part of democratic discourse. They are the exercise of the right under Article 11 of the Convention to freedom of peaceful assembly and provide a vital means by which groups can bring public attention to issues. Journalists who cover protests are an important part of this: they are the intermediaries between the demonstrators and the public at large. Reporting on demonstrations can therefore be said to engage not only the right to freedom of expression of the journalists themselves, but also that of the protestors: the media are also the vehicle through which protestors can bring their issues to the attention of a wider audience. The audience moreover has a right to receive that information. The European Court has emphasized that “[i]t is incumbent on the press to impart information and ideas on matters of public interest ... This undoubtedly includes reporting on ... gatherings and demonstrations.”<sup>79</sup>

Furthermore, through their reporting the media play a role in ensuring that where there is police involvement, they can be held to account for their conduct. In this regard, the European Court has emphasized that,

“The crucial role of the media in providing information on the authorities’ handling of public demonstrations and the containment of disorder must be emphasised. The “watchdog” role of the media assumes particular importance in such contexts since their presence is a guarantee that the authorities can be held to account for their conduct vis-à-vis the demonstrators and the

<sup>79</sup> *Najafli v. Azerbaijan*, Application No 2594/07, 2 October 2012.

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public at large when it comes to the policing of large gatherings, including the methods used to control or disperse protesters or to preserve public order.”<sup>80</sup>

Recommendation CM/Rec(2016)4 states that, “it is important for law enforcement authorities to respect the role of journalists and other media actors covering demonstrations and other events. Press or union cards, relevant accreditation and journalistic insignia should be accepted by State authorities as journalistic credentials, and where it is not possible for journalists or other media actors to produce professional documentation, every possible effort should be made by State authorities to ascertain their status. Dialogue between State authorities and journalists’ organisations is moreover encouraged in order to avoid friction or clashes between police and members of the media.”<sup>81</sup>

The principles that underlie Recommendation CM/Rec(2016)4 further specify that, “policing operations, including the policing of public demonstrations, must be sufficiently regulated by [national law], within a system of adequate and effective safeguards against arbitrariness and abuse of force, and even against avoidable accident.”<sup>82</sup>

The Implementation Guidance to Recommendation (2016)4 provides:

“[I]t is imperative that state authorities do not interfere with [journalists’] coverage of events that have important implications for the functioning of democratic systems. It follows that journalists and other media actors are entitled to photograph/film demonstrations, including police handling of disorder and that their equipment must not be seized.”

The Guidance further emphasises that police should respect press cards and similar symbols, but that even when a journalist is not wearing journalistic insignia this should not be used as a pretext for undue restrictions on journalistic activities. When journalists cannot produce their credentials, police should make an effort to verify their status by some other means – for example by contacting media organisations or journalists’ associations.

In *Butkevich v. Russia*, the European Court of Human Rights implied – but did not elaborate on the point in detail – that journalists should not be required to wear press emblems or distinctive clothing during protests in order to benefit from the protection of Article 10 ECHR.<sup>83</sup>

The Venice Commission and the OSCE have also issued guidance on the policing of demonstrations and the role of the media.<sup>84</sup> Their Guidelines on Freedom of Peaceful Assembly, which themselves draw on human rights law and international good practices, recommend the following:

- ▶ the authorities have a duty to protect and facilitate the work of journalists and media personnel and ensure their safety to the maximum extent;
- ▶ law enforcement need to protect journalists from violence or harm emanating from third parties
- ▶ law enforcement are obliged to exercise restraint and refrain from interfering with the work of journalists. In particular, they must not arrest or detain journalists in connection with their coverage of an assembly;
- ▶ law enforcement must respect not only a journalist’s physical integrity but also that of his or her equipment;

80. *Pentikäinen v. Finland*, application no. 11882/10, 20 October 2015.

81. Recommendation(2016)4, Guidelines, par. 14.

82. Recommendation(2016)4, Principles, par. 22.

83. *Butkevich v. Russia*, Application no. 5865/07, 13 February 2018, paras 121-124.

84. European Commission for Democracy Through Law, OSCE Office For Democratic Institutions and Human Rights, Guidelines on Freedom of Peaceful Assembly, 15 July 2020.

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- ▶ the need to ensure safety should not be used as a pretext to unnecessarily limit the rights of journalists;
- ▶ journalists have the right to record police activities at assemblies, subject only to reasonable time, place, and manner restrictions;
- ▶ journalists must be given full access by the authorities to all forms of public assembly and to the policing operations mounted to facilitate them;
- ▶ any attempt to remove journalists from the scene of demonstrations must be subject to strict scrutiny;
- ▶ respect for and protection of journalists should cover not just those formally recognized as journalists, but should also include community media workers, citizen journalists, and bloggers;
- ▶ no special press credentials should be required to access or cover an assembly except where space is limited;
- ▶ dispersal orders directed at protestors should not oblige journalists to leave the area, unless their individual safety is endangered or, in exceptional cases, when their continued physical presence will significantly hinder or obstruct law enforcement officers in doing their work.<sup>85</sup>

Finally, both the Implementation Guidance and the Venice Commission/OSCE Guidelines emphasise the importance of coordinated training and communication between the media and the police, to ensure that each understands the other's responsibilities and constraints and to ensure trust and good working relationships. The police should maintain open lines of communication with the media to reduce the risk of conflict, and post-event debriefing by the police should be standard practice and must address the safety of journalists.

