

Financially and Content-Damaging Legislative Regulations for Broadcast Media and Their Alternatives

Davit Kutidze

Malkhaz Rekhviashvili

Research Institute Gnomon Wise

**Tbilisi
September 2023**

The document was prepared by Gnomon Wise, an independent research institute at the University of Georgia, as part of the Gnomon Wise's "Challenges Facing the Georgian State and Response to Them" Project.

Authors:

Davit Kutidze – Research Fellow at Gnomon Wise

Malkhaz Rekhviashvili – Affiliated Research Fellow at Gnomon Wise

The opinions expressed in this paper belong solely to the authors and Gnomon Wise and may not reflect the view of the University of Georgia.



© Research Institute Gnomon Wise

www.gnomonwise.org

Table of Contents

Introduction.....	1
Chapter 1: Indicators to Assess the State of Media	2
1.1. Reporters without Borders - World Press Freedom Index.....	3
1.2. IREX – Vibrant Information Barometer	6
Chapter 2: Media Regulation – EU Requirements and Local Context	9
Chapter 3: Legislative Regulations that Curtailed or Pose a Potential Threat to the Georgian Media... 11	
3.1. Hate Speech.....	11
3.2. „Right of Reply“	15
3.3. “Obscenity” and Communications Commission’s Interference in Media Content For “Customer Protection”	16
3.4. Enforcement of the Communications Commission’s Decisions and Severity of Sanctions	19
3.5. Vague Interpretations of Abuse of Rights of Minors in Media and Sanctions for Violations	23
3.6. Regulation of Video Sharing Platforms	25
3.7. Rule of Conduct for Media in the Parliament	26
Chapter 4: Advertising Regulation in the Media	28
4.1 Problematic Legislative Regulations Regarding Advertising	28
4.2. Political Advertisement and Controversial Interpretation of the Law by the Communications Commission	35
4.3. Obligation for Private Broadcasters to Provide Free Pre-Election / Political Advertisements	38
Chapter 5: Alternatives to the Current Regulations Threatening Freedom of Broadcasting Media.....	40

Introduction

After Russia's aggressive and unprovoked invasion of Ukraine, the integration of the so-called Trio—Georgia, Ukraine, and Moldova—into the European Union has accelerated. Shortly after the outbreak of the war, the "Trio" officially expressed their EU membership bids, received the questionnaire, and moved to another stage, awaiting candidate status. Two of these countries—Ukraine and Moldova—were granted EU membership candidate status, whereas Georgia received only European perspective and 12 priorities that need to be addressed to obtain candidate status. Media freedom is among these priorities.¹ It should be noted that whether or not Georgia receives candidate status in December 2023, these 12 priorities, including media freedom, will remain relevant in the long run.

According to the Constitution of Georgia,² integration into Euro-Atlantic structures has been proclaimed as a national objective, and within this context, media freedom has also become one of the preconditions for the country's European integration. As early as 1921, the Georgian state recognized media as a crucial precondition for building a democratic country and inserted a separate article³ in the Constitution of 21 February 1921, guaranteeing freedom of expression of printed thought. Therefore, considering both historical and current contexts, media plays an indispensable role in shaping Georgia into a democratic and European country.

In 2012, Georgia experienced the first precedent of a peaceful transition of power through elections. This democratic process was followed by the bolstering of positive expectations, and it is safe to say that in a decade, the country found itself on the verge of EU integration. However, the improvement of media freedom was not a continuous process over the last ten years. Various rankings provide the opportunity to monitor the state of media freedom, showing that Georgia advanced in the first years of that period, transitioned into stagnation, and eventually began to backslide.⁴

¹ European Commission. (June 17, 2022). *Opinion on the EU membership application by Georgia*. Via link: https://ec.europa.eu/commission/presscorner/detail/en/ganda_22_3800 (31.08.2023).

² Legislative Herald of Georgia. Article 78 of the Constitution of Georgia. Accessible at: <https://matsne.gov.ge/ka/document/view/30346?publication=36> (31.08.2023).

³ Legislative Herald of Georgia. Article 32 of the Constitution of Georgia (adopted in 1921). Accessible at: (20.07.2023).

⁴ Kutidze, D. (2022). The State of Georgian Media in the Last Decade – Progress, Stagnation and Regress. Research Institute Gnomon Wise. Accessible at: <https://gnomonwise.org/ge/publications/review/83> (31.08.2023).

Reporters Without Borders, an international organization, annually publishes the World Press Freedom Index. Over the last decade, Georgia's best score was in 2018, and the worst was in 2022, losing nearly 12 points and dropping 29 positions in the country ranking compared to the previous year. Georgia achieved a slight improvement in the 2023 index, with a total score of 61.69, gaining 12 positions in the ranking compared to the previous year.⁵

Another international ranking, the Vibrant Information Barometer, measures media freedom. Produced by IREX, it provides an annual assessment of a country's situation. Initially published under the name Media Sustainability Index, it later underwent a change in methodology and name. However, the scores were adjusted to allow for year-by-year comparison. In 2012, after a change in government, Georgia showed progress here as well. However, it has been backsliding since 2015-2016, and the situation is now much worse even compared to 2012.⁶

The focus of this paper is on legislative regulations that have curtailed media freedom in various ways. Apart from laws adopted in the last ten years, the document offers an overview of regulations adopted earlier, even if used to curb media freedom during the period falling under our analysis. We will also share our view on how the processes should unfold and what steps need to be taken to safeguard media independence and freedom at the legislative level.

Chapter 1: Indicators to Assess the State of Media

As mentioned in the introduction, the aim of this document is to study the legislative regulations that, together with other factors, led to the worsening of the state of the media. Naturally, this implies the exploration of various objective, empirical data defining the state of the media. In this case, two surveys will be used as indicators (World Press Freedom Index by Reporters Without Borders and Vibrant Information Barometer by IREX), and the methodology of both studies, as well as the results vis-à-vis Georgia, will be reviewed.

⁵ Reporters without Borders (RSF). *World Press Freedom Index - Georgia*. Accessible at: <https://rsf.org/en/country/georgia> (06.07.2023).

⁶ International Research and Exchanges Board (IREX). *Vibrant Information Barometer*. Accessible at: <https://www.irex.org/resource/vibrant-information-barometer-vibe> (06.07.2023).

1.1. Reporters without Borders - World Press Freedom Index

Reporters without Borders (RSF) suggest the following definition of the press freedom: “Press freedom is defined as the ability of journalists as individuals and collectives to select, produce, and disseminate news in the public interest independent of political, economic, legal, and social interference and in the absence of threats to their physical and mental safety”.⁷

Therefore, to assess the press freedom, RSF divides questionnaire into five contextual indicators: Political Context, Legal Framework, Economic Context, Sociocultural Context and Safety. The active group of experts which consists of seven members has been working since 2020. This group includes the RSF representatives as well as media professionals from the field and academia.

January-December is a reporting period for the assessment of the countries. According to the RSF, unexpected interference in the press freedom or/and an extreme repressive policy which may be related to a new war, a coup d'état, an unprecedented or very unusual major attack on journalists will lead to update of published or slated for publication data in line with the new developments. For the 2023 index, January-December 2022 is a reporting period. Therefore, this year's index is based on assessment of events which occurred in 2022.

As part of the index, index rankings are based on a score ranging from 0 to 100 (with 0 the worst possible indicator). Apart from quantitative indicators (such as attacks on journalists, number of injured journalists, number of journalists with limited freedom, etc.) they use questionnaire available in 24 languages⁸ which assesses qualitative aspect of the situation in every country and territory. In the qualitative part, questionnaire is filled out separately for each indicator and in total encompasses over 100 questions. These questionnaires are filled out by media freedom specialists (with the participation of journalists, researchers, academic personnel and human rights defenders).

The RSF uses a special formula to assess the safety of journalists. This formula is composed in such manner that a country where journalists faced no safety challenges (both mental and physical) will be granted score 100 whereas every such case will deduct points based on gravity of the incident. These cases are assigned coefficient in the formula, for instance – murder coefficient is 100, disappearance or

⁷ Reporters without Borders (RSF). *World Press Freedom Index – Georgia*. Accessible at: <https://rsf.org/en/country/georgia> (06.07.2023).

⁸ Reporters without Borders (RSF). *World Press Freedom Index Questionnaire*. Accessible at: https://rsf.org/sites/default/files/medias/file/2022/04/RSF_Index_Questionnaire_2022_EN.pdf (06.07.2023).

imprisonment for more than 10 years is 50, torture is 25. In addition, coefficient rises in proportion with duration of imprisonment, etc.

In 2023 Index, Georgia's position improved slightly with a score of 61.69 (59.3 in 2022).⁹ Of five assessment indicators, this improvement largely accounted for safety indicator. After massive attack against journalists in July 2021, there has not been such large-scale violence which momentarily increased safety score from 41.34 to 61.69. Economic indicator also improved from the score of 46.43 of 2022 Index to 47.17 in 2023. However, there is backsliding in other indicators. In particular, score for political context decreased from 52.42 to 48.4 whereas score for social context shrank from 75.5 from 2022 to 75 in 2023. With respect to legal framework, Georgia's score in 2022 was 80.79 and in 2023 it dropped to 76. This drop in points resulted in Georgia losing 15 positions in the ranking to move at 47th position.

The Index says about Georgia that Official interference undermines efforts undertaken to improve press freedom. In addition, it is underlined that the environment is becoming increasingly hostile for independent and opposition media and the violence on 5-6 July 2021 is assessed as "unprecedented number of physical assaults on journalists."¹⁰

Generally, media landscape is assessed as diverse, although highly politically polarized. The Index reads that media owners influence editorial content, and name *Rustavi 2* as an example whose editorial line changed after changing the ownership. The Index also highlights strengthening regional and online media as well as declining in print media readership.

In the political context section, it is noted that Georgian law prohibits political parties from owning media, but in fact owners of TV channels have close ties with political parties whereas the big networks generally defend the interests of their owners. It is also stressed that authorities often refuse to have communication with the media that criticize them and sometimes resort to censorship, raids, smear campaigns and intimidation.

When it comes to legal framework, the Index is focused on "foreign agents" bill as something "copied from Russia" as an indicator of the government's will to "control" independent media outlets. The electronic communication law and courts' attack against confidentiality of sources, is also highlighted as examples of such aspiration.

⁹ Reporters without Borders (RSF). *World Press Freedom Index – Georgia*. Accessible at: <https://rsf.org/en/country/georgia> (06.07.2023).

¹⁰ Ibid.

The economic section makes emphasis on problems about development the advertising market. It is noted that that independent print and online media are largely financed by donors, usually from the West. It is also emphasized that advertising regulation for the TV channels “distorted” the competition process with heavily subsidized state-owned media.

The part of the Index about socio-cultural context says that influential social figures, such as members of the Orthodox clergy, are electronically monitored by security services, which violates journalists’ confidential source protection. It also noted that there are strong tensions on certain issues (such as LGBT rights) which affect journalistic coverage.

Safety is still assessed as challenging. The Index notes that verbal and physical assaults on journalists are frequent, including by senior government officials. According to the Index, the lack of transparency and progress in the investigation of the assault on journalists in July 2021 speak to the impunity enjoyed by those who commit crimes against journalists. Imprisonment of Nika Gvaramia, as a director of the opposition TV channel, is also marked separately.¹¹

Graph 1: Georgia in the RSF World Press Freedom Index (2013-2023)¹²



¹¹ Reporters without Borders (RSF). *World Press Freedom Index – Georgia*. Accessible at <https://rsf.org/en/country/georgia> (06.07.2023).

¹² The index at the chart exists from 2022. However, given the fact that score calculation methodology was somehow changed in 2013, the chart shows indicators from 2013 only.

Source: *Reporters without Borders (RSF)*

1.2. IREX – Vibrant Information Barometer

IREX is an international organization which publishes Vibrant Information Barometer (prior to 2021 – Media Sustainability Index) to assess the state of media. According to the Index methodology, “the growth of digital and social media has dramatically changed how information flows. Humans have simultaneously become Information consumers, producers and transmitters”.¹³ The document indicates that it is important in the media environment that people have access to the quality information with most of this information being produced through editorial independence. It is noted that people have “rights, means and opportunities” to have different type of information to make informed choice in their public life.

Accordingly, Vibrant Information Barometer is measured on the basis of four major principles. These principles are as follows: 1. Information Quality, 2. Multiple Channels: How Information Flows, 3. Information Consumption and Engagement, 4. Transformative Action: How Information Drives Behavior. In turn, these four principles include 20 indicators that capture the most important elements needed for free and unhindered work of media. The minimal score is 0 and maximum is 40. Media environment scoring 31-40 points is considered as Highly Vibrant which means that the system is successful and fact-based information is freely available. Somewhat Vibrant media environment is confined within the margins of 21-30 points, meaning it has some shortcomings. It is followed by countries whose media environment score 11-20 points and have Slightly Vibrant, weak media information. The last category falls under the score of 0-10 which is Not at all Vibrant and moribund. Georgia is categorized within the system of the third (Slightly Vibrant) category. Prior to 2021, our country was meeting the criteria of Somewhat Vibrant media environment which is a higher category and this is yet another demonstration of the last years’ negative trends. As in RSF Index, the VIBE’s score of a specific year reflects events that unfolded in a country in the previous year (for instance, score for 2022 derives from assessing the events in 2021).

