

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



## Joint statement of civil society and media organizations regarding bill on incitement of hatred

We, the undersigned NGOs, believe that Article 2391 of the amendment proposed by the Ministry of Internal Affairs (hereinafter, MIA) to the Criminal Code of Georgia carries a risk of unreasonably restricting freedom of expression and stifling criticism. According to the proposal, inciting hatred ☐ ☐ ☐ ☐ ☐ ☐ calls for violent actions, made verbally, in written or through other forms of expression and aimed to cause hostility or discord between racial, religious, national, regional, ethnic, social, linguistic or/and

other groups, a will be could result in criminal prosecution. Unfortunately, the Government initiated this bill without broad and inclusive discussions with the society which, given the importance and sensitivity of the issue, is particularly unacceptable.

We worry that the government's effort to regulate the freedom of expression is not aimed at protecting discriminated minority groups but instead at limiting freedom of expression and strengthening the dominant social and moral discourse. Such an assessment is based on the existing context and the normative content of the proposed amendment.

State policy is ineffective when it comes to protecting the rights of minority groups; the state does not effectively respond to hate-motivated crimes: law enforcement agencies are passive in response to reported crimes and takes little action in restoring the rights of the violated minority, or in implementing preventative measures. We thus question the truthfulness of the claim that these restrictions of the freedom of expression are to protect the discriminated groups. Article 53(31) of the Criminal Code of Georgia already requires that the discriminatory motive of a crime be considered as an aggravating circumstance, however the norm is rarely used in practice and the state does not have the relevant statistics demonstrating the use of this article of the Criminal Code as an instrument to fight hate crimes. The state has not undertaken effective investigation in cases of hate crimes, including in the case of May 17, 2013, nor has it prosecuted/charged specific individuals. Moreover, considering the loyalty to the dominant religious group and to prevalent social mores demonstrated by the government, and its frequent deviation from principles of the secular state, the government's assertion that this piece of legislation is in the interests of discriminated minority groups does not seem credible. The incredulity is further supported by an open endorsement of the bill by the groups which side with criminalization of offending religious sentiments.

Notably, this is not the first time that the Government of Georgia has tried to adopt regulations limiting the freedom of expression. In early 2014, the MIA proposed a draft law providing for administrative liability for offending religious sentiments. Also, on June 30, 2014, amendments were made to the Criminal Proceedings Code which criminalized "incitement towards violation of human equality."

The proposed bill is in conflict with the case law of the Constitutional Court of Georgia regarding Article 24 of the Georgian Constitution as well as the standard set out by

the Law on Freedom of Speech and Expression. The latter law allows for the defense of qualified privilege. The incitement can result in liability only in cases when the person undertakes a deliberate action which causes a clear, direct and substantial risk of a lawless result. In the case dated April 18, 2011, the Constitutional Court interpreted: [ ] it is important that the law, as well as the practice of its application, differentiate expressions which, on the one hand, may contain a language of violence, but, also, is harmless and forms a part of a political, social or scientific discourse, and, on the other hand, incitement where the author is aware of a possible consequence of the incitement and has an intent to cause such a consequence."

Such approach to the freedom of expression is in line with the standard established by the U.S. Supreme Court which provides that the government may declare an expression illegal only when it is directed to [ ] or producing imminent lawless action and is likely to incite or produce such action. A The necessity of restricting the freedom of expression [ ] is essential to a valid restriction does not exist unless speech would produce, or is intended to produce, a clear and imminent danger of some substantive evil which the state constitutionally may seek to prevent."

Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every individual, also creating the basis for implementation of other rights. In accordance with the European Convention on Human Rights, the freedom of expression includes not only "information" or "ideas" that are favorably received or regarded as inoffensive, but also those that offend, shock or disturb the state or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". Freedom of expression also includes discriminatory expression and it affords the possibility to rationalize fears and stereotypes of a society through discussion. The state [ ] discretionary powers are strongly limited when imposing restrictions to the content of the freedom of expression. According to the assessment of the Venice Commission, the application of hate legislation must be measured in order to avoid an outcome where restrictions which potentially aim to protect minorities against abuses, extremism or racism, have the perverse effect of muzzling opposition and dissenting voices, silencing minorities, and reinforcing the dominant political, social and moral discourse and ideology.

We believe that the proposed bill, considering its goal, content, ambiguity of the norm

and the context of its application, create exactly such risks. The terms used in the norm such as [ ] of violent actions, A [ ] to cause hostility A among groups allow a broad interpretation. They pose the risk of abusing the norm including by controlling critics, certain groups of the society or an expression which is unacceptable to the majority. In the opinion of the undersigned organizations, the fight against hate speech and its gradual elimination from the public space will be possible, first, by understanding the reasons behind such hatred, and by cultivating a culture of tolerance; as well as by self-regulating media organizations and enactment of high ethical standards. In this regard, it is of particular importance that the Government works to fundamentally improve the education system.

Additionally, the state [ ] fight against hate speech requires, above all, regulation of the hate speech practiced by civil servants and adequate disciplinary liability to be imposed for such actions. First of all, the Government should enhance this process by enacting relevant regulations in the public service.

In view of the above mentioned, the undersigned organizations call upon the Government and the Parliament of Georgia to take into consideration the importance of democratic and pluralistic values and discontinue proceedings aimed at adopting the bill as it is a big step backwards in terms of safeguarding the freedom of expression and the development of an open society.

Georgian Democracy Initiative (GDI)  
Human Rights Education and Monitoring Center (EMC)  
Media Development Foundation (MDF)  
Tolerance and Diversity Institute (TDI)  
Identoba  
Sapari  
Article 42 of the Constitution  
Georgia's Reforms Associates (GRASS)  
Transparency International (TI) Georgia  
Georgian Young Lawyers' Association (GYLA)  
Charter of Journalistic Ethics  
Civil Development Agency (CiDA)  
Civic Development Institute (CDI)

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Institute of Nonviolent Communication  
Center of Information Centers  
Tabula TV (tabula.ge)  
Liberali Magazine (liberali.ge)  
Rustavi 2 TV  
Frontline Georgia Media Club  
Radio Green Wave  
Media portal media.ge  
Georgia's Regional Media Association (GRMA)  
Georgian Association of Regional Broadcasters (GARB)  
Georgia's Press Association  
P.S. Newspaper (psnews.ge)  
17 May Magazine (17maisi.org)  
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