To implement this important guidance, and in some cases predating the guidance, European countries have introduced several measures, of which communication between the parties is often a cornerstone. In the Netherlands, the Dutch Association of Journalists and the national police meet every three months to discuss collaboration between the press and the police, in particular in relation to incidents involving journalists during riots and the rights of journalists in public spaces. They have also agreed on protocols to follow during protests and other incidents, which includes journalists contacting the operational commander of the unit that polices a demonstration so the police know that media will be present. Similar meetings between representatives of the media and law enforcement are held in Sweden. In Ukraine, police officers from different regions have been trained on the proper interaction between police and the media at public events;<sup>86</sup> and in the United Kingdom, the National Action Plan for the Safety of Journalists published in 2021 commits the police to engage with journalists' associations to update its training for police in relation to the role of journalists in covering demonstrations.<sup>87</sup>

Finally, it is relevant to note that the International Federation of Journalists' Safety Guidelines for Covering Demonstrations and Civil Unrest recommend that while journalists should carry some form of press identification, they should "conceal it if it attracts unwarranted attention".<sup>88</sup> Similarly, the Reporters without Borders Safety Guide for Journalists warn that "if you wear a PRESS sign you may expose yourself to anti-journalist violence by the demonstrators".<sup>89</sup> Guidance from both organisations recognises that there may be circumstances where it is beneficial for a journalist to identify

85. *Ibid.*, pages 73-76.

86. *Ibid.*, pages 36, 37.

87. [National Action Plan for the Safety of Journalists](#), 9 March 2021.

88. [Safety Guidelines for Covering Demonstrations and Civil Unrest](#), paragraph 12.

89. [RSF Safety Guide for Journalists](#), 2016, p. 58.

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themselves as such, but sometimes it is not – it might expose them to violence. A rule requiring journalists to always wear press insignia would therefore be misguided.

#### 4.3.2. Analysis of practices in Georgia

As has been set out in the introductory section to this report, some of the most prominent incidents that have endangered the safety of journalists have been around demonstrations. Amongst other incidents, journalists faced attacks from violent anti-LGBTQI+ thugs in 2021 and were injured by police rubber bullets during protests in June 2019.<sup>90</sup>

The violence of July 2021 in particular has left a deep mark on the media community. During the attacks, the response of the authorities was perceived to be slow and ineffective, which sent a signal to violent protestors that they would be able to get away with any attacks. Following the violence, there is concern that despite the arrests and convictions, there has been insufficient investigation. A sense of continuing impunity for perpetrators remains. Civil society stakeholders emphasised in interviews that the problem is not about individual police officers; the issue is a systemic one. During protests, journalists feel very vulnerable. Outside news reporters are particularly under threat. They are out there with a camera and microphone, their role as a journalist is very visible and they are seen as a ‘target’. During the July 2021 violence, some journalists went so far as to remove their press badges so as not to be attacked.

Article 2(4) of Georgia’s Law on Assemblies and Demonstrations provides that, “[t]he 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.” It appeared from interviews conducted for this review that this is interpreted by law enforcement authorities as a requirement for journalists to wear identifying insignia. As indicated in the preceding section on international standards and good practices, such a requirement goes against international standards and may in certain cases endanger journalists’ lives. The European Court of Human Rights held in *Butkevich v. Russia* that the professional activities of a journalist who was covering a demonstration but who did not wear distinctive clothing or identifying insignia were still protected under Article 10 of the European Convention on Human Rights.<sup>91</sup>

Media and civil society stakeholders interviewed for this report also highlighted a few specific issues where they thought there was room for improvement of police practices:

- ▶ There is no or insufficient coordination with law enforcement prior to public events, demonstrations. This means that both police and journalists are insufficiently prepared in case there is violence and journalists are either directly attacked or get caught up in violence;
- ▶ A lack of clarity around what is a proper ‘identifying sign’ as journalists are required to wear under the Law on Assembly and Manifestations, and a concern that this may exclude citizen journalists and others who fall outside the traditional definition of ‘journalist’ (as indicated above, this requirement falls foul of international standards);
- ▶ A lack of clarity around the role and regulation of Ministry of Internal Affairs Special Forces during demonstrations.

During the interview, the representatives of the Ministry of Internal Affairs said that on a case-by-case basis, individual police officers are appointed as liaison for journalists during demonstrations. These officers direct journalists concerning safe places from which to cover the demonstrations.

90. [Agenda.ge, 32 journalists injured during June 20 rally, media demands investigation](#), 21 June 2019.

91. *Butkevich v. Russia*, Application no. 5865/07, 13 February 2018, paras 121-124.

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In addition to the misguided requirement that journalists should wear identifying signs, the lack of effective communication between the media and law enforcement is a huge shortcoming, around issues on safety in general as well as on the specific issue of protecting journalists during demonstrations. The lack of trust may mean that journalists simply do not feel that they can engage with police. International good practices indicates that effective communication simply must be at the basis of any improvements. The lack of such communication leads to an environment of mistrust which threatens to undermine even a genuine effort to improve safety.

### 4.3.3. Recommendations

To bring national practices in line with international best practice and to ensure the safety of journalists during demonstrations, the following recommendations are made:

- (1) Amendment of the Law on Assemblies and Demonstrations to remove the requirement for journalists to wear identifying signs;
- (2) Set up a working group with participation of law enforcement and journalists representing a cross-section of the media community to agree guidelines on the media coverage of demonstrations and other major events, based on international best practice. Such guidelines should set out the rights of members of the media, outline steps to promote practical co-operation, and include practical rules and methods for media identification;
- (3) Meetings between journalists and law enforcement ahead of demonstrations and other major events such as elections, protests, or big sports events are highly recommended, to discuss safety concerns and to jointly agree safety protocols;
- (4) Safety protocols for events include at a minimum:
  - ▶ recognition of the important role that journalists play in covering demonstrations;
  - ▶ the primary responsibility of law enforcement at demonstrations is to facilitate the protest as well as media coverage, not to restrict it;
  - ▶ a designated point of contact in law enforcement as well as for the media;
- (5) Journalists or media outlets who do not participate in such joint working groups should not be penalised and their non-participation should not be used as a pretext to deny them their rights.

## 4.4. Capacity and knowledge of media of their rights and responsibilities in relation to safety matters

### 4.4.1. International standards and good practices

Media companies have a significant degree of responsibility for the protection of the journalists who work for them. Like every other employer, they should take all steps that can reasonably be expected of them to ensure the safety of their employees, and they should provide safety training and safety equipment when that is necessary in order for their employees to be able to do their job safely.