In this case too, the score is awarded by the panel of experts. The panel has up to 15 members representing specific countries. They evaluate the media environment in the country according to a predetermined questionnaire (five questions for each direction). In addition, the editor can scrutinize the

¹³ International Research and Exchanges Board (IREX). Vibrant Information Barometer (2022). Accessible at: [https://www.irex.org/sites/default/files/Vibrant Information Barometer 2022.pdf](https://www.irex.org/sites/default/files/Vibrant%20Information%20Barometer%202022.pdf) (06.07.2023).

scores given by the panel experts. Besides assigning scores, the strength of the evidence used by experts in measuring these scores is also assessed. The editor observes how consensual the evaluation of the experts is and in case of a 15-point deviation from the average value of the indicator he/she is authorized to cancel the particular expert's score for a specific indicator. Accordingly, the evaluation of each indicator reflects not only the score that a specific country has obtained in one of these four directions, but also how solid the evidence behind these evaluations was.

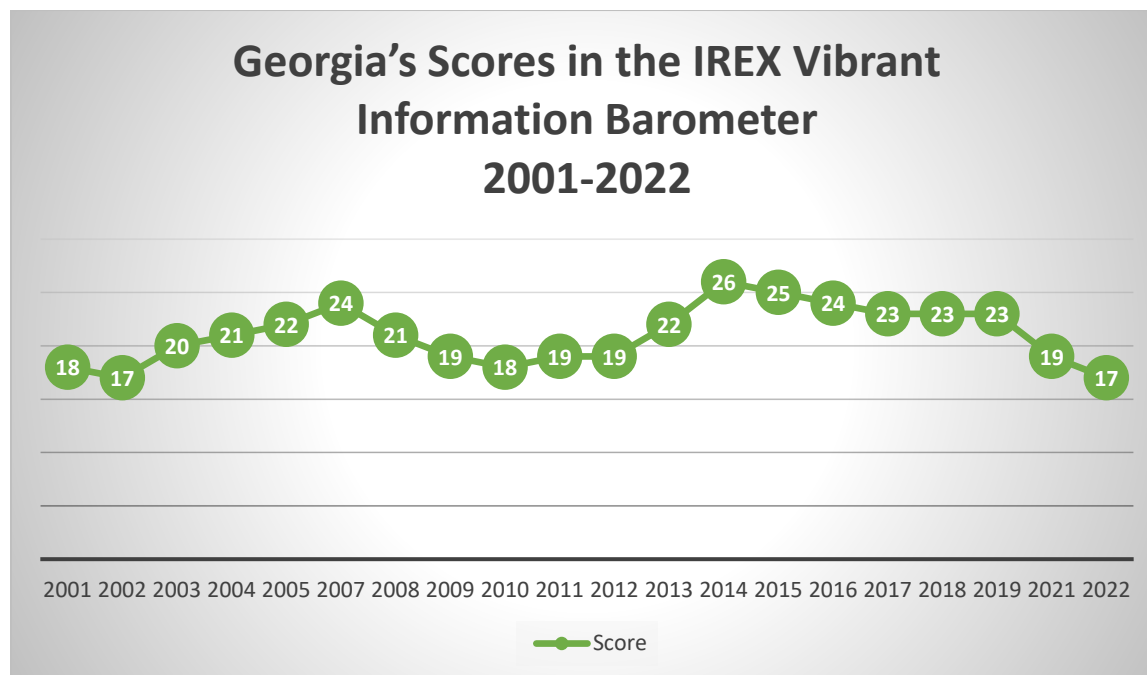
The 2022 report emphasizes that Georgia's laws on freedom of speech and the press remain the "last line of defense" as the law enforcement agencies continue to enforce laws according to their agenda and harass media. According to the report, there is danger of proposing new legislation, hinted by the ruling party. For instance, the report cites the statement of Shava Papuashvili, the Speaker of the Parliament. In particular, in his interview with FactCheck, Shalva Papuashvili, stated: "The goal of regulation in every country is that they see that this issue is not solved by self-regulation, so you have to introduce a regulation. Everyone sets it differently, but the main thing is to achieve the goal. If our task is to prevent people from falsely accusing each other because it prevents informed choice, then we must prevent defamation because we want an informed citizenry."¹⁴ The increasingly complicated procedures for obtaining a broadcasting license/right are also problematic.

This report also highlights another challenge: the legislation is good, but there is a problem of implementation. There are two flaws in this regard. As mentioned earlier, one is the interpretation of the law by different bodies against independent media, and the second is non-enforcement/selective enforcement of the law. As an example, the report cites Georgia's public information law as good, albeit suffering from problems of implementation.

Ultimately, IREX's Vibrant Information Barometer also indicates that the situation is getting worse. It is noteworthy that, according to the Vibrant Information Barometer's previous indices, the state of media in Georgia started to improve from 2012, followed by stagnation from 2015, with the situation worsening drastically in the last three years. As a result, Georgia's score in 2022 was lower compared to what the country had in 2012.

¹⁴ Gugulashvili, M. (2021). "Irrespective what the Charter of Ethics says it has no result" – media through Shalva Papuashvili's lenses. Mediachecker. Accessible at: <https://www.mediachecker.ge/ka/interviu/article/90287-ethikis-gartiam-rac-unda-thqvas-shedegi-nulia-media-shalva-papuashvilis-thvalith> (06.07.2023).

Graph 2: Georgia’s Scores in the IREX Vibrant Information Barometer (2001-2022)



Source: *International Research and Exchanges Board (IREX)*

The 2021 Vibrant Information Barometer report¹⁵ also underlines legislation problems as well as laws that already in place and laws that are slated for adoption. In particular, the report reads: “Georgia has laws that protect freedom of speech and freedom of the press. However, those freedoms are under threat, panelists said, pointing to attempts to tighten laws and file more legal charges against the journalists from media outlets that have been critical of the government in the last year”.

According to the report, legislative changes introduced in 2020 under the pretext of protection the rights of the children led to ambiguities which were appealed by the NGOs to the Constitutional Court. The panelists view the Communications Commission’s attempt to regulate obscene content as another declaration of intent to interfere and control media content and suppress freedom of expression. The 2021 report also pays attention to the existing laws which pose problem by the nature of their content as well as to the practice when laws are enforced selectively. It is noted that authorities use “personal data” argument to justify refusal to provide public information. There is yet another circumstance vis-à-vis availability of public information: Despite the General Administrative Code of Georgia, adopted in 1999,

¹⁵ International Research and Exchanges Board (IREX). Vibrant Information Barometer – Georgia (2021). Accessible at: <https://www.irex.org/sites/default/files/pdf/vibe-georgia-2021.pdf> (06.07.2023).

which regulates journalists' and citizen's access to public information, many government and public institutions provide requested materials so belatedly that the information loses relevance.

According to the report, amendments initiated by the Communications Commission to the Law on Electronic Communications and the Law on Broadcasting which would enable the Communications Commission to appoint "special managers" are assessed negatively. It is highlighted that after civil society organizations fought the measure, the original draft was rescinded, and a modified version was adopted.

These indicators clearly illustrate those challenges which the Georgian media started to face over the years. This document, based on interviews with the experts as well as analysis of legislation and practice, will offer an overview how the legislation changes and law enforcement practice worsen the state of media. At the same time, we will present our view what could be the solution in this situation.

Chapter 2: Media Regulation – EU Requirements and Local Context

Within the context of approximation to the European Union and harmonization of the Georgian legislation with the EU legislation, it should be noted that a golden mean need to be found to make sure that on the one hand media is not limited excessively and unjustifiably and on the other hand requirements of the European Union directive are met.¹⁶ According to Mariam Gogosashvili, executive director of the Georgian Charter of Journalistic Ethics, "our challenge is that we have the American standard of freedom of speech and expression (Law on Freedom of Speech and Expression), but at the same time, we seek and have obligation to implement the European Union's directives. EU's freedom of expression standard is lower as compared to the US one. However, this does not pose a problem to the EU member states since they have relevant, reliable institutions" ...In Georgian reality, however, "any new regulation raises doubts whether or not is it going to be abused by the government and lead country towards authoritarianism... Therefore, if we make a direct copy of the regulations from the EU member

¹⁶ European Union's Directive 2010/13/EU. *Audiovisual Media Services*. Accessible at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32010L0013> (06.07.2023). Amendments to the same Directive - 2018/1808. Accessible at: <https://eur-lex.europa.eu/eli/dir/2018/1808/oj> (06.07.2023).

states, we will not have a guarantee that media outlets that are independent from the government will be able to operate freely.”¹⁷

Given the abovementioned challenge, it is necessary to identify such media regulations in the Georgian legislation that can become media suppression instrument in the hand of government and requires improvement in this form or the other. There is no scarcity of such regulations. This is confirmed by the conclusions and recommendations on Law of Georgia on Broadcasting (published in February 2023) prepared by the Council of Europe experts Eve Salomon and Sally Broughton Micova. According to these experts, certain aspects of the Law on Broadcasting at that time were not line with the EU and CoE standards. In particular, the Opinion reads: “Overall, the Broadcasting Law does not align with AVMSD. Furthermore, there are a number of provisions which would be likely in breach of Article 10 (freedom of expression) of the ECHR. As such the provisions in the current Broadcasting Law would need to be changed with the aim of addressing those clauses that are yet not aligned with European standards”.¹⁸

Based on reviews of Law of Georgia on Broadcasting and related legislation, by the end of 2022, the CoE experts submitted to the Parliament of Georgia numerous recommendations about key issues. However, for that period, Georgia’s legislative body did not take most of those recommendations into account.

Natia Kapanadze, the former Director of Ajara TV and Radio of the Public Broadcaster and founder of the Media Ombudsman non-governmental organization, emphasizes that a revision of legislation is one of the major prerequisites for addressing media-related problems. Ms. Kapanadze specifically stated, “Laws need to be revised – most importantly, the amendments enacted over the course of the last decade in the laws, because there was a constant trend of worsening the legislation... Firstly, harmonization of Georgian legislation with that of the EU is necessary, albeit without political, bad political intentions, and it should be carried out with the involvement of subject-matter specialists—those people and organizations which are affected by the laws, such as media organizations, radios, TV channels, online outlets... Because we, me and my colleagues, know precisely by which amendments, adopted in what year

¹⁷Expert interview with Mariam Gogosashvili, executive director of the Georgian Charter of Journalistic Ethic. The interview was held in May 2023.

¹⁸ Council of Europe (21 February 2023). Legal Opinion on the Law of Georgian on Broadcasting. Accessible at: <https://bit.ly/3Hdl1CR> (06.07.2023).

and serving what political interest, the law was amended and what followed. For instance, access to public information, advertising, content interference, issues regulating the authority of the GNCC."¹⁹

When discussing the regulatory legal framework for the media, it is essential to mention that while working on this policy document, in June 2023, the Georgian Parliament approved significant changes to the Law on Broadcasting²⁰ to fulfill one of the prerequisites for EU candidate status (media freedom). In particular, several recommendations from the CoE experts' Opinion were implemented. Among them, some problematic issues were eliminated, the solutions to which were envisaged in the document prepared by us. Despite this, we will briefly review the challenges that concerned local and international representatives of the media sphere and were addressed at the legislative level by the relevant decision of the Parliament. It should be noted here that despite this positive development, the threats to the media arising from the legislation have not ended, and there are still numerous restrictive norms in place for broadcasters. Therefore, it is necessary to analyze them and look for ways to improve them.

The recommendations in this document aim to relax media regulations, particularly in the broadcasting domain, adopted over the years as much as possible. At the same time, the requirements of the EU directive and the local context have also been taken into account.

Chapter 3: Legislative Regulations that Curtailed or Pose a Potential Threat to the Georgian Media

3.1. Hate Speech

One of the most controversial issues in media-related legislative regulation is the control of hate speech in broadcasting media. On December 22, 2022, several amendments were made to the Law on Broadcasting concerning the self-regulation of hate speech and media. The amendments were initiated by MPs from the ruling Georgian Dream party. It is noteworthy that this issue was not put on the agenda for the first time in 2022, and the GNCC registered almost identical initiatives to regulate hate speech in

¹⁹ Expert interview with Natia Kapanadze, founder of the MediaOmbudsman non-government organization. The interview was held in May 2023.

²⁰ Parliament of Georgia (30 June 2023). Third Reading on Amending the Law of Georgia on Broadcasting. Accessible at: <https://info.parliament.ge/file/1/BillReviewContent/335021> (06.07.2023).

the Parliament of Georgia as early as 2018.²¹In the subsequent years, Gnomon Wise has published several documents about this issue (see the first publication²² and the second publication²³).

As a result of amendments²⁴ enacted by the end of the previous year, a relevant article (Article 55² – Prohibition of program and advertisement containing hate speech and incitement to terrorism) was added to the Law on Broadcasting. According to that article, “such a program or advertisement that contains information inciting violence or hatred against a person or group based on disability, ethnic, social origin, gender, sex, gender identity, nationality, race, religion or belief, sexual orientation, skin color, genetic characteristics, language, political or other opinion, membership of a national minority, property, birth or age, except where necessary due to the content of the program”.

According to the version of the Law of Georgia on Broadcasting which was in effect before 22 December 2022, violation related to the hate speech (2nd and 3rd sections of Article 56) were to be reviewed by a self-regulation board and it was possible to appeal the decision either in the Communications Commission or in the Court. After changes enacted on 22 December 2022, authority to respond to such violations was delegated to the administrative body – Communications Commission. Therefore, hate speech moved into the realm of regulation and the Communications Commission/state obtained yet another instrument to interfere in the media content.

There are numerous important aspects that need to be taken into account when discussing regulation of the hate speech in media. Among other things, hate speech can be interpreted broadly which may pose a risk to the freedom of speech and expression. Looking through the same lenses, interference of an administrative body – Communications Commission – in the media content also contains huge risks, because instead of accomplishment of some benevolent objectives, we may end up with disproportionate suppression of the freedom of expression. The latter, at the very least, can lead to self-censorship of journalists/media whereas in the worst case it may enable the regulator to curtail critical media.

²¹ Parliament of Georgia. 2018. Draft law on “Amending the Law of Georgia on Broadcasting”. Accessible at: <https://info.parliament.ge/file/1/BillReviewContent/210867> (06.07.2023).

