

## 2022 QUESTIONNAIRE OF THE THIRD STUDY COMMISSION OF THE IAJ-UIM/ Georgia

- 1. Does your country protect freedom of speech and, if so, how? Please refer to legislation, including any applicable bill of rights or charter of rights or human rights code, as example, and/or jurisprudence (court decisions) as an overall picture**

Freedom of opinion and the freedom of expression are protected by the supreme law of state – Constitution of Georgia, as well as number of legislative acts, including Law of Georgia on Freedom of Speech and Expression and the Law of Georgia on Assemblies and Demonstrations. Moreover, Georgia has ratified European Convention for the protection of Human Rights and Fundamental Freedoms. At the same time, freedom of expression, as one of the fundamental foundations of a democratic society and the main condition for the self-realization of the individual, its special importance and the need to protect it is emphasized in numerous decisions of the Constitutional Court of Georgia and Common Courts. The Supreme Court's approach is completely consistent with the principles outlined in Article 10 of the European Convention on Human Rights and the European Court of Human Rights' case law.

- 2. Does your country criminalize hate speech and, if so, how? Please refer to legislation and/or jurisprudence as an overall picture.**

The Criminal Code of Georgia does not provide criminal liability for hate speech.

- 3. Does your country have restrictions by the criminal law of the freedom of speech? And if yes, could you give an overall picture of what the legislation is like? Including**
  - a. Are there groups of persons who enjoy special protection of their freedom of speech due to their gender, sexual preference, religion, race or other conditions**
  - b. Are there topics that enjoy special protection in terms of freedom of speech – for example topics of religion and politics.**

Under Georgia's Criminal Code the form of expression that is hazardous for public safety and order, other people's rights, national security, or state constitutional order is criminally liable. According to the Article 239<sup>1</sup>(1) of Criminal Code of Georgia the punishment is provided for public incitement to act of violence orally, in writing or using other means of expression in order to cause a discord between certain groups based on their racial, religious, national, provincial, ethnic, social, political, linguistic and/or other characteristics, provided that this poses clear, direct and substantial risk of act of violence.

Moreover the Article 233(3) of Criminal Code of Georgia provides punishment for dissemination or use of information materials and/or symbols associated with joining and/or participation in illegal formations if such action poses clear, direct and substantial risk of the occurrence of unlawful consequences.

According to the Article 317 of Criminal Code of Georgia, punishment is administered for public incitement to change the constitutional order of Georgia through violence, or to overthrow of state power, or dissemination of materials containing such an appeal, as well as appeal to take up arms for the same purpose.

Open support of terrorist activities and/or a terrorist organization orally, in writing or by other forms of expression, if such action creates a clear, immediate and substantial risk of terrorist activities is declared as an act of crime according to the Article 330<sup>1</sup> of Criminal Code of Georgia. Furthermore the liability is determined under the same Article for public incitement to terrorist activities orally, in writing or by other forms of expression or public dissemination of information in order to carry out terrorist activities, regardless of whether or not the information contains a direct call for committing an offence, if such action creates a clear, immediate and substantial risk of terrorist activities. Calling for planning, preparation, commencement or execution of an act of aggression is also classified as a crime under Georgian Criminal Code Article 405.

- 4. If there are restrictions in the criminal law of the freedom of speech, are the restrictions then absolute or must they be weighed against the consideration of free speech?**
  - A. Does this apply to all groups and if not, are the restrictions either absolute or not? Please mention which person and groups belong to which category.**
  - B. b. in cases where the freedom of speech and the restrictions are to be weighed against each other –**
    - i. Are there then guidelines on how balancing should be done?**
    - ii. If yes, which of the two parameters weighs heaviest, a) the protection of free speech or b) the category that is protected by the legislation? And does this differ from category to category?**
    - iii. And how much dissociation is there such that the outcome of the balancing exercise may differ from judge to judge?**

Freedom of expression under the Criminal Code of Georgia is restricted only in the above mentioned cases. Any sane person, who has already reached the age of majority, may be held liable in case of the existence of crime signs. There are no exceptions in this regard as a certain group of persons. In the presence of the signs of the aforementioned crimes, neither the issue of conflict or balance of interests is considered.

- 5. Do you think that the legislation is clear and comprehensible to the citizen or does it gave cause for doubts?**
  - a. If it gives cause for doubt, how is it expressed? Does it deter the citizen making statements? Or does it deter citizen from using?**

The legislation is foreseeable and formulated in a sufficiently unambiguous fashion.

- 6. Do you find in your work as a judge that the relevant legislation in your country, as it pertains to the freedom of speech and its protection and the criminalization of hate speech, is clear and comprehensible, or do you find that it gives too much room for different outcomes in the same types of cases?**

As hate speech isn't criminalized in Georgia the freedom of speech is well protected and the legislation doesn't leave the room for ambiguity.