Recommendation CM/Rec(2016)4 states that the responsibilities of the media may include adopting in-house guidelines and procedures for the deployment of journalists on difficult or dangerous assignments (which should be voluntary); providing them with adequate information on the risks involved; and ensuring the requisite training on all issues of safety, including digital security and privacy. The Recommendation also states that media should arrange for life assurance and health



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and travel insurance as part of a comprehensive and equitable package of work conditions. Other institutional responsibilities include the provision of legal support and representation, and trauma counselling on return from assignments.<sup>92</sup>

Building on these standards, there are some international good practices that can be referred to. The Safety Principles that have been developed by the 'ACOS' (Culture of Safety) Alliance of media organisations provide some detail as to what can be expected of media companies.<sup>93</sup> The Principles were developed in the context of internationally operating media companies' responsibilities to freelance journalists, but perhaps precisely for that reason they can be seen as setting out what the minimum rules are (a company would be expected to provide more for its permanent employees). The Principles provide, as relevant:

- (1) News organisations and editors should endeavour to treat journalists and freelancers they use on a regular basis in a similar manner to the way they treat staffers when it comes to issues of safety training, first aid and other safety equipment, and responsibility in the event of injury or kidnap;
- (2) Editors and news organizations should be aware of, and factor in, the additional costs of training, insurance and safety equipment in war zones. They should clearly delineate before an assignment what a freelancer will be paid and what expenses will be covered;
- (3) News organisations should not make an assignment with a freelancer in a conflict zone or dangerous environment unless the news organization is prepared to take the same responsibility for the freelancer's well-being in the event of kidnap or injury as it would a staffer. News organizations have a moral responsibility to support journalists to whom they give assignments in dangerous areas, as long as the freelancer complies with the rules and instructions of the news organization.

The ACOS Alliance also provides a range of resources, including a safety self-assessment guide, enabling media to review and improve their current safety practices and protocols and helping news managers to identify and better understand their own weaknesses and strengths when it comes to the security of individuals who are working for them; and a Checklist for freelance journalists and the editors they work with, ensuring that they have considered all the relevant safety concerns before an assignment.<sup>94</sup> Other resources include checklists for reporting on public unrest; legal assistance; trauma management; digital security; and insurance. These materials should be closely studied by stakeholders for guidance regarding how to improve their internal practices.

The ACOS Alliance also certifies an industry standard for journalists' safety training, covering issues such as risk assessments, legal risks, physical threats, digital threats, medical emergencies, and gender, identity, and risk.<sup>95</sup>

Examples of media-specific safety guides that should be studied by stakeholders for guidance on this include the BBC High Risk Guide, which provides guidance and protocols on a range of safety-related issues such as reporting on chemical and industrial spills; covert filming; crisis management and security support; demonstrations, protests and crowds; disaster coverage; public order; as well as a hostile environments high risk guide and information and requirements regarding personal protective equipment.<sup>96</sup> The BBC defines high-risk work as "deployments to hostile environments which may be environmental (high altitude or desert) or man-made (conflicts, violent disorder); un-

92. Recommendation CM/Rec(2016)4, Guidelines, par. 16

93. [See the Freelance Journalist Safety Principles](#)

94. See [Safety Management Resource](#) .

95. [See Industry Standard for Safety Training](#)

96. [BBC High Risk Guide](#).

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dertaking activities such as covert filming of dangerous groups; or covering events such as terrorist incidents, natural disasters or pandemic diseases.” Before any such assignments, journalists should:

- ▶ seek information and advice from the High Risk Team;
- ▶ complete a written risk assessment and apply the necessary safety control measures;
- ▶ ensure those involved have the right training and/or experience for the assignment;
- ▶ identify and use appropriate safety equipment;
- ▶ make adequate contingency plans and arrangements in case of emergency;
- ▶ obtain the appropriate level of management authorisation, and notify and coordinate all deployments with Newsgathering (the lead department for the coordination of all deployments to Hostile Environments).

While not all news outlets have the resources to employ an in-house “High Risk Team”, the other steps that the BBC guide insists should be taken require far less financial investment and will ensure that no journalist is sent into a dangerous situation unaware of the potential risks and without effective safety protocols in place.

Another example of a media guide is the Safe and Secure guide for documentary filmmakers.<sup>97</sup> This provides a Handbook covering digital security, journalistic accountability, legal safety, guidance regarding high risk locations, subject security, and PR-related issues; a Checklist for use by filmmaking teams to anticipate and minimise possible risks and work out a contingency plan; and a Hostile Filming Protocol which is a more extensive companion piece to the Checklist for those who have identified they will be filming in a hostile environment. The guide is aimed at filmmakers who do not have resources such as an in-house High Risk Team and should also be studied by stakeholders for guidance.

Examples of state-sponsored national practices include the Dutch ‘Persveilig’ (Press Safety) program, which brings together media companies, journalists associations, law enforcement bodies, and which seeks to ensure that journalists have the tools they need to provide for their own safety and security (without abrogating the responsibilities of the State or of their employers).<sup>98</sup> The program is jointly financed by the media and state subsidies. In Sweden, the government provides financial support to the “Fojo Media Institute” to develop support for journalists and editors subjected to threats and hatred.<sup>99</sup>

### 4.4.2. Analysis of practices in Georgia

Civil society and media stakeholders indicated that generally speaking, there is a lack of knowledge among journalists and media outlets regarding safety issues. In media outlets, it is often not clear who is responsible for ensuring the safety of journalists. It appeared that journalists are sometimes sent into dangerous and potentially violent situations with insufficient guidance, training, equipment, and other safety resources. In many media outlets, safety equipment is not available, or when it is there is a lack of knowledge on how to use it.

In response to the July 2021 violence, some media changed their security protocols and invested in safety equipment such as helmets, vests, and gas masks. Some media also introduced safety briefings before events such as rallies and demonstrations, and debriefs after. Stakeholders agreed

97. See [Safe and Secure guide for documentary filmmakers](#)

98. [See Press Safety Program](#)

99. As reported in the 2022 Rule of Law Report [Country Chapter on the rule of law situation in Sweden](#), SWD(2022) 527 final, 13 July 2022.