²² Kutidze, D.; Gurgensashvili, I. (2020). Restriction of Freedom of Expression in the Name of Fighting Hate Speech?! Research Institute Gnomon Wise. Accessible at: <https://gnomonwise.org/ge/publications/researches/25> (06.07.2023).

²³ Kutidze, D.; Gurgensashvili, I. (2022). Amendments to the “Law on Broadcasting” – Threat of Censorship Through Biased Interpretation of the European Union’s Directive. Research Institute Gnomon Wise. Accessible at: <https://bit.ly/3KbAuDV> ^(06.07.2023).

²⁴ Legislative Herald of Georgia. Law of Georgia on Broadcasting (version of 22.12.2022). Accessible at: <https://matsne.gov.ge/document/view/32866?publication=64> (06.07.2023).

Explanatory note for the draft amendments to the Law of Georgia on Broadcasting, adopted at the end of 2022, says that the only reason to regulate hate speech is to harmonize Georgia's legislation with Audiovisual Media Services European Union's Directive 2010/13/EU²⁵ which is set forth by the EU-Georgia Association Agreement. However, this claim is not true. Both the 2010/13/EU European Union's directive as well as its updated version in 2018 emphasize that "a careful analysis of the appropriate regulatory approach is necessary, in particular, in order to establish whether legislation is preferable for the relevant sector and problem, or whether alternatives such as co-regulation or self-regulation should be considered. Furthermore, experience has shown that both co-regulation and self-regulation instruments, implemented in accordance with the different legal traditions of the Member States, can play an important role in delivering a high level of consumer protection." In addition, "... without prejudice to formal obligations of the Member States (in regard to implementation of Directive's demands into their respective legislations), this Directive encourages the use of co-regulation and self-regulation. This should neither oblige Member States to set co-regulation and/or self-regulatory regimes nor disrupt or jeopardize current co-regulation or self-regulatory initiatives which are already in place within Member States and which are working effectively".

This text shows that there is no unequivocal call that the Directive obliges to regulate its requirements, in this case for hate speech, in a new manner. Furthermore, this clause gives a straightforward discretion to the member states not to change existing systems if they work effectively. Of additional note is that according to Section 7 of Article 4 of the EU's Directive, it is necessary to have a consensus between major stakeholders when making such decision which is lacking in this case. Furthermore, broadcasters and NGOs as well as professional union of the journalists (Charter of Ethics) categorically oppose such regulation of the issue.²⁶ According to the executive director of the Georgian Charter of Journalistic Ethics, Mariam Gogosashvili,²⁷ she understands that "hate speech is an issue, although the Charter has been carrying out election campaign monitoring of the broadcasters and it can be argued that most of the broadcasting media does not use hate speech, except for such organization as

²⁵ European Union's Directive 2010/13/EU. *Audiovisual Media Services*. Accessible at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32010L0013> (06.07.2023). Amendments to the same Directive - 2018/1808. Accessible at: <https://eur-lex.europa.eu/eli/dir/2018/1808/oj> (06.07.2023).

²⁶ Georgian Charter of Journalistic Ethics. (16 September 2022). Statement by the Media Advocacy Coalition on amendments to the Law of Georgia on Broadcasting. Accessible at: <https://www.qartia.ge/ka/siakhleebi/article/92700> (06.07.2023).

²⁷ Expert interview with the executive director of the Georgian Charter of Journalistic Ethics, Mariam Gogosashvili. The interview was held in May 2023.

Alt-Info which we do not even recognize as a media outlet.²⁸ We have identified several cases of use of hate speech on air on TV Obiektivi and PosTV. In other media, we see obscenity, cynicism, exchange of insults but we do not see hate speech. We see exactly that danger that we do not know what would qualify as hate speech - what the Communications Commission would consider as hate speech. It may have selective approach towards different media and eventually this may hinder operation of media that is independent from the government". As stated by Ms. Gogosashvili, the example of consensus in media environment is alternative draft law on amendments to the Law on Broadcasting, prepared by the civil society organizations which was supported by most of the broadcasters, including sharply polarized ones. However, the relevant body did not consider the draft law at that time and another version which introduced regulation of hate speech ended up becoming a law.

Council of Europe experts are of the similar opinion with respect to regulation of the hate speech in their opinion about on how Georgian legislation is in line with the European Union's directives. In particular, it is noted in the opinion: "Under the revised Broadcasting Law ComCom, as the NRA, takes responsibility for the regulation of hate speech. During the interview ComCom representatives understood the European interpretation of hate speech. Nevertheless, representatives of the civil society organizations and media outlets interviewed for the purpose of this initial advice cited examples of 'interpretation creep' by ComCom to extend the scope of broadcast content regulation over recent years. They have also stressed the high risk of political pressure on ComCom in view of the current political landscape and constituency of the Parliament. In these circumstances it is recommended that hate speech regulation is a matter for co-regulation under an improved co-regulatory mechanism. In case the decision is made in favor of statutory regulation, Art. 55⁽²⁾ should be amended to expressly state that critical and/or offensive speech is not to be considered hate speech."²⁹

Of note is that on 30 June 2023, the Parliament of Georgia adopted at the third reading amendments³⁰ to the Law of Georgia on Broadcasting and within the context of regulation of hate speech, it is possible to say that it fully took into account local and international recommendations. As a result, hate speech was again removed from the realm of regulation and it is still not allowed to appeal decisions

²⁸ Authors' remark: Alt-Info is an organization that promotes the Russian propaganda and organizes assaults targeting journalists and sexual minorities.

²⁹ Council of Europe (21 February, 2023). Legal Opinion on Law of Georgia on Broadcasting. Accessible at: <https://bit.ly/3Hdl1CR> (06.07.2023).

³⁰ Third Reading on Amending the Law of Georgia on Broadcasting. Accessible at: <https://info.parliament.ge/file/1/BillReviewContent/335021> (06.07.2023).

made by relevant bodies to the Communications Commission or to the Court.³¹ This is undoubtedly a positive change, because it reduces the government interference levers in media content, expands free space for freedom of speech and expression and also enables audiovisual media service providers to review the complaints from interested parties themselves and decide whether or not hate speech was used on air. Another positive aspect is that from December 2022, before the revision of this regulation, it was not employed in practice against any media outlet. In addition, the latest amendments adopted by the Parliament ascertains that critical or/and offensive statements are not considered as hate speech which is also an important issue.

Despite positive changes in June 2023 and eradication of potential risks stemming from regulation, authors of this document still consider it necessary to briefly overview the controversy about the hate speech. At the same time, we give interested readers an opportunity to become aware of the dangers that may follow such restrictions if similar initiative is proposed again in the future. This is particularly true vis-à-vis Georgian reality where there are numerous questions about the independence of administrative bodies and judiciary.

3.2. „Right of Reply“

As a result of amendments enacted in December 2022,³² the special article (52¹) on the right to respond was added to the Law of Georgia on Broadcasting. According to this article, “any interested party whose legal interests has been damaged by the assertion of incorrect facts in a broadcaster’s program shall have a right to reply in a manner prescribed by this law.” This manner is defined in the following sections of the Article 52¹: “The interested party shall be entitled to demand that a broadcaster issues a correction or retraction of incorrect fact in 10 days after making a statement, including assertion of fact, with commensurate means and form when correction should be of the same length as initial statement and made approximately in the same time when the initial statement was made”. In addition, “refusal of a broadcaster to correct a wrong fact in a statement with commensurate means and forms or retract a statement can be appealed to the GNCC or a court”.

³¹ Section 21 of the draft law adopted by the Parliament which prohibits appealing possible violation of Article 552 of the Law on Broadcasting in the media to the Communications Commission or Courts. Accessible at: <https://info.parliament.ge/file/1/BillReviewContent/335021> (06.07.2023).

³² Legislative Herald of Georgia. Law of Georgia on Broadcasting (22.12.2022 version). Accessible at: <https://matsne.gov.ge/document/view/32866?publication=64> (06.07.2023).

Having this regulation in mind, CoE experts in their Opinion on the Law on Broadcasting paid attention to the threats that freedom of expression faces. According to them, “The right of reply has always been contentious from a freedom of expression perspective. It can be an important tool through which citizens and business can protect themselves from damaging falsehoods. Previous experience has demonstrated that it can also be easily abused by powerful political and business elites.³³ At the root of abuse problems in other countries is an overly broad understanding of the right of reply that included opinion and interpretation without an accuracy requirement”. Therefore, the CoE experts opine that the previous correction and rebuttal provisions in Article 52 (section 2, 3 and 4) before it was revised and the system for enforcing them were already largely in line with the AVMSD. Therefore, the experts recommended to reinstate the version of correction and rebuttal provisions that were in effect before 22 December 2022 with only slight amendments (p. 35).³⁴

According to the amendments adopted by the Parliament of Georgia to the Law of Georgia on Broadcasting on 30 June 2023 at the third reading,³⁵ Article 52¹ was removed and the rule regulating accuracy of fact and right of reply were incorporated in Article 52 which according to the Article 59¹ of the same law falls under the scope of self-regulation. Therefore, this issue too was resolved in line with local and international recommendations.

3.3. “Obscenity” and Communications Commission’s Interference in Media Content For “Customer Protection”

Yet another controversial issue, based on which the Communications Commission blatantly interfered in the media content is the concept of obscenity in legislation and its unacceptability in broadcasting. According to the Law of Georgia on Broadcasting, “obscenity is an action which is in conflict with ethical norms established in society and which has no social and political, cultural, educational or scientific value.³⁶

³³ Slovakia and Slovenia would be the clear examples. See OSCE representative’s interventions about press freedom vis-à-vis Slovakia and Slovenia. [Milosaljevič, M.](#) (2012) The Right of Reply and Correction: The Slovenia Experience.

³⁴ Council of Europe (21 February 2023). Legal Opinion on Law of Georgia on Broadcasting. Accessible at: <https://bit.ly/3Hdl1CR> (06.07.2023).

³⁵ Parliament of Georgia (30 June 2023). Third Reading on Amending the Law of Georgia on Broadcasting. Accessible at: <https://info.parliament.ge/file/1/BillReviewContent/335021> (06.07.2023).

³⁶ Legislative Herald of Georgia. Law of Georgia on Broadcasting (version of 22.203.2023). Accessible at: <https://matsne.gov.ge/document/view/32866?publication=66> (06.07.2023).

In practice, it was precisely on the ground of prohibition of “obscenity” that the Communications Commission interfered in the content of a broadcaster. On 12 December 2020, a satirical program³⁷ was aired on Mtavari Channel, entitled as “Lackeys of the Palace” where the Georgian Dream MPs from the Parliament of tenth convocation are referred as slaves of one ruler. The program shows very closely the then acting Minister of Finance, Ivane Machavariani. This specific cadre turned out to be problematic for the Communications Commission. According to the description of the Communications Commission’s representative:³⁸ “The camera is zoomed at the Minister’s trousers, focusing on genitals and it clearly shown how the acting Minister of Finance touches his trouser. The journalist’s words accompany this scene: “Here the Minister of Finance, Ivane Machavariani, albeit with body language but very clearly and understandably, showed us what the Parliament of tenth convocation is going to do”. In addition, the Communications Commission argued that the journalist’s text was also problematic: “You do remember what Chuck Palahniuk wrote in his *Fight Club*? The only difference between our parliament and condom is that the latter can accommodate only one whereas Parliament can accommodate plenty.”

This program which the Communications Commission started to discuss without complaint of any interested party, in its own initiative was considered to be dissemination of obscenity by the broadcaster. The question is whether or not the Communications Commission was authorized to interfere in the broadcaster’s content? According to the Communications Commission’s stance, Mtavari Channel violated section 4 of Article 56 of the Law of Georgia on Broadcasting, according to which: “it is prohibited to place a program or an advertisement that contains pornography, as well as the kind of program or advertisement infringing upon human/citizen dignity and basic rights and freedoms that contains obscenity”.

It is noteworthy that before 2009, according to the Article 14 of the same Law, only a broadcaster’s self-regulation body was authorized to respond to the alleged violation of section 4 of the Article 56 and the decision it made could not be appealed to the administrative body or court. However, in 2007, this section together with some other norms was appealed to the Constitutional Court. The norms under dispute were appealed vis-à-vis section 1 of the Article 42 of the Constitution of Georgia at that

³⁷ Korshia, B. (12 December 2020). “Condom accommodates one and Parliament accommodates plenty – Chuck Palahniuk’s definition was tailored to Georgian reality”. Mtavari Arkhi. Accessible at: <https://mtavari.tv/news/25971-prezervativshi-erti-eteva-parlamentshi-bevri-chak> (06.07.2023).

