

The Parliament has considered and adopted – in an accelerated manner and without a broad public discussion – changes to the Law on Broadcasting proposed by members of the parliamentary majority, which, together with other novelties, provide for the transfer of hate speech and obscenity from the realm of self-regulation (when the media themselves consider complaints and forms of responding to them in order to uphold and improve professional standards) to that of regulation. The competence to examine issues of hate speech and obscenity and the power to impose relevant sanctions will be granted to the Communications Commission.

Legal regulation of hate speech contains a threat against the background of the authorities' attitude to critical opinion, the lack of strong and independent regulatory bodies, and the low confidence in the judicial system.

DRAFT LAW, INITIATOR

Draft law: [on Changes to the Law of Georgia on Broadcasting](#)

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SELF-REGULATION MECHANISM

CURRENT WORDING	PROPOSED CHANGE
<p>The Law on Broadcasting does not define the self-regulation mechanism. The Code of Conduct for Broadcasters determines as follows:</p> <ul style="list-style-type: none"> A decision of the self-regulation body is appealed, in the manner established by the Code of Conduct, to the appeals body of self-regulation of the broadcaster, which is set up by the broadcaster or an association of broadcasters and functions in accordance with the Code of Conduct. Members of the appeals body may not be public servants or members of political parties, and they may not have taken part in taking the appealed decision. 	<p>The mechanism for appeal in the framework of self-regulation was determined by the Law on Broadcasting instead of the Code of Conduct for Broadcasters.</p>

THE ISSUE OF REGULATION OF HATE SPEECH AND INCITEMENT TO TERRORISM

CURRENT WORDING	PROPOSED CHANGE
<p>The issue of using hate speech and incitement to terrorism is subject to self-regulation. Accordingly, decisions made by broadcasters are not appealed to the Communications Commission and courts.</p>	<p>The issue of using hate speech is transferred from the realm of self-regulation by broadcasters to regulation. The use of hate speech in the media will be first considered by the broadcaster's self-regulation body. The decision may be appealed to the appeals body of self-regulation. An interested person may appeal the decision of the appeals body to the Commission and demand response from the Commission.</p> <p>In the event of establishment of a violation, the Commission will be able to apply the following sanctions according to the gravity of the violation: a warning, a fine, suspension of license/authorization.</p> <p>The decision of the Commission may be appealed to a court in the manner established by the Administrative Procedure Code of Georgia.</p>

THE ISSUE OF REGULATION OF OBSCENITY AND PORNOGRAPHY

CURRENT WORDING	PROPOSED CHANGE
<p>Response to the placement of a program or advertisement that contains obscenity is provided in the framework of self-regulation by the broadcaster.</p>	<p>Instead of self-regulation, response to these issues will be provided by the Communications Commission, on its own initiative or at the request of an interested person.</p>
<p>Response to the dissemination of a program or advertisement that contains incitement to terrorism is provided in the framework of self-regulation by the broadcaster.</p>	<p>Instead of self-regulation, response to these issues will be provided by the Communications Commission.</p>

EVALUATION

The **disputed changes** to the Law on Broadcasting that were adopted by the Georgian Dream **further deteriorate the already deteriorated standard of freedom of speech and expression and create additional risks of exerting influence on broadcasters.**

1. The process of consideration of the draft law was not inclusive

The legislative changes that are going to exert a considerable influence on the media environment were considered and adopted by the Parliament in an accelerated manner – in a week, without proper involvement of the public and stakeholders in the process.

It is also noteworthy that, after the changes were initiated, at the time of adoption in the first reading at the plenary session, an important change was made to the draft law. Whereas the initial wording of the draft law only dealt with the regulation of hate speech, after the first reading, additional provisions were made that transfer the issue of obscenity from the realm of self-regulation to that of regulation. This is not the first time that the ruling team has considered and adopted changes in an accelerated and non-inclusive manner based on the argument of fulfillment of EU directives.

Members of the Parliament of Georgia are well aware of the position of the media and the civil society sector on these issues. The Parliament has [come forward](#) with initiatives to transfer speech to the realm of regulation on several occasions, although it has failed on every occasion to reach an agreement with the media and those civil society organizations that work on the issues of media freedom.

It should also be noted that as early as last year, the Media Advocacy Coalition, along with broadcasters, elaborated an [alternative proposal](#) on an effective co-regulation mechanism, although the ruling party refused to accept this proposal.

On each occasion, the issue of transferring hate speech to the realm of regulation became an object of broad discussion. The accelerated consideration of the draft law in the days when the Parliament was considering the issue of the President's impeachment raises a well-founded doubt that it was precisely designed to avoid this discussion.

2. What the EU Directive calls for

Every time the ruling party came forward with an initiative to regulate hate speech, it cited the argument of bringing the Law on Broadcasting in compliance with the EU Directive 2010/13/EU concerning the provision of audiovisual media services. Granted, this time, the explanatory note to the draft law does not refer to this Directive, although the initiators of the draft law have mentioned this argument on several occasions at the committee and plenary hearings.

This is not the first case when the authorities propose a legislative package on the pretext of fulfilling the EU Directive and try to implement changes limiting the freedom of expressing critical opinion under the cover of fulfillment of international obligations.

First of all, we should explain the nature of EU directives themselves and the conditions of their implementation. Specifically, the directives are legislative acts that are addressed at states. The main priority for the Directive is to ensure that countries achieve the stated goal, and it is up to the states themselves to decide which way, form and means they choose for achieving the goal. Granted, the EU Directive indicates an obligation of EU member countries to ensure that the media do not contain hate speech and incitement to violence, although it should be noted that the [EU Directive](#) does not give priority to any system (regulation or self-regulation). Accordingly, it is up to the states themselves to decide which system they choose to fight against the use of hate speech in the media. It is necessary that at the time of making such decisions there is a consensus among stakeholders, which is also provided for by Article 4 of the Directive and which is missing in this concrete case.