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that investments such as these are vital; however, they are expensive and have a huge impact on the budgets of media outlets at a time when they already struggle financially.

In response to the increased safety risks, journalists should also receive a basic level of training on their rights and responsibilities. This should include knowledge of criminal procedure and how they can expect to interact with law enforcement authorities in the investigation of any incidents of violence against them.

### 4.4.3. Recommendations

It is clear that the safety practices of at least a number of media organisations fall short of international good practices, and potentially of national standards as well. Media companies who argue that they cannot afford to invest in necessary safety equipment should reassess their financial priorities and learn from good practices put in place by other media companies. Journalists themselves should also be encouraged to invest in their own safety, by attending relevant courses and gaining the knowledge to ensure their own safety especially as regards digital risks. The following specific recommendations should be considered, and should apply with regard to journalists employed by media outlets as well as freelancers whom media outlets commission or whose work they publish:

- (1) Media companies conduct an audit of their safety practices (the bullet points that follow can be taken as a guide in such an audit);
- (2) Media companies provide at least a basic level of safety equipment and ensure that their employees are trained in how to use the equipment; basic safety training is available to all employees, including non-frontline employees, and covering digital security and privacy as well as basic physical security;
- (3) Media companies adopt safety protocols including guidelines and procedures for the deployment of journalists on difficult or dangerous assignments; a briefing is provided for journalists prior to potentially difficult or dangerous assignments, providing them with adequate information on the risks involved; only journalists who have received appropriate safety training should be deployed on potentially difficult or dangerous assignments;
- (4) Media companies arrange for life assurance as well as health and travel insurance as part of a comprehensive and equitable package of work conditions;
- (5) Media companies ensure the provision of legal support and representation, as well as trauma counselling on return from assignments, as needed;
- (6) Journalists should receive training about what to expect in the criminal investigation of crimes in which they are victims, and what is expected of them in terms of providing information. Such training should cover the following topics:
  - ▶ the importance of reporting crimes, cooperating with investigations, and developing jurisprudence that protects journalists' rights;
  - ▶ basic criminal law concerning offences against journalists, including what evidence is required to prove them; the stages of a criminal investigation and what is to be expected at each stage; the rules of evidence, including rules that apply to different kinds of evidence (physical evidence, mobile phone recordings etc.)
  - ▶ steps journalists can take when faced with potential criminal conduct, such as preserving evidence;

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## 5. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

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In June 2021, Georgia's government – along with other Council of Europe member states – committed to devise a National Plan of Action on the safety of journalists. The government agreed that the Plan will set a comprehensive and effective programme of activity, with urgency-based priorities and adequate resources for their implementation. The government pledged strong political and operational leadership, and recognised that coordination between the authorities involved and the effective involvement at all stages of stakeholders including civil society, academia, and journalists and their professional associations would be instrumental to the success of the Plan.<sup>100</sup>

The Plan of Action committed to will be wide-ranging and cover the following points:

1. the specific risks, challenges and threats that women journalists and other media actors face on account of their gender, also in the online sphere.
2. ensuring that investigations into crimes against journalists are prompt and effective;
3. providing for practical and operational measures to stem impunity for attacks against journalists;
4. the importance for the police and media to build a mutual understanding of their respective responsibilities and constraints, notably through training, regular dialogue and the joint development of guidelines for their interaction.

Furthermore, the government pledged to swiftly and decisively condemn any attack on journalists, and to make the protection of journalists a political priority, with the corresponding political accountability that this engages.

This commitment, undertaken as part of the Council of Europe Ministerial Conference on Media and Information Society in June 2021, provides a perfect framing for the work that needs to be carried out in Georgia to improve the serious shortcomings in the country concerning the safety of journalists. The commitment builds on earlier case law of the European Court of Human Rights, which provides for legally binding obligations on States, as well as an earlier Recommendation on the Safety of Journalists stemming from 2016. In other words, the commitment is a long-standing one.

Implementation is urgent. Attacks against journalists are on the rise and constitute a threat not just to the media community, but to democracy as a whole.

During interviews conducted for this report it became clear that there is a commitment among government stakeholders to incorporate a plan of action for journalists' safety into an overall plan of action on human rights, but that there is no intention to craft a specific plan of action for the safety of journalists. This would be a mistake. Given the specificities and complexity of the issue of safety of journalists, the increase of violence, and the low capacity of law enforcement to tackle it, it is unlikely that a 'general' human rights action plan would be able to fully address the many issues that need to be addressed to ensure the safety of journalists. The scant reference to the investigation and prosecution of crimes against journalists in the Recommendation on Investigation and Procedural Guidance of Cases Involving Human Rights Defenders does not inspire confidence. Spe-

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100. [Resolution on the safety of journalists](#), 11 June 2021.

## CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

cific plan of action on journalists' safety, in line with Georgia's explicit international commitment<sup>101</sup> is highly recommended.

The lead in devising action for the safety of journalists could come from the government, but it must also be a multi-stakeholder effort. The lead from the top also means that high level elected politicians, at the national level as well as locally, refrain from negative rhetoric against the media. Instead the importance of a free and independent media to the long-term success of democracy, safety, and economic prosperity of the country could be emphasised along with speaking out against violence and hatred against the media.<sup>102</sup> It is recommended that the need for a National Plan of Action is highlighted by high level elected politicians.

Devising the Plan of Action should be a multi-stakeholder effort. It is both striking and telling that there is not currently any formalised structure for meetings between representatives of the media and law enforcement agencies to discuss the many issues of concern. Such a structure should be set up in the form of a national working group, chaired by an independent and respected person or entity but with high-level political authority. Regular meetings of such a working group could do much to bring the different stakeholders together and build an understanding among law enforcement of the challenges faced by journalists, and vice-versa.