³⁸ Gugulashvili, M. (21 January 2021). Why the arguments put forward by the Communications Commission about the obscenity part in Mtavari Channel’s program is dangerous? Media Checker. Accessible at: <https://www.mediachecker.ge/ka/mediagaremo/article/86432-ratom-aris-sashishi-komunikaciebis-komisiis-msjeloba-mthavari-arkhis-siuzhetshi-ukhamsobis-natsilze> (06.07.2023).

time which ensured the right to go to court to protect human rights and freedoms. On 10 November 2009, the Constitutional Court made a judgement³⁹ to satisfy only that part of the lawsuit which concerned the obligation of the broadcasters not to place such program or advertisement infringing dignity and fundamental rights of a person and citizen which contains obscenity. In particular, the Constitutional Court declared that the wording of section 2 of the Article 14 of the Law of Georgia on Broadcasting: “except the norms envisaged by the Articles 52, 54, 56” which concerns the wording of section 4 of the Article 56: “...placement of such program or advertisement, infringing dignity and fundamental rights of a person and citizen which contains obscenity” was declared unconstitutional. In regard to the other parts, the Constitutional Court ruled that the norms under appeal were not infringing rights of citizens. In its opinion, the Constitutional Court placed a major emphasis that any citizen if he/she believes that his/her dignity and fundamental rights were infringed shall have a right to address to court. This opinion of the Constitutional Court never mentions the rights of an administrative body – in this case of the Communications Commission – to decide on its own and without someone who lodged a complaint whether or not the viewers’ rights were infringed. At the same time, in this case the Constitutional Court is very cautious in its opinion about any limitations and highlights crucial importance of the freedom of expression in a democratic society. Therefore, the stance of the Communications Commission, that the Constitutional Court’s 2009 judgement gives it any right or obligation to solve such matters, lacks any logical ground.⁴⁰

Given all the above mentioned, it is evident that we are dealing with peculiar and wrong interpretation of the law by the Communications Commission which posed a danger to the freedom of speech and expression.⁴¹ It is noteworthy in this context that as a result of amendments, adopted by the Parliament on 30 June 2023 at the third reading,⁴² section 2 of the Article 14 of the Law of Georgia on Broadcasting was changed and it was unequivocally clarified that possible violation of the Article 56 cannot be appealed to the Communications Commission. In addition, according to the Article 59¹ of the

³⁹ Constitutional Court of Georgia (10 November 2009). Judgement on case Citizens of Georgia Giorgi Kipiani and Avtandil Ungiadze v Parliament of Georgia. Accessible at: <https://constcourt.ge/ka/judicial-acts?legal=300> (06.07.2023).

⁴⁰ Kutidze, D. (14 February 2021). Communications Commission as a Censorship Committee. Research Institute Gnomon Wise. Accessible at: <https://gnomonwise.org/ge/publications/opinions/39> (06.07.2023).

⁴¹ Gugulashvili, M. (21 January 2021). Why the arguments put forward by the Communications Commission about the obscenity part in Mtavari Channel’s program is dangerous? Media Checker. Accessible at: <https://www.mediachecker.ge/ka/mediagaremo/article/86432-ratom-aris-sashishi-komunikaciebis-komisiis-msjeloba-mthavari-arkhis-siuzhetshi-ukhamsobis-natsilze> (06.07.2023).

⁴² Parliament of Georgia (30 June 2023). III Hearing on Amending the Law of Georgia on Broadcasting. Accessible at: <https://info.parliament.ge/file/1/BillReviewContent/335021> (06.07.2023).

same Law, response to alleged dissemination of obscenity can take place only within the self-regulation scope of a broadcaster. However, it is precisely the Article 59¹ which causes ambiguity, because says that appealing the decisions made by self-regulation bodies of the broadcasters, including about placement program or advertisement which infringes dignity and fundamental rights of human/citizen and contains obscenity can be appealed neither at the Communications Commission nor at Court. This in turn contradicts 10 November 2009 judgement of the Constitutional Court of Georgia, according to which, citizen shall have right to apply to a court in the case of infringing dignity or other fundamental rights. Therefore, it is unclear what were the guiding principles for Georgia's legislative body when adopting these amendments and how this norm will be interpreted in the future.

Given this vague amendment, as well as the judgement of the Constitutional Court of 2009, it is important that concept of obscenity (which can be interpreted broadly and definitely has a problem of clarity) and placement of program or advertisement infringing human/citizen dignity and basic rights and freedoms are differentiated (separately outlined in different articles) and in every specific cases, prerogative to discuss obscenity remain in the hands of the broadcasters' self-regulatory bodies whereas people are able to appeal the decision of a self-regulatory body with respect to programs infringing human dignity to defend their rights.

3.4. Enforcement of the Communications Commission's Decisions and Severity of Sanctions

Since the end of 2022, one more amendment has come into effect. According to the previous version of the Law (before 22 December 2022), "legal acts issued by the Communications Commission can be appealed to the Court in a manner prescribed by the law" (Article 8, section 7). In a modified version of the Law, "adoption of lawsuit by the Court will not result in suspension of the Communication Commission's legal act, except for the case when the Court rules otherwise" (Article 8, section 7). Therefore, according to the older version of the Law, if the Communications Commission found a broadcaster guilty in anything, broadcaster was allowed to appeal to the court and once lawsuit was accepted, enforcement of the Communications Commission's decision was to be suspended before the Court's final verdict. In other words, prior to legislative changes of December 2022, appealing the Communications Commission's decision to the court had a suspension effect whereas after changes, granting a suspension effect became a Court's discretion. Therefore, this increased risks that immediate enforcement of the Communications Commission's legal act without substantial review from the Court would inflict irreparable damage to a broadcaster.

The CoE experts also discerned a danger in this regulation. They believe that although wording of the Article 8.7 is congruent with the AVSMD's Article 30.6 it should be interpreted in line with the Joint Opinion №1008/2020 of the Venice Commission / Directorate General of Human Rights and Rule of Law (22 March 2021).⁴³

As part of the Venice Commission's opinion, the impact of the new Article 11 of the Law of Georgia on Electronic Communications is also discussed. According to this article, decisions taken under Article 46 will have to be executed with immediate effect. The Opinion also takes note of the ComCom's intent to amend the Law of Georgia on Broadcasting to ensure that ComCom's decisions are executed with immediate effect based on this law. The Venice Commission's Opinion recommends to revoke the amendment to Article 11 and return to the general principle of domestic administrative procedure law that appeals have suspensive effect for appointment decisions taken by the GNCC. "During the interview with Georgian broadcasters, it was stated by several representatives that an appeal from a decision by ComCom takes at least 1 year to be heard at first instance and can take years for final appeals to be heard. It was also clear that expedited applications for interim orders are not being properly considered and that applications are therefore almost never allowed. There is at least one broadcaster with accumulated fines under appeal, immediate payment of which (pending a full appeal hearing) would be likely to cause the broadcaster to stop operations, and therefore interfere with freedom of expression" (p. 20).⁴⁴

The Georgian Charter of Journalistic Ethic also recognized a danger in this regulation. As stated by its executive director, Mariam Gogosashvili, "the Communications Commissions has applied the highest sanctions. For instance, against the Mtavari Channel which exceeds GEL 100,000 and at the same time for a strongly disputable issue. In this case, broadcaster will have to pay money immediately whether or not it lodged a lawsuit with respect to the Communications Commission's decision to the Court and what the latter will eventually rule. Therefore, under the overloaded Court, the ruling may be announced after a Tv channel has been inflicted a financial damage and given such severe sanctions, it may cease to exist and shut down as a result of financial difficulties".⁴⁵ Tamta Muradashvili, the lawyer of the Mtavari Channel is of the same opinion and argues that what helped Mtavari Channel to endure was that enforcement of

⁴³ European Commission for Democracy Through Law (VENICE COMMISSION). (22, March 2021). *Joint Opinion on the Recent Amendments to the Law on Electronic Communications and the Law on Broadcasting*. Accessible at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)011-e) (06.07.2023).

⁴⁴ Council of Europe (21 February 2023). Legal Opinion on the Law of Georgian on Broadcasting. Accessible at: <https://bit.ly/3Hdl1CR> (06.07.2023).

⁴⁵ Expert interview with Mariam Gogosashvili, executive director of the Georgian Charter of Journalistic Ethic. The interview was held in May 2023.

the Communications Commission's decisions was automatically suspended after appealing to the Court which was a temporary relief for a broadcaster from a serious financial damage.⁴⁶

Natia Kapanadze also points out the punishment leverages at the disposal of the Communications Commission and its impartiality: "Communications Commission, through its 23 year-long period of existence, has never been politically unbiased. The decisions which the Communications Commission made based on monitoring results has always been a part of decisions and assessments of a political team... We studied the tendency since 2019 and the share of such decisions by which the Communications Commission punishes broadcasters and subjects under those broadcasters has increased substantially and almost doubled among all decisions made by the Communications Commission. Punishment is their main instrument."⁴⁷

This controversial regulation was changed in June 2023, after the Parliament voted for relevant amendments. In particular, although section 7 of the Article 8 remained unchanged, section 8 was added, according to which if the fine exceeds 1% of the broadcaster's annual income and at the same time exceeds GEL 5,000 and if there is a decision to suspend/cancel the authorization, the appeal cannot be enforced immediately and the sanction will be suspended during the litigation process.

As we see, owing to the abovementioned clarification, the risk that the monetary sanction imposed by the Communications Commission can suspend or fully disrupt operation of a broadcaster before the Court's ruling, has decreased to a certain extent. However, the wording is vague and therefore still contains danger as it again leaves a room for interpretation and misuse. In particular, conditions envisaged by the newly added section are cumulative. Specifically, in order to suspend the immediate execution, it is necessary that both conditions occur simultaneously – fine exceeds both 1% of a broadcaster's annual income and GEL 5,000. Let's discuss an example: For a company with an annual income of GEL 10 million, 1% will be GEL 100,000. Theoretically, the Communications Commission may impose a GEL 99,999 fine on such a broadcaster. Although it is more than GEL 5,000, enforcement will not be suspended as this amount of the fine does not exceed 1% of the company's annual income. Therefore, the second mandatory condition is not fulfilled. In addition, we can cite the second case as an example: the annual income of the broadcaster is GEL 400,000 GEL and 1% of it is GEL 4,000. If the Communications Commission established a fine of 4,500 GEL, although the first condition is fulfilled and it exceeds 1%, the

⁴⁶ Interview with the lawyer of Mtavari Channel, Tamta Muradashvili. Interview was held in May 2023.

⁴⁷ Expert interview with Natia Kapanadze, founder of the MediaOmbudsman non-government organization. The interview was held in May 2023.

second condition will not be fulfilled because the fine does not exceed GEL 5,000. Taking all these into account, issue of enforcement of monetary penalties are remains problematic, because large sums of fine (if the execution is not suspended by the Court) vis-à-vis incomes may still inflict irreparable damage to a broadcaster's financial stability.

As regard to sanctions in general and their enforcement, according to the Article 71 and 72 of the Law of Georgia on Broadcasting, the Communications Commission shall fix a reasonable period of time for the offender to eliminate the violation or to carry out measures for its prevention. At the same time, the Communications Commission has to impose a fine on a broadcaster if the latter fails to take written warning into consideration (the fine shall be in the amount of not more than 0.5% of a broadcaster's annual income but not less than GEL 2,500. After the first case of imposition the fine, if a broadcaster continues to repeatedly committed a violation of it commits another one-off violation within wine year after being fined, the Communications Commission may impose a fine on the offender of not more than 1% of its annual income (but not less than GEL 5,000), or initiate public administrative proceedings for suspending the license/authorization. Within one year after being fined for a second time, in case of repeated violations and/or for being fined again, the Communications Commission may impose a fine on the offender of not more than 3% of its annual income but not less than GEL 10 000, or initiate public administrative proceedings for suspending the license/authorization.⁴⁸

According to the Opinion of the CoE experts, suspending the operation is a grievous interference in the freedom of expression and this may contradict the Article 10⁴⁹ of the European Convention of Human Rights (ECHR). Therefore, they recommend to revoke sanctions of such severity, including Article 72.2 and 74.1 (d) (radio services) (page42).⁵⁰ This recommendation, however, was not taken into account, by the Parliament in amendments adopted in June 2023. This strict regulation many threaten freedom of speech in the future.

The approach which the Communications Commission applied to the critical of the government TV station – Mtavari Channel – with respect to the amount of fine is disturbing. During its session on 23 August 2023, the Communications Commission acceded to the complaint submitted by the Georgian

⁴⁸ Legislative Herald of Georgia. Law of Georgia on Broadcasting (version of 22.02.2023). Accessible at: <https://matsne.gov.ge/document/view/32866?publication=66> (06.07.2023).

⁴⁹ European Court of Human Rights (Georgian translation). European Convention of Human Rights. Accessible at: https://www.echr.coe.int/documents/d/echr/convention_kat (06.07.2023).

⁵⁰ Council of Europe (21 February 2023). Legal Opinion on the Law of Georgian on Broadcasting. Accessible at: <https://bit.ly/3Hdl1CR> (06.07.2023).

Dream against Mtavari Channel, Formula and TV Pirveli and fined Mtavari Channel for placing “Back home to Europe” advertisement video clip on air by Gel 118,688.67 (1% of the annual income) whereas it issued written warnings⁵¹ to two other TV channels. The United States Department of State’s 2022 report⁵² about Georgia also highlights this case.

Lawyer of the Mtavari Channel, Tamta Muradashvili, speaks about the Communications Commission using disproportionately severe sanctions: “Because of video clips [on socio-political issues] the Communications Commission imposed extremely high fines on us. For instance, the Law says that if a broadcaster breaks the law, it may be fined for at least GEL 2,500 but not more than 1% of its annual income. The regulatory commission applied not minimal or medium, but the strictest fines when it came to us. As a result, Mtavari Channel accumulated huge number of fines”.

Given all the above mentioned, there is a legitimate suspicion that the Communications Commission imposed such a high amount of fine to inflict a maximum damage to the critical of the government media outlet. Therefore, it raises a question how justified is such a mechanism in the hands of an administrative body (under any government) and what is the logical highest threshold beyond which the fines should not exceed.

3.5. Vague Interpretations of Abuse of Rights of Minors in Media and Sanctions for Violations

On 20 September 2019, the Parliament of Georgia adopted the Code on the Rights of the Child which has come into effect since 1 September 2020.⁵³ According to the section 1 of Article 66 of this Law, a broadcaster is obliged to ensure that a child is protected from the effect of information hazardous to the child. A broadcaster is also obliged to use classification criteria of broadcasting programmes for the purposes of establishing the categories of these programmes and place these programmes into a broadcasting grid in accordance with the rules laid down in the Law of Georgia on Broadcasting. Some 21 normative acts were amended as part of legislative changes, including Law of Georgia on Broadcasting and Law of Georgia on Electronic Communications. It was banned to broadcast programs without age

⁵¹ Civil.ge. (23 August, 2022). Communications Commission imposes fine against Mtavari Channel, warns Formula and TV Pirveli. Accessible at: <https://civil.ge/ka/archives/505595> (06.07.2023).