On Georgia's road to EU integration, it is, first of all, necessary to carry out more relevant and important changes. It should be noted that the 12 recommendations given for granting the status of a candidate country for EU membership contain important issues for ensuring a free, professional, pluralist, and independent media environment. It will be better if the authorities direct their efforts precisely in this direction – towards strengthening of the media.

3. What the law provides for and what dangers the growing powers of the Commission contains

According to the initiative proposed by the ruling party, the Communications Commission will be able to regulate the dissemination of hate speech and obscenity in broadcasters' programs and advertisements, **which has been completely covered by self-regulation up to now.**

The powers of the Communications Commission will also expand considerably with regard to placement of programs and advertisements that contain **obscenity**, and this issue will transfer from the realm of self-regulation to that of regulation.

It will be possible to appeal decisions on the possible use of hate speech made in the framework of self-regulation bodies of broadcasters (e.g., commissions and councils set up by broadcasters) to the Communications Commission and then already to a court.

Granting the right to decide on issues of obscenity and hate speech to the Communications Commission goes beyond the functions of the Commission, enables it to regulate the content of media products, and poses a threat to freedom of expression.

The goal of regulation of hate speech in itself, first of all, be the protection of minorities. How well a law or regulation works – which, in turn, may not be an instrument for a bad idea – depends on a country's democratic development and independence of its institutions. In a number of critical situations, the authorities have failed to properly protect minorities. In this case, too, it is doubtful that regulation of hate speech will result in the protection of the rights of vulnerable groups. On the contrary, before the parliamentary elections of 2024, regulation of hate speech may be used by radical groups precisely for violating the rights of minorities and vulnerable groups.

In their [legal opinion](#), independent experts of the Council of Europe also talk about the problematic nature of the Law on Broadcasting with regard to regulation of hate speech and its incompatibility with the standards of the EU and the Council of Europe. In their opinion, the law will likely be in breach of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Discussing various models of regulation of hate speech, they note that it is recommended that hate speech remain an object of co-regulation, with an improved mechanism for co-regulation.

4. What kind of sanctions threaten broadcasters

After the transfer of obscenity from the realm of self-regulation to that of regulation, the Commission will have the powers to consider an issue and impose sanctions on a broadcaster on its own initiative and/or on the basis of a complaint of an interested person.

The Commission can only consider a dispute regarding hate speech after an interested person appeals a decision of a self-regulation body to the Commission.

In both cases, the Commission may apply the following sanctions:

- Warning;**
- Fine** – in the amount of not more than 0.5% of the annual revenue of the broadcaster, but not less than GEL 2,500. If, during one year, the broadcaster commits a violation again, the Commission may impose a fine of 1% of its annual revenue, but not less than GEL 5,000, or launch public administrative proceedings for the suspension of the license/authorization. And in the case of every new violation during one year after the first fine, the Commission is authorized to impose a fine on the wrongdoer in the amount of 3% of its annual revenue, but not less than GEL 10,000, or launch public administrative proceedings for the suspension of the license/authorization;
- Suspension of license** – the Commission will consider the issue of suspension of the license if a written warning and a fine have already been applied in relation to the broadcaster for this violation. The license will be suspended until the elimination of the violation, but not for more than 3 months.

A decision of the Commission may be appealed to a court in the manner established by the Administrative Procedure Code of Georgia.

Against the background of low degree of independence of the regulatory body and the lack of trust in the judicial system, the risk that broadcasters will be fined in a biased manner increases. Whereas there are questions regarding the decisions of the Communications Commission and the fairness of the appeals process, granting a new competence to the Communications Commission is going to increase the risks of fining the critical media that are already in a dire financial situation and reflect negatively on the financial sustainability and stability of TV stations, especially independent channels that are critical to the authorities. The existing risks are further exacerbated by the politicization of the regulatory body and problems related to its independence from the ruling party.

5. The current legal framework and the need for legal regulation of hate speech

In spite of the fact that the applicable law does not provide for legal regulation of hate speech, the legislation makes it fully possible to restrict the kind of freedom of expression that violates the state's legitimate interests or other persons' lawful rights. The Criminal Code makes it punishable to carry out the following: public incitement to acts of violence (Article 239¹), incitement to change the constitutional order (Article 317), as well as calling for planning an act of aggression (Article 405). If freedom of expression violates a person's personal rights (honor, dignity, business reputation), they may apply to a court and protect the violated right by means of civil law (Article 18 of the Civil Code of Georgia).

Accordingly, expression – if it poses a threat to the state or violates human rights – has already been subjected to regulation according to the Georgian legislation. Further regulation is not going to ensure better protection of rights but rather increase the risks of abuse of the levers given to the state.

Summary

Considering the existing reality, when the negative attitude of the authorities to critical media, non-governmental organizations, and critical opinion in general, the low degree of independence and politicization of the Communications Commission, and the low trust in the judicial system remain a challenge, giving the Communications Commission additional levers to impose sanctions on the media and the competence to interfere in the content of media products contains a risk for the freedom of expression.

The law cannot ensure the achievement of the goal for which it is allowed to regulate hate speech and obscenity in democratic countries, and it may turn into a punishment instrument and used against critical media.

Therefore, Transparency International Georgia believes that changes of such significance should not be adopted without discussions with and broad involvement of stakeholders, which is also required by the EU Directive concerning the provision of audiovisual media services.

We call on the President of Georgia to veto the legislative changes that contain a threat of censorship and punishment of the critical media.