This report has outlined recommendations in four areas that are particularly urgent:

1. the investigation and prosecution of cases of violence against journalists
2. capacity of law enforcement authorities in relation to ensuring the safety of journalists;
3. safety of journalists during demonstrations; and
4. capacity and knowledge of the media of their rights and responsibilities in relation to safety matters

The recommendations made in relation to each of these chapters are reproduced below . It should be emphasised that they cover only the concerns raised in these four areas and do not correspond to other issues that also need to be addressed and which should form part of the National Plan of Action. As flagged up in the introduction to this report, these include but are not limited to journalists' working conditions; the polarised media landscape; ties between large media conglomerates, businesses, and politicians; the state broadcaster's fragile independence; the independence of the media regulator; an underdeveloped advertising market; abusive lawsuits; and societal tensions around issues such as religion, LGBTQI+ rights, and Russian influence, which affect the media.

### 5.1. Recommendations

#### Overarching

- (1) Establish of a multi-stakeholder committee, chaired by an independent and respected person or entity but with high-level political authority, with a mandate to research and devise a National Plan of Action on Safety of Journalists, which the government will commit to implement;
- (2) High level elected politicians, at the national level as well as locally, refrain from negative rhetoric and speak out against anti-media violence and hatred.

#### *On the investigation and prosecution of cases of violence against journalists*

- (3) To the extent that it is necessary to provide a definition of "journalist", any such definition is functional rather than determined by formal accreditation or employment and, in line with

<sup>101</sup>. Idem.

<sup>102</sup>. [Resolution on the Safety of Journalists](#), 11 June 2021.

## CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

international best practice, includes all who regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication, in line with the Council of Europe Recommendations CM/Rec(2000)7 and CM/Rec(2016)4; the UN Plan of Action on the Safety of Journalists; and UN Human Rights Committee General Comment No. 34.<sup>103</sup>

(4) Reform Article 154 in order to:

- ▶ encompass all incidents of violence or threats against individuals or legal persons linked to their journalistic activity. While it is not possible for legislation to list all activities that can be regarded as 'journalistic', the law should give examples of common journalistic activities to illustrate the broad range covered, such as newsgathering, conducting interviews, journalistic investigations, and accessing particular locations, whilst explicitly mentioning "other lawful journalistic activities" so as to ensure that the law does not end up constraining journalism; and
- ▶ elevate it into the category of 'particularly serious' offences and provide for harsher penalties, including imprisonment;

The relevant criminal law provisions of Ukraine and other legislation included in Annex 2, and accompanying practices in these countries, could serve as the inspiration in this law reform.

- (5) Following up on the Joint declaration on crimes against freedom of expression by the OSCE Representative on Freedom of the Media and her counterparts at the UN, OAS, and ACHPR, and in line with the approach of Article 53-1, consideration should also be given to recognising an attack on the right to freedom of expression of the victim as an aggravating factor whenever a crime is committed, leading to heavier penalties for such crimes;
- (6) Collect **all-encompassing** statistics on incidents of violence or threats against individuals or legal persons linked to their journalistic activity so as to provide a full picture of the problem and enable an evaluation of the effectiveness of law enforcement responses;
- (7) Undertake a public inquiry into the quality of performance in the investigation of offences against journalists, with the involvement of media representatives and other stakeholders. This inquiry should be conducted by an independent entity not linked to the State institutions, have a mandate to provide strong and practical recommendations to improve the investigation and prosecution of violence against journalists, have the power to compel witnesses and documents to be produced before it, and its proceedings should be open to the public;<sup>104</sup>
- (8) Acting on the findings of such an inquiry, it is recommended to improve the investigation and prosecution of all incidents of violence or threats against journalists to meet the 'prompt, effective, and thorough' standard that is required;
- (9) Issue specific and detailed guidance to all law enforcement agencies on the investigation of violence against journalists, covering at least the following points:
- ▶ the importance of properly taking into account any evidence of a link with a journalist's professional activities, and any discriminatory element;

103. Given the broad range of actors who carry out journalistic functions, particularly since the advent of the internet, the number of journalists who freelance, as well as the journalistic role performed by watchdog organisations, it is considered best practice not to define 'journalist' as encompassing only those who are employed by media outlets. For a comparative overview of definitions of 'journalist' in different European countries, including several countries that do not have a strict definition or a very broad one, see the Explanatory Memorandum to PACE Report [The status of journalists in Europe](#), doc. 14505, 26 February 2018.

104. The terms of reference of the Public Inquiry into the assassination of Maltese journalist, Daphne Caruana Galizia, can be taken as inspiration. See the ARTICLE 19 2022 report, [Daphne Caruana Galizia: Lessons from the Public Inquiry into her murder](#), for an English translation of the ToR and lessons learned from the process.

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- ▶ the need to be aware of and investigate gender-specific aspects of violence, both off-line and online;
  - ▶ an emphasis on investigating and prosecuting not only those who commit acts of violence, but also those who incite or instigate violence;
  - ▶ the requirement for law enforcement authorities to act of their own motion, once a matter has come to their attention, without requiring a journalist or next of kin to launch a complaint;
  - ▶ ensuring that the victim or the next of kin are able to receive information on the investigation/prosecution and present evidence;
  - ▶ ensuring that investigative procedures are gender sensitive so that women journalists are not dissuaded from reporting attacks against them and are provided with adequate support, including psychosocial support;
  - ▶ the right of journalists not to reveal their confidential sources of information;
  - ▶ guidance on how to investigate online threats and offences against journalists, highlighting that threats and harassment online that amount to criminal offences must be prosecuted and treated like offline offences and that threats to life and physical integrity, including rape threats, should be prioritised for prosecution.
- (10) Investigate all instances of incitement, committing, or threatening to commit acts of violence against journalists, including – and especially – when incitement or threats are uttered by high profile individuals including politicians and public officials;
- (11) Grant access to case files to journalists and, where relevant, their next of kin without delay or obstacle. It is recommended that courts follow the standards set by the European Court of Human Rights in granting victim status;
- (12) Strengthen sentences imposed for offences against individuals or legal persons linked to their journalistic activity so as to reflect the gravity of the offence against democracy;
- (13) Failing a demonstrable improvement in the investigation and prosecution rate of violence against journalists within a year of publication of this report, establish a public commission of inquiry to investigate the causes of violence against journalists and the inadequate law enforcement response.