⁵² U.S. Department of State. *2022 Country Reports on Human Rights Practices: Georgia*. Accessible at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/georgia/> (06.07.2023).

⁵³ Legislative Herald of Georgia (20 September 2019). Code on the Rights of the Child. Accessible at: <https://bit.ly/3MxIOB5> (04.04.2023).

labels and specific airtime which “is not in line with the child’s age and hinder its development as well as the child’s upbringing into an independent person with a sense of social responsibility.”⁵⁴

Article 56¹ and 56² were added to the Law of Georgia on Broadcasting where a number of vague provisions were inserted. For instance, “Broadcaster is obliged to ensure protection of underage person from harmful information, broadcasting of programs having harmful influence on the physical, intellectual and moral development as well as psychological and physical health of adolescents are prohibited; Broadcasting of programs or placing a content in a program having harmful influence on adolescents’ socialization is prohibited”, etc. In addition, Article 71 of the same law which lays down was also amended and the Communications Commission was authorized to fine broadcasters at its own initiative and without previous warning. These are precisely those vague definition and punishment leverage in the hands of the Communications Commission, which we discussed above, that media workers were concerned about. They argued that the law generated myriad unanswered questions: “For instance, do regulations apply to news broadcasts which often cover crime? Does it mean that broadcaster may be found as a transgressor if it covers a rally at 16:00 where confrontation, violence and crime took place? Can it be considered that famous Romeo and Juliette movie glorifies suicide and should not be aired at 22:00?” Broadcasters say that scenes when easily accessible utensil is used to inflict harm or as a murder weapon can be found in absolutely humane, multiple Oscar-winning animated movies. Therefore, the Communications Commission should clarify whether broadcasting Tom and Jerry or Spiderman during daytime hours will be considered as a transgression.⁵⁵ Given all these factors, media started to have a legitimate fear that in the name of protecting the right of the child, administrative bodies would use punishment levers at its disposal against the critical of the government media.

Of note is that the controversial changes adopted by the Parliament were appealed to the Constitutional Court of Georgia. In accordance with 22 February 2023 ruling⁵⁶ of the Constitutional Court, application was only partially satisfied and normative content of Sections 4 and 5 of Article 71 of the Law of Georgia on Broadcasting were declared unconstitutional. These passages envisaged imposing penalty to broadcasters if they live broadcasted harmful for the adolescents information/content under such

⁵⁴ Chichua, N. (21 August 2020). Tommy and Jerry and others – Dangerous for adults Code on the Rights of the Child? Netgazeti. Accessible at: <https://bit.ly/3K7ErJW> (04.04.2023).

⁵⁵ Chichua, N. (19 August 2020). Broadcasters ask for moratorium on penalties envisaged by the Code of the Right of the Child. Accessible at: <https://bit.ly/40GcMqv> (04.04.2023).

⁵⁶ Judgment of the First Collegium of the Constitutional Court of Georgia №1/1/1537; “Mtavari Arkhi” LLC, TV Pirveli LLC, TV Kavkasia LLC, Formula LLC, Irakli Saghinadze, Giorgi Liponava and Ketevan Devdariani v Parliament of Georgia (22 February 2023). Legislative Herald of Georgia. Accessible at: <https://bit.ly/40W9HCu> (04.04.2023).

circumstances when despite resorting to every possible measure of caution under respective circumstances, broadcaster could not anticipate and was not able to anticipate the possibility of such content ending up on air”.

On 30 June 2023 with enacting the amendments to the Law of Georgia on Broadcasting, the Parliament of Georgia concurred to the opinion of the CoE experts and revoked harsh sanctions (sanctioning without prior warning) for violation of Articles 56¹ and 56². In particular, sections 2, 4 and 6 of the Article 71 which envisaged response to such transgressions (at the initiative of the Communications Commission, without prior warning of a broadcaster) with harsh sanctions, including even suspension of broadcaster’s license were removed. However, it is noteworthy that Article 56¹ still remains with the scope of the Communications Commission’s regulation (instead of being within the scope of media self-regulation) and given some of its vague provisions, it is safe to say that risks of unlawful interference from an administrative body into media content as well as imposition of sanctions, have not been eradicated.

3.6. Regulation of Video Sharing Platforms

The Law of Georgia on Broadcasting defines the video sharing platform services as “services the main purpose or the substantial functionality of which or of an integral part of which is the provision of programmes and/or user-generated video clips to the wide public through electronic communication networks for its informing, entertaining or educating purposes, without the editorial responsibility of the video sharing platform service provider”. The organization of programmes and/or user-generated video clips, in particular, running, marking and sequencing, shall be defined the video sharing platform service provider, including through automatic tools or algorithms. To put more simply, for instance MyVideo.ge is a video sharing platform operating in Georgia.

As a result of amendments adopted in December 2023, video sharing platform services domain was also subjected to the regulatory scope of the Communications Commission. It should be emphasized that after changes enacted in June 2023 – based on conclusions from the CoE experts – many shortcomings and risks related to video sharing platforms were eradicated, but some potentially dangerous sections still remain. For instance, Article 45⁴ of Chapter IV³ of the Law of Georgia on Broadcasting obliges video sharing platforms to take all measures prescribed by the law to ensure that public is protected from sharing the following video clips, programs or audiovisual advertising communication through their video sharing platforms: “a) that can harm physical, mental and moral

development of minors; b) that involves inducement to violence or hatred (hate speech) against a person or a group of persons on the grounds of his/her or their disability, ethnic or social origin, gender, sex, gender affiliation, nationality, race, religion or faith, sexual orientation, skin color, genetic characteristics, language, political or other opinions, belonging to a national minority, property, place of birth or age, except when it is necessary considering the context of the video clip, programme or audiovisual advertising communication and there is no intention to disseminate the language of hatred. The video clip, programme or audiovisual advertising communication may not be deemed as containing the language of hatred provided for by this subparagraph only due to its abusive or critical content; c) the dissemination of which contains the elements of a crime defined by the Criminal Code of Georgia – an open call for terrorism, the dissemination of pornography knowingly that contains an image of a minor, racial discrimination or violation of the equality of rights of humans”.

The abovementioned article, particularly its (b) subsections involves in its content an issue that can be interpreted broadly – the hate speech – and subjecting to the regulatory scope of an administrative body poses a risk that as a result of the interference of the Communications Commission, a certain product placed at the video sharing platform may be restricted unlawfully.

Of necessary note is that Article 14 of the Law of Georgian on Broadcasting which deals with issue of complaints as well as Chapter IX of the same Law – Accountability and Sanctions – are also extended to the video sharing platforms. In addition, for instance on MyVideo.ge, it is available to watch national and regional broadcasters on live. Therefore, there is a risk that if the Communications Commission rules that there are violations in fragments of their programs, cut and placed at the video sharing platforms, it may request from the platform to remove them which also poses a danger to the freedom of speech and expression.

3.7. Rule of Conduct for Media in the Parliament

On February 6, 2023, the Speaker of the Parliament issued an order to approve the rules of accreditation for the media.⁵⁷ Although it is not a legislative change, its content to a certain extent reflects the authorities' desire to create a comfort zone safeguarded from media critical of the government. According to the order, a journalist accredited to the Parliament shall have the following obligations:

⁵⁷ Parliament of Georgia (6 February 2023). The Parliament endorsed the accreditation rule for the media pursuant to the order of the Speaker. Accessible at: <https://bit.ly/3KvwYFT> (04.04.2023).

Not to disrupt parliamentary proceedings; Not to take photographs of a MP's or staff member's place of work without prior permission; Stop an interview if an MP, staff member or guest objects; Not to photograph the documents, the screen of a telephone or any other electronic device belonging to an MP, a staff member or a guest in such a way that information or images on them can be seen; Not to treat anyone in the Parliament in a rude, sexist or discriminatory manner; Comply with the instructions of security staff and marshals; Wear accreditation in a conspicuous place and not pass it on to another person.

If a journalist or media fails to comply these rules, their parliamentary accreditation will either be suspended or revoked.⁵⁸ Most of the media outlets, as well as the Georgian Charter of Journalistic Ethics⁵⁹ decried this regulation as imposition of red lines for the media and an attempt to restrict media's work in the Parliament. It is noteworthy within this context that if there is a high public interest, journalist should be allowed to repeat the question to the MP or member of the apparatus several times, despite their refusal, as well as recording of their rooms, documents, or screens of their electronic devices. Pursuant this order, however, journalist is obliged to comply the instructions of security or/and marshals which ensure enforcement of these prohibitions without understanding of context or high public interest.

It should be underlined that this regulation has already been applied in practice. As of 5 June 2023, Parliament suspended accreditation for 11 journalists and cameramen from critical of the government media.⁶⁰ The official reason behind this decision, among others, was violation of that section of the Speaker of the Parliament's order which obliges journalist to stop interviewing if an MP, staff member or guest objects. The Public Defender also commented on the fact of suspending accreditation for the journalists. According to Levan Ioseliani, "the rule that which was used as the basis of the above-mentioned decision, is problematic. In addition, the mentioned rules do not provide for an appeal mechanism, and the decision to suspend journalists' accreditation does not specify the deadline or procedure for appealing it, which is a necessary requirement of legislation. It is significant that similar

⁵⁸ Parliament of Georgia (6 February 2023). Accreditation Rule for the Media to the Parliament of Georgia. Accessible at: <https://bit.ly/3zwpz2Y> (04.04.2023).

⁵⁹ Tskipurishvili, N. (9 February 2023). Restriction of the media in the Parliament for the comfort of the Georgian Dream. Accessible at: <https://bit.ly/40KK7Rd> (04.04.2023).

⁶⁰ Transparency International (TI) – Georgia (5 June 2023). „Bureaucratic Scalpel Against Critical Media. Accessible at: <https://shorturl.at/QVWZ9> (06.07.2023).

attitudes and decisions towards media representatives prevent the reduction of polarization in the country”.⁶¹

Chapter 4: Advertising Regulation in the Media

4.1 Problematic Legislative Regulations Regarding Advertising

In 2015, the Law of Georgia on Broadcasting was amended⁶² to provide more precise intervals for placement of advertisement or teleshopping. As a result of those amendments, advertising time was regulated and therefore shortened. According to the government’s position, adoption of these changes was required by the European Union’s directives, although as it turned out, Directive did not require such tight restrictions that accompanied the initiated changes.

In particular, new amendments banned interruption of official state event, speeches of highest public officials and religious ceremonies by advertisements. It was also forbidden to interrupt those public/political and religious programs, pre-election debates or documentaries whose duration is less than 15 minutes. According to the Section 2 of Article 20 of the European Union’s Directive, television advertising should not be inserted during religious ceremonies only and it does not envisage further restrictions listed above.⁶³

In addition, it was established that on a broadcaster’s channel (except for specialized advertising channels and/or teleshopping channels), commercial advertisements and/or teleshopping spots shall be placed in the advertisement breaks so that their volume during the broadcasting hour does not exceed 20%. Therefore, time allotted for advertisements was limited for the broadcasters. Of note in this context is that 12 minute per hour restriction does not apply to statements of the broadcaster that are made with regard to its own and/or independent programs (so called announcements). European Union’s Directive does indeed envisage such restriction, although implementation of this norm of the Directive could have

⁶¹ Apriamashvili, S. (7 April 2023). The Public Defender criticizes new accreditation rule for the journalist in the Parliament. Netgazeti. Accessible at: <https://bit.ly/3nKZ5YK> (07.04.2023).

⁶² Legislative Herald of Georgia (19 February 2023). On amending the Law of Georgia on Broadcasting. Accessible at: <https://bit.ly/3Kz4c7C> (04.04.2023).

⁶³ European Union’s Directive 2010/13/EU. On Audivisual Media Services. Accessible at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32010L0013> (06.07.2023). Amendments to the same Directive - 2018/1808. Accessible at: <https://eur-lex.europa.eu/eli/dir/2018/1808/oj> (06.07.2023).

been carried out gradually and reach 12-minute limit over the course of five years.⁶⁴ Furthermore, Article 26 of the same Directive reads that Member States may lay down conditions other than those laid down in Article 23 if the entities concerned are broadcasters operating in one country only and different approach does not contradict the European Union's legislation.

Of note is that as a result of the amendments enacted in the Law of Georgia on Broadcasting in December 2022 the abovementioned interval was changed as follows: "On a broadcaster's channel except for specialized advertising channels and/or teleshopping channels, commercial advertisements and/or teleshopping spots shall be placed in the advertisement breaks so that their volume from 06:00 to 18:00 does not exceed 20% of that period and from 18:00 to 24:00 does not exceed 20% of that period".⁶⁵ With this amendment, period from 12:00 AM to 06:00 AM remains outside the scope of stringent restriction which means that regulation was relaxed to a certain extent. Although, it is hard to say how lifting restrictions on advertisements in late night hours will affect the broadcasters' income.

Yet another noteworthy restriction in the 2015 amendments' package was about programs partially or fully financed by a sponsor. In particular, indication to a sponsor in a program partially or fully financed by the sponsor and in the broadcaster's statement regarding its own and/or independent programmes shall be concise and shall not exceed four minutes within a broadcasting hour. European Union's Directive did not at all require imposition of such restriction.

Parliamentary Assembly of the Council of Europe, in its 2015 resolution, assessed these changes as aimed at curbing the financial independence of private and thus potentially influencing their editorial independence.⁶⁶

Within the context of commercial audio-visual communication, of necessary mention is that recently, the Communications Commission has been particularly active in applying regulations about product (goods/services) placement in programs and carries out monitoring of various TV channels to this

⁶⁴ Jikia, T. (13 February 2015). Davit Bakradze says that amendments to the law on advertising are not an immediate necessity. FactCheck Georgia. Accessible at: <https://bit.ly/3JL7iUq> (04.04.2023).