### *On the capacity of law enforcement authorities*

- (14) Review of the resources (including financial as well as human resources, what qualifications, expertise and experience staff have, access to equipment, and training received and available) needed within various law enforcement agencies for the protection and safety of journalists, and making up the shortfalls, where relevant. This should include a review of the capacity and resources (also including financial as well as human resources, what qualifications, expertise and experience staff have, access to equipment, and training received and available), of the Special Investigative Service in relation to its mandate under Article 154;
- (15) Establish dedicated units within the police and the General Prosecutor's Office for the investigation and prosecution of violence against journalists and provided with the necessary resources (financial, human, equipment, training) to do so;
- (16) In addition to the establishment of dedicated police and prosecution services, it is recommended to update the mandate of the human rights departments within the Ministry of

## CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

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Internal Affairs to include a focus on the safety of journalists. It is further recommended that the department is given the resources to implement this enhanced mandate;

- (17) In case there is no possibility for establishment of a unit dedicated to prosecuting crimes against journalists in the General Prosecutor’s Office, it is advisable that the mandate of the existing human rights department in the General Prosecutor’s Office is updated to include a focus on the safety of journalists, and the department should be given the resources to implement this enhanced mandate;
- (18) Carry out a comprehensive review of Training Curricula for law enforcement on the safety of journalists, resulting in a training plan for all law enforcement agencies akin to that which appears to have successfully trained law enforcement personnel on hate crimes. Such a plan should include dedicated training modules on the safety of journalists for police and prosecutors, covering, at a minimum, the following points:
- ▶ raising awareness about the “public watchdog” role played by journalists in a democratic society;
  - ▶ the role played by journalists in a democratic society by covering public demonstrations, reporting from conflict zones, in times of crisis (including during states of emergency), and ways to prevent any hindrance to such coverage;
  - ▶ the right of journalists not to reveal their confidential sources of information and the necessary procedural safeguards in this regard;
  - ▶ the fact that journalists often face specific risks and discrimination, and that the pursuit of particular stories can expose them to threats, attacks, abuse, and harassment by state actors as well as by non-state actors;
  - ▶ the prevention and detection of violence against women, equality between women and men, the needs and rights of victims, as well as how to prevent secondary victimisation;
  - ▶ the need to ensure timely access to law enforcement authorities when there is a serious risk or threat of violence against journalists;
  - ▶ the provision of information on the assistance, support, protection and compensation that victims can obtain as of their first contact with law enforcement authorities;
  - ▶ the need to issue protection to journalists when warranted;
  - ▶ the characteristics of an effective investigation, the need to consider every possible link between the crime and the journalist’s professional activities, gender-related issues, and a possible link between racist attitudes and the act of violence;
  - ▶ improving the understanding of law enforcement authorities of how to investigate threats and other criminal offences that take place online, including those that are gendered;
  - ▶ the role of the media at demonstrations;
- (19) Consideration could be given to engaging in exchanges and peer-learning with police forces in other countries that have made successful advances in protecting the safety of journalists and prosecuting offenders.



## CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

### *On the safety of journalists during demonstrations*

- (20) Amendment of the Law on Assemblies and Demonstrations to remove the requirement for journalists to wear identifying signs;
- (21) Set up a working group with participation of law enforcement and journalists representing a cross-section of the media community to agree guidelines on the media coverage of demonstrations and other major events, based on international best practice. Such guidelines should set out the rights of members of the media, outline steps to promote practical co-operation, and include practical rules and methods for media identification;
- (22) Meetings between journalists and law enforcement ahead of demonstrations and other major events such as elections, protests, or big sports events are highly recommended, to discuss safety concerns and to jointly agree safety protocols;
- (23) Safety protocols for events include at a minimum:
  - ▶ recognition of the important role that journalists play in covering demonstrations;
  - ▶ the primary responsibility of law enforcement at demonstrations is to facilitate the protest as well as media coverage, not to restrict it;
  - ▶ a designated point of contact in law enforcement as well as for the media;
- (24) Journalists or media outlets who do not participate in such joint working groups should not be penalised and their non-participation should not be used as a pretext to deny them their rights.

### *On the capacity and knowledge of the media of their rights and responsibilities in relation to safety matters (these recommendations apply with regard to journalists employed by media outlets as well as freelancers whom media outlets commission or whose work they publish):*

- (25) Media companies conduct an audit of their safety practices (the bullet points that follow can be taken as a guide in such an audit);
- (26) Media companies provide at least a basic level of safety equipment and ensure that their employees are trained in how to use the equipment; basic safety training is available to all employees, including non-frontline employees, and covering digital security and privacy as well as basic physical security;
- (27) Media companies adopt safety protocols including guidelines and procedures for the deployment of journalists on difficult or dangerous assignments; a briefing is provided for journalists prior to potentially difficult or dangerous assignments, providing them with adequate information on the risks involved; only journalists who have received appropriate safety training should be deployed on potentially difficult or dangerous assignments;
- (28) Media companies arrange for life assurance as well as health and travel insurance as part of a comprehensive and equitable package of work conditions;
- (29) Media companies ensure the provision of legal support and representation, as well as trauma counselling on return from assignments, as needed;

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(30) Journalists should receive training about what to expect in the criminal investigation of crimes in which they are victims, and what is expected of them in terms of providing information. Such training should cover the following topics:

- ▶ the importance of reporting crimes, cooperating with investigations, and developing jurisprudence that protects journalists' rights;
- ▶ basic criminal law concerning offences against journalists, including what evidence is required to prove them; the stages of a criminal investigation and what is to be expected at each stage; the rules of evidence, including rules that apply to different kinds of evidence (physical evidence, mobile phone recordings etc.)
- ▶ steps journalists can take when faced with potential criminal conduct, such as preserving evidence;

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## ANNEX (1) – ACTIVITY PROGRAMME

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Meetings (online, via video conference with simultaneous interpretation provided by Council of Europe):