⁶⁵ Legislative Herald of Georgia. Law of Georgia on Broadcasting. Accessible at: <https://bit.ly/40XvSrR> (04.04.2023).

⁶⁶ Council of Europe Parliamentary Assembly. (2015). *Protection of the safety of journalists and of media freedom in Europe*. Accessible at: <https://bit.ly/3KaAsfz> (04.04.2023).

aim. In May-June 2023 alone, the Communications Commission warned Mtavari Channel⁶⁷, Agromedia⁶⁸ and BMG⁶⁹ for violations with respect to sponsorship whereas TV Imedi⁷⁰ and Rustavi 2⁷¹ were fined each with GEL 2,500. One of the reasons behind warning or imposition of fine was “attaching particular importance to the sponsor’s product”. Here, as well as in numerous other cases, “attaching particular importance to a product” can be a subject of broad interpretation and individual assessment. Therefore, we can consider this regulation as an important leverage in the hands of the GNCC.

In February 2018, amendments were enacted⁷² to the Law of Georgia on Broadcasting which removed most of restrictions on commercial advertisements and sponsorship, went into effect. It was allowed to place commercial advertisement at public broadcasters except for the so-called prime time (19:00 to 24:00) and week-ends. According to the changes, “sponsored and commercial advertisements may be placed in these channels only within the framework of sports programs, international festivals and contests, at the beginning, during a natural break or at the end of a competition program. In this case, the duration of a commercial advertisement shall not exceed 60 minutes within a 24-hour period, 12 minutes per hour”.

Consequently, Georgia’s Public Broadcaster which is already financed from the state budget and its funding grows proportionally to Georgia’s GDP growth was given an opportunity to earn additional revenues from advertisements. Of further note is that Law of Georgia on Public Procurement is not applicable to the Public Broadcaster when it purchases tele-radio products or/and related services which arguably creates risks of corruption. In accordance to the NGOs operating in Georgia as well as the Georgian Charter of Journalistic Ethics, these amendments posed a risk with respect to the accountability

⁶⁷ Georgian National Communications Commission (4 May 2023). Communications Commission Cautions Mtavari Arkhi for Unlawful Product Placement. Accessible at: <https://www.comcom.ge/ge/yvela-siaxle/comcom-ma-mtavari-arxi-etserhi-produqtis-kanondargvevit-gantavsebisvis-gaafrtxila.page> (06.07.2023).

⁶⁸ Georgian National Communications Commission (15 June 2023). Communications Commission Cautions Agromedia for Unlawful Product Placement. Accessible at: <https://www.comcom.ge/ge/yvela-siaxle/comcom-ma-agromedia-etserhi-produqtis-kanondargvevit-gantavsebisvis-gaafrtxila.page> (06.07.2023).

⁶⁹ Georgian National Communications Commission (25 May 2023). Communications Commission Cautions BMG for Unlawful Product Placement. Accessible at: <https://www.comcom.ge/ge/yvela-siaxle/comcom-ma-bi-em-dji-sponsorobis-wesis-dargvevistvis-gaafrtxila.page> (06.07.2023).

⁷⁰ Georgian National Communications Commission (11 May 2023). Communications Commission fined Rustavi 2 with GEL 2,500 for Unlawful Product Placement. Accessible at: <https://www.comcom.ge/ge/yvela-siaxle/comcom-ma-rustavi-2-etserhi-produqtis-kanondargvevit-gantavsebisvis-2500-larit-daadjarima.page> (06.07.2023).

⁷¹ Georgian National Communications Commission (18 May 2023). Communications Commission fined TV Imedi with GEL 2,500 for Unlawful Product Placement. Accessible at: <https://www.comcom.ge/ge/yvela-siaxle/comcom-ma-teleimedi-2500-larit-daadjarima.page> (06.07.2023).

⁷² Legislative Herald of Georgia (21 February 2018). On amending the Law of Georgia on Broadcasting (21 February 2018). Legislative Herald of Georgia. Accessible at: <https://bit.ly/3U6JLlg> (04.04.2023).

and transparency of the Public Broadcaster. On top of that, media professionals believe that would be harmful for commercial TV channels, particularly regional and small televisions, since amendments put them in unequal situation as compared to the Public Broadcaster.⁷³

Natia Kapanadze commented on the decision to authorize the Public Broadcaster to place advertisements: "The Communications Commission was involved in the adoption of the law that granted the Public Broadcaster the right to place advertisements. As a representative of the Public Broadcaster, I was saying that this would not have solved the challenges faced by Ajara TV, whereas Channel 25 was facing a risk of closure. The amendment to the law, which the political team was supposed to revise as per their pledge, is still in effect. Sometime later, a ban on gambling was also added... We have seen that this facade-like prohibition was aimed at financially undermining media outlets."

Since 1 March 2022, regulation on prohibition of gambling advertisements⁷⁴ went into effect²¹ which drastically reduced revenues of broadcasters and made already low-income sector further vulnerable financially. According to the reports of the GNCC this regulation is the reason behind shrinking revenues of broadcasters in the last year. In particular, in the second quarter (April-June) of 2022, total commercial advertising revenues of TV and radio broadcasters amounted to GEL 19 million which was GEL 4.1 million (17.5%) less as compared to the same period of the previous year.⁷⁵ In the third quarter (July-September) of 2022, total commercial advertising revenues of TV and radio broadcasters amounted to GEL 16.3 million which is GEL 1.7 million (9.3%) as compared to the same period of the previous year.⁷⁶ In the fourth quarter (October-December), advertising revenues of TV and radio broadcasters reached GEL 26.9 million which was nearly GEL 1.9 million (6.7%) less as compared to the same period of the previous year.⁷⁷

When measured in year-over-year figures, total advertising revenues of TV and radio broadcasters in 2022 decreased by 7.6% as compared to 2021 and amounted to GEL 79.9 million. According to the GNCC data, advertising revenues earned from gambling sector in the second, third and fourth quarters of

⁷³ Absandze, T. (29 December 2017). "Commercial" Public Broadcaster. FactCheck Georgia. Accessible at: <https://bit.ly/3U71k3C> (04.04.2023).

⁷⁴ Legislative Herald of Georgia (22 December 2021). On amending the Law of Georgia on Broadcasting. Accessible at: <https://bit.ly/40QbEAq> (04.04.2023).

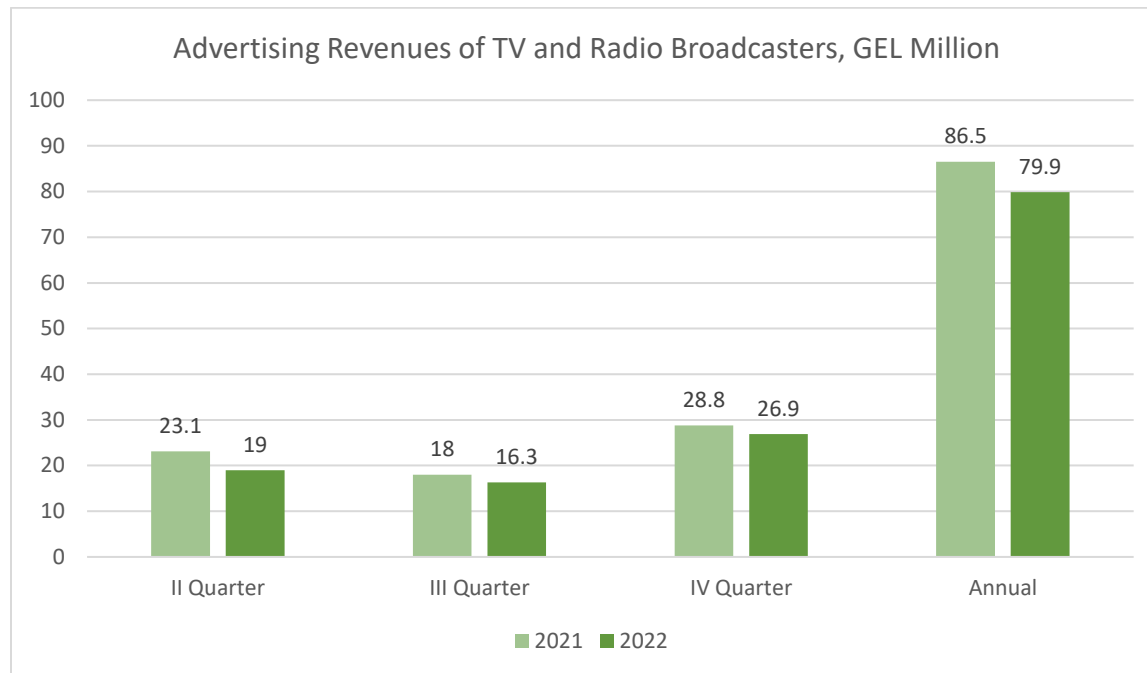
⁷⁵ Georgian National Communications Commission (9 August 2022). Advertising revenues of TV and radio broadcasters in the second quarter of 2022 were GEL 19 million. Accessible at: <https://bit.ly/3zxG6DU> (04.04.2023).

⁷⁶ Georgian National Communications Commission (10 November 2022). Advertising revenues of TV and radio broadcasters in the third quarter of 2022 were GEL 16.3 million. Accessible at: <https://bit.ly/3Gc1T7G> (04.04.2023).

⁷⁷ Varadashvili, M. (2 February 2023). What revenues TV did TV channels earn in the fourth quarter? BM.ge. Accessible at: <https://bit.ly/3Uhpr0G> (07.04.2023).

2021 were GEL 14.3 million whereas in 2022, revenues generated from gambling advertisements effectively came down to zero.⁷⁸

Graph 3: Advertising Revenues of TV and Radio Broadcasters, GEL Million



Source: *Communications Commission*

According to Mariam Gogosashvili, executive director of the Georgian Charter of Journalistic Ethics, “this regulation came into effect quite hastily, in three months. I believe that at least one year should have been given to the broadcasters to make sure that they were able to find alternative resources and somehow offset this financial loss”. The lawyer of Mtavari Channel, Tamta Muradashvili argues that “this populist issue was wisely exploited, because this is really a problem in our country. However, the problem of the people is not advertisement as such, but dependence on gambling which still remains a problem. Adoption of this regulation in an accelerated manner was also a problem. The government did not impose any other restriction to the gambling companies except for banning the advertisements. In fact, if the government’s aim was to fight ludomania, it could have been done in other forms”. One of the co-founders of TV Formula, Misha Mshvildadze, is of the same opinion: “If any activity is not banned in the country, then banning its advertisement lacks any logic. I understand that there are things which make

⁷⁸ Georgian National Communications Commission (16 February 2023). Advertising revenues of TV and radio broadcasters in 2022 were GEL 79.9 million. Accessible at: <https://bit.ly/410Q1gG> (04.04.2023).

a person lost some of his part, such as gambling, but if you regulate it, you should do it properly... In fact, this was done to choke the TV channels and they do not even tell us what results did it bring, whether or not number of gamblers was reduced? Did it achieve its aim, except for it inflicted a blow to financial independence of the media?⁷⁹

With respect to the prohibition of advertising of gambling, it should be said that simultaneously with such a regulation, Georgia's National Football League, as part of the relevant sponsorship framework,⁸⁰ bears the name of one of the companies representing the gambling business. In addition, the name of one of the gambling companies appears in the title of the main football stadium in Batumi.⁸¹ Naturally, discussion of this regulation on gambling is beyond our scope of competence and, therefore, beyond the scope of this document, although the mentioned facts call into question the coherence of the government policy vis-a-vis gambling.

On 31 October 2014, the Parliament of Georgia enacted amendments in regulating social advertisements.⁸² In particular, a new passage was added to the Law of Georgia On Broadcasting that "if an administrative body and a broadcaster fail to reach an agreement about whether the material provided to the broadcaster by the administrative body is a social advertisement and/or whether it contains information which is important for the public, the Commission shall settle the dispute within 10 days after one of the parties files an application with the Commission as determined by the General Administrative Code of Georgia".

As a result of this passage, Communications Commission was allowed to participate in discussion over content of product broadcast on media and most importantly to make a relevant decision. Naturally, this increased the role of a regulator in a field that could be considered as belonging to the broadcasters' scope of self-regulation.⁸³ This novelty was also problematic because generally it is hard to have precise

⁷⁹ Interview with the co-founder of TV Formula, Misha Mshvildadze, was held in July 2023.

⁸⁰ CRYSTALBET National League. Accessible at: <https://www.eroვნuliliga.ge/ge> (06.07.2023).

⁸¹ Longurashvili, N. (5 August 2021). Batumi Stadium was officially renamed into "Ajarabet Arena". BM.ge. Accessible at: <https://bm.ge/news/batumis-stadionis-oficialuri-saxelwodeba-acharabet-arena-gaxda/88811> (06.07.2023).

⁸² Legislative Herald of Georgia (31 October 2014). On amending the Law of Georgia on Broadcasting. Accessible at: <https://bit.ly/3ZH87n4> (04.04.2023).

⁸³ Bochikashvili, G. (4 July 2014). Officials of TV companies criticize draft law on social advertisement. Media.ge. Accessible at: <https://bit.ly/3MfVl6p> (04.04.2023).

and comprehensive definition of a social advertisement, although the idea of social advertisement is more or less clarified in the amendments adopted on 31 October 2014.⁸⁴

IREX media sustainability index 2015 report also offers reflection on regulating social advertisement in such manner. In particular, it underlines concerns of the Georgian media and NGOs that with the changes, GNCC was essentially granted excessive power over broadcasters whereas the definition of social advertising still remains rather vague.⁸⁵

Of note is that the Communications Commission made use of this right, granted to it in 2014, multiple times vis-à-vis different broadcasters.⁸⁶ It is beyond the scope of this paper to ascertain whether or not a certain disputable issue fits within the definition of social advertisement. What is most important here is that there are numerous instances of enforcement of this regulation and interference in broadcasters' freedom, including interference by the Communications Commission in the content of products deemed inappropriate by the entities subjected to this regulation.

Of additional note is that according to Article 65 of the Law of Georgia on Broadcasting, “A broadcaster shall allot at least 90 seconds every three hours to a social advertisement submitted for placement free of charge and without discrimination”. Communications Commission’s representative and the Georgian Charter of Journalistic Ethics have different stances vis-à-vis appropriateness of obligating a private broadcaster to place a social advertisement free of charge. The lawyer of the Mtavari Channel, Tamta Muradashvili, says that “a broadcaster should not have an obligation to place social advertisement free of charge. It is solely on the basis of ethics and civil stance of a broadcaster that the latter should decide whether or not place any type of social video clip free of charge. In regard to the content of social video clip, regulatory commission also interfered here. We had one such case when one of the government LEPLs asked to place advertisement about protection of plastic cards or deposits. We refused

⁸⁴ “Social advertisement - an advertisement intended to promote public good, achieve a charitable purpose, raise public awareness regarding important social issues and/or facilitate positive change in public behavior, which is neither commercial nor pre-election advertisement, and which does not contain an advertisement of the services provided by state or local self-government bodies, or by legal entities under private or public law

⁸⁵ International Research and Exchanges Board. (2015). *MEDIA SUSTAINABILITY INDEX 2015*. Accessible at: <https://bit.ly/3nAhVli> (04.04.2023).

⁸⁶ Communications Commission (16 October, 2015). *Imedi radio was obligated to air social advertisement*. Accessible at: <https://bit.ly/40WIXCY> (04.04.2023).

Communications Commission. (19 February 2016). *Communications Commission obligated TV Imedi to place social advertisement*. Accessible at: <https://bit.ly/3Mg12XE> (04.04.2023).

Communications Commission (23 June 2017). (23 June 2017). Communications Commission considered application lodged by the Constitutional Court of Georgia against the Public Broadcaster and Rustavi 2 TV channel. Accessible at <https://bit.ly/3Gi8xt3> (04.04.2023).

to place the advertisement free of charge. This refusal was appealed to the Communications Commission and it obligated us to place the video clip free of charge. It was simply impossible for us how this video could be placed in the social advertisement format, although the Communication Commission received such instruction and they made a respective decision”.

On the other hand, executive director of the Georgian Charter of Journalistic Ethics, Mariam Gogosashvili, believes that “placement of social advertisement should be possible free of charge, although broadcasters can possible receive certain tax incomes to compensate this. I believe this is important, because in a polarized broadcasting media environment, as a civil sector representative, I should have a possibility to place information for the viewers of each political pole. Furthermore, if any type of information and social advertisement serve to raise public awareness. In addition, the Communications Commission should also have a right to decide whether or not a specific video clip is a social advertisement. Often broadcasters refuse to place advertisements which have content they dislike. Therefore, someone should solve the issue and this is where the Communications Commission comes into play”.

4.2. Political Advertisement and Controversial Interpretation of the Law by the Communications Commission

Among the problematic issues with regard to media, particularly vis-a-vis the broadcasters, is the regulation of political/campaign advertisement and controversial practice established by the Communications Commission, as a result of which it is virtually impossible to place political advertisement during the non-election period.

Communications Commission interprets regulations vis-à-vis campaign/political advertisements in a rather controversial manner. In particular, the Communications Commission argues that according to the legislation, placement of political advertisements during non-election period, violates section 1⁸⁷ of Article 70 and section 2⁸⁸ of Article 63 of the Law of Georgia on Broadcasting. Therefore, in practice, the Communications Commission bans placement of political advertisements on broadcasters’ air during non-

⁸⁷ „Media services and video-sharing platform service providers are obliged to ensure that the programs, advertising, information about sponsors, and user-generated videos they host comply with Georgian legislation and license/authorization conditions”.

⁸⁸ „The placement of improper, unfair, unreliable, unethical and clearly false advertisements or teleshopping is prohibited.”

election period which poses a threat to the freedom of speech and expression. There were numerous broadcasters that were fined for placing political advertisement during non-election period, including Mtavari Channel (several times), N(N)LE Non-entrepreneurial Media Union Obiektivi, Girchi TV LLC, TV Pirveli LLC and Formula LLC. Given this practice, on 20 December 2022, the Public Defender of Georgia lodged a relevant lawsuit⁸⁹ to the Constitutional Court of Georgia. According to the lawsuit, the normative content of section 2 of Article 63 of the Law of Georgia on Broadcasting which prohibits placement of political advertisement in a non-election period contradicts section 1 and 2 of Article 17 of the Constitution of Georgia (freedom of speech and expression).

According to section 2 of Article 63 of the Law of Georgia on Advertising,⁹⁰ the placement of improper, unfair, unreliable, unethical and clearly false advertisements or teleshopping is prohibited. At the same time, according to section 2 of Article 3 of the Law of Georgia on Advertising, improper advertising is defined as unfair, unreliable, unethical, misleading or other advertising that violates the requirements for content, timing, placing, and dissemination established by the legislation of Georgia. It is joint interpretations of these regulations that the Communications Commission uses as a guide when substantiating their ban on placement of campaign/political advertisements during a non-election period. In particular, since the concept of political advertising does not exist independently from campaign advertising in the Georgian legislation and according to the Election Code of Georgia,⁹¹ regulations that are extended on campaign advertisements is confined by certain timeframe (they come into effect 50 days before the Voting Day), Communications Commission concludes that advertisement placed in broadcasters in any other period, violates time requirements of the Law of Georgia on Advertising. Therefore, it should be considered as inappropriate and be prohibited. However, on the other hand, Law of Georgia on Advertising is not extended on political advertisement which is clearly underlined in section 5 of Article 2 of this Law. Nevertheless, as mentioned previously, Communications Commission cautioned several broadcasters for such “violations” numerous times” whereas Mtavari Channel was at different times fined⁹² with GEL 111,903, GEL 58,061 and GEL 118,688.⁹³ The latest fine was about the video clip

⁸⁹ Constitutional Court of Georgia (20 December 2022). Public Defender of Georgia v Parliament of Georgia. Accessible at: <https://rb.gy/zl6gh> (06.07.2023).

⁹⁰ Legislative Herald of Georgia. Law of Georgia on Advertising (version of 09.02.2023). Accessible at: <https://rb.gy/bznlv> (06.07.2023).

⁹¹ Legislative Herald of Georgia. Organic Law of Georgia Election Code of Georgia (version of 09.02.2023). Accessible at: <https://rb.gy/g33wc> (06.07.2023).

⁹² In the case of Mtavari Arkhi, the Communications Commission sought to give substance to their decision to impose fine by arguing that it was repeated “violation” committed by this broadcaster.

⁹³ Constitutional Court of Georgia (20 December 2022). Public Defender of Georgia v Parliament of Georgia. Accessible at: <https://rb.gy/zl6gh> (06.07.2023).

that we mentioned earlier – Back Home to Europe” which the Communications Commission considered not a social, but political advertisement.⁹⁴

The lawyer of Mtavari Channel, Tamta Muradashvili, stated about this issue: “In 2016, despite the absence of such prohibitions in the law, the Communications Commission stated that the placement of political advertising in a non-election period was not allowed. During the early years of the Georgian Dream's rule when Vakhtang Abashidze chaired the Communications Commission, there is an official letter where he states that there is no such prohibition in the law, and if we want to ban it, a relevant amendment needs to be enacted to the law. However, when Mr. Bekauri assumed the position of chairperson of the Communications Commission, he decided to resort to a distorted and arbitrary interpretation of the law and impose a fine on us for placing political advertisements during a non-election period. There was a case when MPs from the European Georgia were shown in the clip, and although the footage had no political content and could not have been defined as political advertisement, they nonetheless banned us from placing it. Afterwards, the Communications Commission continued the similar practice by referring to another article of the law, and not only were video clips featuring politicians affected, but also advertisements with social content, featuring the participation of civic activists and NGOs, were considered as political advertisements. The messages of those video clips could possibly, in a broader understanding, be related to politics—for instance, issues of socially vulnerable people, topics about the EU, etc. They started to extend this wrong and ugly practice to them as well”.

Due to the vagueness of the legislation or its misinterpretation by the Communications Commission, we find ourselves in a situation where it is practically impossible to place political advertisements in the non-election period. This situation is absurd in essence and poses a threat to freedom of speech. There is no logical reason why it should not be possible to run political ads during a normal, non-election period. The Public Defender highlights this danger in his constitutional lawsuit and believes that it contradicts the Constitution of Georgia. Therefore, it is crucial to see how the Constitutional Court will discuss and decide on this matter. Subsequently, it might be beneficial to clearly define the concept of political advertising in the legislation (as much as possible) to ensure that any interested person can place such an advertisement at any time. However, the regulation of political advertisements during the non-election period cannot be as strict as that of pre-election political

⁹⁴ Civil.ge. (23 August 2022). Communications Commission Imposed Fine on Mtavari Channel and Cautioned TV Formula and TV Pirveli. Accessible at: <https://civil.ge/ka/archives/505595> (06.07.2023).

advertisements since, in such a case, there is no danger that even a misleading political advertisement will directly impact the final election results.

4.3. Obligation for Private Broadcasters to Provide Free Pre-Election / Political Advertisements

Pre-election/political advertising is subjected to various regulatory approach across different countries: in some cases, free of charge political advertising is allowed and, in some cases, only paid advertisement is permitted. There are cases with mixed approach as well.⁹⁵ In regard to Georgia, there are two laws that regulate placement of political advertisements – Election Code and Law of Georgia on Broadcasting. According to these regulations, Georgia allows both paid campaign/political advertisement and free of charge advertising which is mandatory for public and private tele-radio broadcasters to place for a certain period of time. The subject of our interest is free of charge campaign/political advertisement and discussion how appropriate it is for private broadcasters, operating in already limited ads market, to have an obligation to run free of charge political advertisements during the pre-election period.

In accordance with the legislation, the national broadcaster carrying out general broadcasting shall broadcast on its air a pre-election advertisement submitted by each qualified electoral subject for at least 90 seconds every three hours free of charge and without discrimination during the electoral campaign held at the time of general elections. The time unused by the electoral subjects may not be added to another time further allotted for these subjects”.⁹⁶ Article 66 of the Law of Georgia on Broadcasting and obligation to broadcast pre-election advertisement free of charge is extended to the regional broadcasters as well.

The main argument for the existence of free of charge pre-election/political advertising is that there is no additional imbalance between the representatives or other large parties and relatively small parties, and that all qualified electoral subjects have more or less equal access to the information space in order to bring their ideas to the voters. On the other hand, the obligation to place pre-election/political advertisements for free is naturally unacceptable for private broadcasters. They have to add free political ads to the commercial advertising time during the pre-election period and increase the duration of the commercial cut (which should be displeasing to the viewers), or reduce the time allocated to commercial

⁹⁵ The Electoral Knowledge Network. (2012). *Media and Elections*. Via Link: <https://aceproject.org/ace-en/topics/me/mea/mec04/mec04b/mec04b01> (06.07.2023).

⁹⁶ Legislative Herald of Georgia. Law of Georgia on Broadcasting (version of 03.07.2023). Article 66. Accessible at: <https://matsne.gov.ge/document/view/32866?publication=69> (06.07.2023).

ads, change the broadcasting network, etc. Such changes place a particularly heavy burden on companies with small revenues.

As the survey (Tughushi, Kuprashvili, Koridze, Rukhadze, 2013)⁹⁷ conducted in Georgia in 2013 shows, electoral subjects too, are not entirely happy with free of charge pre-election advertisements, because they believe that time is allotted unfairly. In addition, according to this survey: Most of the broadcasters are Limited Liability Companies. The idea of being “limited” is as follows: The LLC cannot be held accountable for commitments taken by the government and vice versa. Private LLC is not responsible for funding (providing service) to the political subject. Articles and sections of the Civil Code of Georgia that concerns private enterprises (legal entities) are turned upside down”. The survey also highlights that given the practice, “allotment of free of charge advertising time, instead of ensuring equal conditions for the subjects in the pre-election period, even hinders delivering pre-election information to the voters through TV broadcasting. The companies, in order to place free of charge political advertisements, have to conduct the following works: equal distribution/planning of broadcasting net, camera services, preparation and submission of weekly reports to the Communications Commission”.

Accordingly, one of the major findings of that 2013 survey is that “obligation to place free political advertisement imposed on private broadcasters does not provide equal conditions for political subjects, damages interests of especially low-income channels and creates a reason for disproportion of advertisement and other programs in a broadcasting net”. It is also underlined that qualified electoral subjects in most cases completely use free air time and almost never purchase paid political advertisement.

Of interest is what is the amount of revenues that broadcasters earn from pre-election/political advertisement and what is the approximate value of the free advertisements they place. According to the 2021 report⁹⁸ of the Communications Commission, in the pre-election period of the municipal elections of Georgia in 2021 (the latest election in Georgia for the time being), “national broadcasters received a total of GEL 3.8 million from paid political advertising. As for the regional broadcasters, 22 regional broadcasters received a total of GEL 44,661 from paid political advertising... TV and radio broadcasters

⁹⁷ Tughushi, L., Kuprashvili, L., Koridze, Z., Rukhadze, N. (2013). Political Advertisement and its Influence on Elections and Media Analysis and Recommendations. Accessible at: https://www.undp.org/sites/g/files/zskgke326/files/migration/ge/GE_UNDP_DG_Report_Political_Advertisement_GEO.pdf (06.07.2023).