- ▶ 4 March 2022: representatives from Public Defender’s Office
- ▶ 10 March 2022: representatives from civil society organisations concerned with the safety of journalists
- ▶ 14 March 2022: representatives from media and journalists’ organisations
- ▶ 28 April 2022: representatives from Ministry of Internal Affairs
- ▶ 28 April 2022: representatives from General Prosecutors’ Office
- ▶ 28 April 2022: representatives from Special Investigation Service of Georgia
- ▶ 28 April 2022: representative from Human Rights Secretariat, Government Administration

Other activities:

- ▶ 2 March 2022 – 9 May 2022: Desk research and drafting of preliminary report
- ▶ 1 August 2022 – 31 August 2022: Drafting final report

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## ANNEX (2) – COMPARATIVE CRIMINAL LAW PROVISIONS CONCERNING SAFETY OF JOURNALISTS

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Unless otherwise indicated, the below is sourced from *How to protect journalists and other media actors?*, [Implementation Guide to Recommendation CM/Rec\(2016\)4 on the Protection of journalism and safety of journalists and other media actors](#), Council of Europe DGI(2020)11, June 2020. It is highly recommended that anyone interested in improving the safety and protection of journalists familiarises themselves with this guide.

### Ukraine

The Ukrainian penal code criminalises “impeding lawful professional activity of journalists”, “threats or violence against journalist”, “intentional destruction or damage to property of a journalist”, “infringement on the life of a journalist”, “taking journalist hostage”.

Provisions (source <https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text>):

*Article 163. Violation of privacy of mail, telephone conversations, telegraph and other correspondence conveyed by means of communication or via computers*

1. Violation of privacy of mail, telephone conversations, telegraph and other correspondence conveyed by means of communication or via computers shall be punishable by a fine of fifty to one hundred tax-free minimum incomes, or correctional labour for a term of up to two years, or restriction of liberty for a term of up to three years.
2. The same actions, where repeated or committed in respect of statesmen, public figures or journalists, or committed by an official or with the use of special devices for secret reading of information shall be punishable by imprisonment for a term of three to seven years.

*Article 171. Preclusion of lawful professional activities of journalists*

1. Illegal seizure of materials collected, processed, prepared by a journalist, and technical means, which he/she uses in the course of his/her professional activity, illegal denial of access to information to the journalist, illegal prohibition to cover certain topics, highlighting certain individuals, criticism of an authorised entity, as well as any other intended preclusion of a journalist’s lawful professional activity shall be punishable by a fine of up to fifty tax-free minimum incomes, or arrest for a term of up to six months, or restriction of liberty for a term of up to three years.
2. Any influence on a journalist in order to prevent him/her from performing his/her professional duties or to harass a journalist in connection with his/her lawful professional activity shall be punishable by a fine of up to two hundred tax-free minimum incomes, or arrest for a term of up to six months, or restriction of liberty for a term of up to four years.
3. Any such actions as provided for by part 2 of this Article, where committed by an official through abuse of office or by a group of persons upon their prior conspiracy shall be punishable by a fine of two hundred to five hundred tax-free minimum incomes or restriction of liberty for up to five years,

**Annex (2) – Comparative Criminal law provisions concerning safety of journalists**

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with or without deprivation of the right to hold certain positions or engage in certain activities for up to three years.

*Article 345-1. Threat or violence against a journalist*

1. Threat of murder, violence or destruction or damage to property of a journalist, his/her close relatives or family members in connection with the implementation of this journalist's lawful professional activity shall be punishable by correctional labour for a term of up to two years, or arrest for a term of up to six months, or restriction of liberty for a term of up to three years, or imprisonment for up to three years.

2. Intended infliction of battery, minor bodily injury or bodily injury of medium gravity on a journalist, his/her close relatives or family members in connection with the performance of lawful professional activity by this journalist shall be punishable by restriction of liberty for a term of up to five years, or imprisonment for the same term.

3. Intended infliction of grievous bodily harm on a journalist, his/her close relatives or family members in connection with the implementation of this journalist's lawful professional activity shall be punishable by imprisonment for a term of five to twelve years.

4. Any such actions as provided for by part 1, 2 or 3 of this Article, where committed by an organised group shall be punishable by imprisonment for a term of seven to fourteen years.

Note. Under this Article and Articles 171, 347-1, 348-1 hereof, professional activity of a journalist shall mean systematic activity of a person related to the collection, receipt, creation, distribution, storage or other use of information for the purpose of its distribution among an indefinite circle of persons through print media, television and radio organisations, news agencies, the Internet. The status of a journalist or his/her affiliation with a mass medium shall be confirmed by an editorial or service certificate or other document issued by a mass medium, its editorial office or a professional or creative union of journalists.

*Article 347-1. Intended destruction or damage to a journalist's property*

1. Intended destruction or damage to property belonging to a journalist, his/her close relatives or family members, connected with the implementation of this journalist's lawful professional activity shall be punishable by a fine of one thousand to four thousand tax-free minimum incomes, or arrest for a term of up to six months, or restriction of liberty for a term of up to five years.

2. The same actions committed by means of arson, explosion or other globally harmful means, or which have resulted in the death of people or any other grave consequences shall be punishable by imprisonment for a term of six to fifteen years.

*Article 348-1. Trespass against life of a journalist*

Murder or attempted murder of a journalist, his/her close relatives or family members connected with the lawful professional activity of this journalist shall be punishable by imprisonment for a term of nine to fifteen years or life imprisonment.

*Article 349-1. Taking hostage a journalist*

Taking or holding a journalist, his/her close relatives or family members as hostages in order to induce that journalist to take or refrain from taking any action as a condition of the release of the hostage shall be punishable by imprisonment for a term of eight to fifteen years.

## Serbia

The Serbian penal code criminalises “endangering the safety of a media professional or their next of kin”, “violation of freedom of speech and public appearance” and the “prevention of printing and distribution of printed material and broadcasting of programs”. Furthermore, the Serbian penal code includes provisions that treat certain crimes against journalists (such as murder) as aggravated offenses.