⁹⁸ Georgian National Communications Commission. 2021 Report. Accessible at: <https://www.comcom.ge/uploads/other/9/9574.pdf> (06.07.2023).

devoted a total of more than 39,000 minutes to free political advertising during the pre-election period. Free political advertising was distributed on 12 national television channels. A total of more than 35,000 minutes was devoted to free political advertising on TV, valued at approximately 22.5 million GEL. The market value of free political advertising was determined by assigning the value for advertising spots that the broadcasters themselves had set in the respective broadcasted programs”. These figures give a perfect illustration that the political subjects basically fully use their free of charge advertising time and spend less resources on paid ads which damages the interests of private broadcasters.

Given these circumstances, it is possible to discuss an idea that obligation to place free of charge pre-election/political advertisements is retained for the Public Broadcasters and not for private companies. To this aim, it is also possible to analyze experience of different countries and implementing them in Georgian reality in view of the local context. The abovementioned survey (Tughushi, Kuprashvili, Koridze, Rukhadze, 2013) suggests an interesting recommendation in this regard: “cost of the so called free political advertisement shall be calculated according to financial statements of broadcasters, which shall be compensated from the central budget.

Chapter 5: Alternatives to the Current Regulations Threatening Freedom of Broadcasting Media

Several key recommendations have been formulated based on the analysis of legislative regulations outlined in this document, along with insights gathered from practical interviews and relevant literature:

- 1. Ensure that the Communications Commission's or government's interference in media content is kept to a minimum, regulated by a code of conduct that is adopted with broad consensus among relevant stakeholders.**
- 2. Limit the Communications Commission's or government's interference in the content of commercial, social, or political advertising to the bare minimum.**
- 3. The sanctions for violations in the broadcasting sphere should not be overly stringent, avoiding grounds for easily suspending the authorization or license of a media service provider.**

4. Regulations concerning media content or those implying potential financial repercussions for the media should not be implemented without a broad consensus among media professionals and local or international experts in the field.

As regard to more in-depth views about challenges discussed in the research part of the document, they are as follows:

Hate Speech - As mentioned earlier, with the amendments to the Law of Georgia on Broadcasting on 30 June 2023, adopted by the Parliament of Georgia at the third reading, hate speech was again removed from the sphere of the Communications Commission's/government's regulation. As in the past, tele-radio broadcasters will review complaints related to hate speech within the scope of their self-regulation boards. At the same time, the authorized individual/license holder is obliged to submit to the Communications Commission and publish on the official website before May 1 of each year the information about the implementation of code of conduct requirements. This means that the Communications Commission cannot interfere in media content but is capable of monitoring how the code of conduct is implemented. In view of the analysis of literature and practice in this document, we believe this is the most optimal version.

Given the lack of faith in Georgia's judiciary, as well as in administrative bodies and in light of the poor effectiveness of those agencies, the Georgian Parliament should refrain from taking such a step in the future as well. Although the latest amendments eradicated potential risks, it is important that civil society demonstrates caution if this issue is raised in the future. This applies not only to hate speech but also to the adoption of any such regulation that will authorize an administrative body or court to interfere in media content. For instance, the latest statements about "banning LGBT propaganda" create disproportionate risks of undue interference in media content and freedom of expression.

Hate Speech and Video Sharing Platforms – It is necessary to mention within the context of hate speech that it remains regulated when it comes to video sharing platforms. Therefore, a broad interpretation accompanying the definition of hate speech poses a threat to such platforms operating in Georgia and, correspondingly, to freedom of speech because it creates risks that the government may use it for wrongful aims. It is important in this respect that video sharing platforms are also removed from the regulatory scope of the Communications Commission/government. Importantly, according to the amendments enacted to the Law of Georgia on Broadcasting, a code of conduct for video sharing platforms should be drafted with the involvement of relevant stakeholders. Therefore, it is possible that

these platforms create their own ethics boards and, similar to broadcasters, review complaints as part of a self-regulation mechanism. In other words, video sharing platforms should have the same degree of freedom as media outlets.

Right of Reply – In this case too, by the decision of the Parliamentary Majority on 30 June 2023, controversial regulation was amended. However, for the past few years, the government/Communications Commission has been clearly aspiring to regulate media with respect to hate speech and other related issues. As mentioned earlier, such intentions and granting such competence to an administrative body/Court should be at least discussed in advance with media experts and media outlets. In addition, given the current challenges facing the Georgian judiciary and democracy in general, such regulation will most likely negatively affect media freedom.

Regulation of “Obscenity” – Concerning the specific broadcast of the government-critical TV channel, Mtavari Arkhi, the Communications Commission arbitrarily interpreted the law, misinterpreted the judgment of the Constitutional Court, and blatantly interfered in the broadcaster's content (see p. 20 for more details). Although the amendments adopted on 30 June 2023 by the Parliament changed section 2 of Article 14 of the Law of Georgia on Broadcasting and clearly underlined that a possible violation of Article 56 cannot be appealed to the Communications Commission (therefore, the Communications Commission is not authorized to respond to such issues on its own), ambiguities about the issue still remain. In particular, Article 59¹ of the most recent redaction of the Law states that appealing the decision made by broadcasters' self-regulation bodies, including the placement of such programs or advertisements infringing human/citizen dignity and basic rights and freedoms, is impossible not only to the Communications Commission but also to the Court. In turn, this contradicts the 10 November 2009, judgment of the Constitutional Court, which states that all citizens shall have the right to apply to a court in case of an infringement of dignity or other basic rights.

Given this ambiguity, it is important that the concept of obscenity and the placement of programs or advertisements infringing human dignity and basic rights are differentiated (separately outlined in different articles), and for each specific case, the prerogative to discuss obscenity remains in the hands of broadcasters' self-regulatory bodies. Regarding programs infringing human dignity, people should be able to appeal the decision of a self-regulatory body to defend their rights in accordance with the judgment of the Constitutional Court. It should be added that Georgia received a similar recommendation from the CoE Experts. In particular, they underlined that "programs that contain obscene behavior and offensive

language should not be prohibited but rather restricted to times when children are unlikely to be seeing them."

Enforcement of Sanctions – With the amendments adopted by the Parliament on 30 June 2023, the threat posed by the immediate enforcement of a specific decision of the Communications Commission, specifically that the imposed monetary sanction may have caused hindrance or complete suspension of the broadcaster's work, has been reduced to a certain degree. However, for the financial sustainability and smooth functioning of the broadcaster, the current rule of enforcing fines is still a significant threat, as it remains possible to misuse it against media critical of the government.

Leaving the fine enforcement rule in such a way that the Communications Commission still maintains an immediate effect mechanism likely stems from an attempt to ensure the efficiency of the Communications Commission's work, so that every fine is not groundlessly challenged in court in order to delay its enforcement. Perhaps this argument is valid to some extent, but it is important to remember that media freedom, in its essence, is a greater good than ensuring the effective work of an administrative body—in this case, the Communications Commission—even if aimed at media regulation. This provision gives the Communications Commission disproportionately large powers to regulate the media. Therefore, at this stage, it is recommended that the issue of enforcing sanctions remain as it was before the changes of 22 December 2022, when appealing the relevant act of the administrative body to the court would automatically lead to its suspension.

Apart from all these, the legislation enables the Communications Commission to keep such a form of sanction as the suspension of broadcasting for a media service provider if the latter violates any requirement of the law a second time in a year. This provision poses a huge threat to freedom of speech and expression and may contradict Article 10 of the European Convention on Human Rights (ECHR). Therefore, we believe it is necessary to revoke this stringent sanction. In particular, Article 72.2/72.3 (media service or video sharing platform) and 74.1(d) (radio services) of the Law of Georgia on Broadcasting

Protection of Minors - Although the second, fourth and sixth paragraphs of Article 71 of the Law of Georgia on Broadcasting were removed as a result of the amendments adopted on 30 June 2023 and the Communications Commission is no longer authorized to apply strict sanctions and suspend the license on its own initiative, without warning the broadcaster, Article 56¹ still remains in the Law which leave the issue still within the Communications Commission regulatory scope and gives the administrative body,

due to the vagueness of the law, the possibility of unfair interference in the activities of the broadcaster, including by means of fines. The delegation of such authority to the Communications Commission threatens the independence of the media, creates the risk of censorship, and it is necessary to transfer the abovementioned issue from the jurisdiction of the administrative body to the self-regulation framework.

Rule of Conduct for the Media in the Parliament – The decision of the Speaker of the Parliament to "regulate" the journalists' accreditation process creates certain problems within the Parliament's premises. The Public Defender of Georgia also highlighted the problematic nature of the Speaker of the Parliament's order. Despite imposing unlawful restrictions on the work of journalists with this rule, there are also questions regarding the constitutionality of such an order—how is it possible that media's work in the Parliament is restricted based on the Speaker of the Parliament's order, and journalists are not able to appeal this decision. Therefore, at the very least, it is necessary to outline in detail the issue, timeframe, and procedure for appealing decisions under that rule. However, we recommend that it would be better to revoke that rule, or in case of necessity, introduce rules that will not result in a disproportionate restriction of media's work, and Parliamentary correspondents will be involved in the elaboration process themselves.

Advertising Issues

Commercial Advertisement – Problems in broadcasting media arising from the definition and reduction of time allotted for commercial advertisements have probably been more or less overcome. However, it is important that in the future, before adopting a law that would put media's financial sustainability into question, legislators give media outlets a reasonable time from the adoption of regulation in the Parliament before its coming into effect. One of the main problems when introducing regulations of advertisements (both in terms of the reduction of time and banning gambling ads) was insufficient communication with the media outlets and making decisions at a time when tele-radio broadcasters would be facing financial risks to continue annually planned spending in light of the drastic reduction of revenues.

At the same time, as mentioned earlier, Georgian legislation adopted more regulations compared to what was required by the European Union's directive. For instance: the indication to a sponsor in a program partially or fully financed by the sponsor and in the broadcaster's statement regarding its own

and/or independent programs shall be concise and shall not exceed four minutes within a broadcasting hour, and state and political programs shall not be interrupted by advertisements. The European Union's Directive did not at all require the imposition of these specific regulations. Therefore, excessive regulations for the broadcasting media in terms of advertising need to be revised and relaxed.

Requirements on product placement (goods/services) in a program should be relaxed, and such vague and broadly interpreted passages, such as "attaching excessive importance to a product" – based on which the Communications Commission imposed fines/cautioned numerous tele-broadcasters – should be removed altogether. Such ambiguity in the law is yet another instrument in the hands of the administrative body.

As the analysis showed, granting the right to place advertisements to the Public Broadcaster is problematic, calling into question the independence of the Public Broadcaster, including its independence from commercial influences. The introduction of the Public Broadcaster into the advertising market damages private broadcasters and distorts competition in the market. This is particularly noticeable in the case of regional broadcasters. As Natia Kapanadze, the former director of Public Broadcaster's Ajara Television and Radio, notes, granting this right to Ajara Television and Radio created problems for its competing private broadcaster. Therefore, it is necessary to revise this right and return to the original version, especially given the fact that the public broadcaster does not have financial problems, as it is financed from the state budget, and this financing increases in proportion to the growth of the country's GDP.

Social Advertisement – When regulating social advertisements placed on a broadcaster, the Communications Commission should not have the authority to interfere with the content of the advertisement and decide whether the advertisement is social, political, or of any other type. Possession of such a lever allows the administrative body to limit the freedom of the media. Therefore, the issue of regulation of both commercial advertising and social advertising should remain within the competence of the Communications Commission only technically – whether or not the timeframes specified by law are observed. If there really is a need to regulate content, it should move into the realm of self-regulation.

The question of whether there should be an obligation for private broadcasters to place free social advertising causes a difference of opinion. On the one hand, it is important that interested groups can easily reach the widest possible spectrum of society for the sake of their own awareness and, therefore, well-being. On the other hand, it is debatable why a private broadcaster is obliged to place free advertising

on its air. If a private broadcaster has the desire to promote this or that issue, it will be eager to place a specific social advertisement at a low price or even for free. Therefore, it is possible to argue that the obligation to run free social advertising will remain only for public broadcasting channels, while private companies will have a free choice. This issue should be resolved with the involvement of representatives of private broadcasters and other interested parties.

Political Advertisement – Due to vague legislation or incorrect interpretation by the Communications Commission, we find ourselves in a situation where placing political advertisements during a non-election period is virtually impossible. This is not only absurd but also poses a significant threat to the freedom of speech, leading to a recent appeal to the Constitutional Court.

Therefore, it is crucial to observe how the Constitutional Court discusses and decides on this matter. Following this, it would be beneficial to clearly define the concept of political advertising in the legislation as much as possible, ensuring that any interested person can place such an advertisement at any time. Additionally, the regulation of political advertisements during the non-election period should not be as stringent as that of pre-election political advertisements. In such cases, there is no direct risk that even a misleading political advertisement will impact the final election results. Thus, it might be reasonable to subject the content of political advertisements during the non-election period to the review of a self-regulation body, similar to the approach taken with social advertisements.

Free-of-charge pre-election/political advertisement - The obligation to provide free political advertisements imposes an unfair burden on private broadcasters. A commonly cited argument for free political advertising is that regardless of financial resources, qualified parties should have the opportunity to place their advertisements, even on broadcasters whose editorial policies may be unfavorable to them. While this is a valid point, it doesn't change the fact that the broadcaster does not earn income for the content placed on the air. Additionally, broadcasters are required to reduce commercial advertising during the pre-election period or increase total advertising time at the expense of programs, which is financially damaging for them and likely undesirable for viewers.

Based on the analysis, there are two potential resolutions for the aforementioned issue: 1. Compensate broadcasters for the free political advertising they provided after the end of the pre-election period (from the state budget). This approach creates an opportunity for all qualified subjects to air advertisements on any broadcaster without incurring their own expenses and 2. Completely remove this obligation from private broadcasters and retain it only for a Public Broadcaster.