Provisions (source [https://www.mpravde.gov.rs/files/Criminal%20%20%20Code\\_2019.pdf](https://www.mpravde.gov.rs/files/Criminal%20%20%20Code_2019.pdf)):

### *Article 138 Endangerment of Safety*

- (1) Whoever endangers the safety of another by threat of attack against the life or body of such person or a person close to him, shall be punished with fine or imprisonment up to one years.
- (2) Whoever commits the offence specified in paragraph 1 of this Article against several persons or if the offence causes anxiety of citizens or other serious consequences, shall be punished with imprisonment of three months to three years.
- (3) Whoever commits the offence specified in paragraph 1 of this Article against Republic President, Member of Parliament, Prime Minister, Government members, Constitution Court Judge, Judge, Public Prosecutor and Deputy Public Prosecutor, lawyer, police officer or person of importance to public information, shall be punished with imprisonment of six months to five years.

### *Article 148 Violation of Freedom of Speech and Public Appearance*

- (1) Whoever unlawfully denies or restricts freedom of speech or public appearance of another, shall be punished with a fine or imprisonment up to one year.
- (2) If the offence specified in paragraph 1 of this Article is committed by an official in discharge of duty, such person shall be punished with imprisonment up to three years.

### *Article 149 Prevention of Printing and Distribution of Printed Material and Broadcasting*

- (1) Whoever without authorisation prevents or hinders printing, recording, sale or distribution of books, magazines, newspapers, audio and video cassettes or other similar printed or recorded materials, shall be punished with a fine or imprisonment up to one year.
- (2) The penalty specified in paragraph 1 of this Article shall be imposed on whoever prevents or hinders without authorisation broadcasting of radio or television program.
- (3) If the offence specified in paragraph 1 of this Article is committed by an official in discharge of duty, such person shall be punished with imprisonment up to three years.

## Sweden

The Swedish penal code criminalises “illegal coercion or illegal threat with the intent of influencing the shaping of public opinion or of encroaching on freedom of action within a political organisation or a trade or industrial association and thereby endangers freedom of speech, assembly or association”.

Provisions (source <https://www.government.se/4adb14/contentassets/7a2dcae0787e465e9a2431554b5eab03/the-swedish-criminal-code.pdf>):

### *Section 5*

**Annex (2) – Comparative Criminal law provisions concerning safety of journalists**

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A person who exercises unlawful coercion or makes an unlawful threat with intent to influence the formation of public opinion or infringe freedom of action within a political organisation or a professional or business association, and thereby endangers freedom of speech, assembly or association, is guilty of an offence against civil liberties and is sentenced to imprisonment for at most six years.

## France

The French penal code criminalises “interference with the exercise of freedom of expression in a concerted manner and with threats” and “hindrance, in a concerted manner and by means of beatings, violence, assault, destruction or degradation, to the exercise of freedom of expression”.

Provisions (source <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070719>):

### *Article 431-1*

Obstructing, in a concerted manner and with the help of threats, the exercise of freedom of expression, work, association, assembly or demonstration or obstructing the conduct of the debates of a parliamentary assembly or a deliberative body of a local authority is punished by one year's imprisonment and a fine of 15,000 euros.

Obstructing, in a concerted manner and with the help of threats, the exercise of the freedom of artistic creation or the freedom of the dissemination of artistic creation is punishable by one year's imprisonment and 15,000 euro fine.

The fact of hindering, in a concerted manner and with the help of beatings, violence, assault, destruction or degradation within the meaning of this code, the exercise of one of the freedoms referred to in the preceding paragraphs is punished by three years' imprisonment and a fine of 45,000 euros.

### *Article 431-2*

Individuals guilty of one of the offenses provided for in Article 431-1 also incur the following additional penalties:

1° The prohibition of civic, civil and family rights, in accordance with the procedures provided for in Article 131-26;

2° Prohibition, in accordance with the procedures provided for in Article 131-27, from exercising a public function or exercising the professional or social activity in the exercise or on the occasion of the exercise of which the offense has been committed;

3° Prohibition on possessing or carrying, for a maximum period of five years, a weapon subject to authorisation.

### *Article 223-1-1*

The act of revealing, disseminating or transmitting, by any means whatsoever, information relating to the private, family or professional life of a person allowing him to be identified or located for the purpose of exposing or exposing the members of his family to a direct risk of harm to person or property that the author could not ignore is punished by three years' imprisonment and a fine of 45,000 euros.

When the acts are committed to the detriment of a person holding public authority, responsible for a public service mission or holder of a public elected office or a journalist, within the meaning of the second paragraph of Article 2 of the law of 29 July 1881 on the freedom of the press, the penalties are increased to five years' imprisonment and a fine of 75,000 euros.

## Armenia

The Armenian penal code criminalises hindering journalistic work or forcing journalists to disseminate or not to disseminate information. The sanction is increased if the offence is committed by a public official abusing his/her position. If the acts are committed with violence or threats against journalists or their next of kin, it is punished with imprisonment.

Provisions (source [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2021\)022-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2021)022-e)):

*Article 164. Obstructing a journalist's lawful professional activities*

1. Obstructing a journalist's lawful professional activities, or compelling him or her to disseminate or to refuse dissemination of information —

shall be punished by a fine in the amount of two-hundred-fold to four-hundred-fold of the minimum salary.

2. The same acts that have been committed by an official by use of his or her official position

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shall be punished by a fine in the amount of four-hundred-fold to seven-hundred-fold of the minimum salary or by imprisonment for a term of maximum three years, with or without deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum three years.

3. The acts provided for in parts 1 and 2 of this Article, which have been committed by use or threat of use of violence dangerous to life or health of a journalist or his or her relative — shall be punished by imprisonment for a term of three to seven years.



The review has been carried out in the framework of the Council of Europe Project “Strengthening Media Freedom, Internet Governance and Personal Data Protection in Georgia”, at the request of the Public Defender of Georgia. It outlines the legal and policy framework of Georgia and relevant practices with regard to the protection and safety of journalists. The document also makes recommendations for improvement based on the Recommendation CM/Rec(2016)4 and drawn from practices across Europe, as well as from countries in other parts of the world with relevant experience.

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The Council of Europe is the continent’s leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.