

**INFORMATION PROVIDED BY THE GOVERNMENT OF GEORGIA ON A/HRC/RES/25/2
“FREEDOM OF OPINION AND EXPRESSION: MANDATE OF THE SPECIAL RAPPORTEUR
ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION
AND EXPRESSION” RESOLUTION**

1. Information regarding the protection of mass media from compelled disclosure of confidential sources of information.

Article 24(1) of the supreme law of Georgia – the Constitution of Georgia – acknowledges that everyone within the jurisdiction of Georgia has the inevitable freedom “to receive and disseminate information, to express and disseminate his/her opinion orally, in writing or otherwise’. The same provision further envisages that “mass media shall be free” and “censorship shall be inadmissible” and prohibits the monopolization of mass media or dissemination of information by anybody including state. The para 4 of the Article reserves the possibility of restriction of the proclaimed freedom which may be exercised “by law to the extent and insofar as is necessary in a democratic society, in order to guarantee state security, territorial integrity or public safety, to prevent crime, to safeguard rights and dignity of others, to prevent the disclosure of information acknowledged as confidential, or to ensure the independence and impartiality of justice”.

According to Article 3 of the Law of Georgia on Freedom of Speech and Expression (LFSE) the state “shall recognize and protect the freedom of speech and expression as eternal and supreme human value”. Further, in Article 3(1) the LFSE stipulates that everyone, save an administrative body, shall have a freedom of expression and defines this freedom as, *inter alia*, the right of a journalist to protect the confidentiality of the source of information.

Procedural guarantees to ensure the effectiveness of such protection are provided in Article 11 of the LFSE, which is read as follows:

- 1. The sources of professional secrets shall be protected by an absolute privilege, and nobody shall have the right to require disclosure of the source. In litigation on the restriction of the freedom of speech, the respondent shall not be obliged to disclose the source of confidential information.*
- 2. Disclosure of confidential information without the consent of its owner or, in cases determined by the law, without a grounded decision of the court, shall be unacceptable.*
- 3. The court shall be authorised to issue an injunction on securing evidence with regard to only that part of confidential information, which had been proved to must be disclosed.*
- 4. The confidential information received as a result of disclosure shall be used only for the purpose for which it was disclosed.*

The terms “absolute privilege “and “professional secret” are defined in Article 1 of the LFSE as follows: *absolute privilege* – a complete and unconditional release of a person from liability provided for by law; *professional secret* - the secret of confession, information disclosed to a member of parliament, doctor, journalist, human rights defender, or advocate in the course of their professional activity, as well as information of professional value, which became known to a person under the condition of privacy protection in relation to carrying out his/her professional duties and the disclosure of which may damage the person’s professional reputation; information, which does

not contain any personal data, a state or trade secret, as well as information on an administrative body shall not be a professional secret.

Finally, to exclude any possibility of pressure on journalist the LFSE envisages that in litigation on restriction of the freedom of speech the respondent's denial to disclose a professional secret or its source shall not become the sole ground for making an adverse decision for the respondent (Article 7(7)).

2. Information regarding protection of whistleblowers.

The Law of Georgia on the Conflict of Interests and Corruption in Public Service (LCIC) contains a special chapter dedicated to the protection of whistleblowers. Article 20² of the LCIC provides that whistleblowing shall be conscientious and shall serve to prevention and elimination of breaches of the provisions of the Georgian law and ethic codes as well as to protection of public interest. Whistleblowing shall be considered conscientious until proved otherwise. Further, Article 20³ establishes that whistleblowing may acquire any form, e.g. oral, by phone, written, etc. and also may be anonymous and if there is no written permission of the whistleblower or discloser of his/her personality no such discloser shall be allowed.

Article 20⁴ of the LCIC envisages that it is prohibited to intimidate, oppress, force, humiliate, and persecute a whistleblower or his /her next of kin¹, to cause pecuniary or non-pecuniary damage to or use force or threat of force or discriminate against him/her or his /her next of kin in connection with the fact of whistleblowing. Similarly, the LCIC prohibits initiation of administrative, civil or criminal proceedings against the whistleblower or imposing relevant responsibility on as well as applying restrictive measures against him/her in connection to exposed facts or events. Already initiated administrative, civil, criminal or disciplinary proceeding shall be ceased save it is not connected to the fact of whistleblowing or the aim of enjoyment of the protection granted by the law is encroachment on the sovereignty and security of the state, its constitutional order or spreading animosity between religious and ethnic groups. The burden of proof that the whistleblower does not enjoys exemption from criminal, civil, administrative or disciplinary liability or restrictive measures and that such proceeding or measures are lawful lies on the initiator of the proceedings against the whistleblower. The monitoring of the proper compliance of the abovementioned guaranties of protection granted to a whistleblower shall be performed by the head of the relevant public institution. In case these guarantees are violated a whistleblower may apply to superior administrative body or to the court. If, in course of criminal proceeding the life, health or property of a whistleblower, her/her next of kin or a witness of whistleblowing are endangered any of these persons as well as the public institution may apply to the Prosecutor's Office of Georgia and ask for measures of special protection of witnesses prescribed in the Criminal Procedure Code of Georgia.²

¹ According to 20¹ (e) of the LCIC next of kin shall be construed as including a spouse (including former), a child (including adopted as step-child), a parent (including adoptive parent), grandchildren and grandparents, siblings, unmarried partner.

² Article 68 of the Criminal Procedure Code provides that measure of special protection are enforced by the Ministry of Internal Affairs of Georgia and may include: a) measures against identification - changing or removing from a public registry or other registry of public character the data that makes it possible to recognize and identify a person, e.g. first name, last name, address, place of work, profession, or other relevant information; b) change

Article 20⁵ of the LCIC stipulates that a whistleblower enjoys the protection prescribed by law irrespective whether the information revealed by him/her is false or true. However the same provision reserves some exceptions. In particular, a whistleblower is not protected by law if: a) the information revealed by him/her is false which was known or should have been known to a whistleblower as he/she was able to verify the credibility of the information save he/she has undertaken every reasonable measure to verify the information and still could not establish its falseness; b) a whistleblower acts for his/her personal gain save the case of special reward established by law; c) a whistleblower is aware that the information revealed by him/her is publicly known or is known to the public institution.

According to Article 20⁸ if a public officer is personally affected by the revealed information, is directly or indirectly interested in the outcome of the case or if there are any other circumstances that cast doubt on his/her impartiality he/she shall not be allowed to examine the allegations of a whistleblower.

of personality and issuing new documentation - using a pseudonym, change a physical appearance, classifying the procedural documents or other documents which makes it possible to recognize and identify a person; c) adoption of special measures of physical protection (personal bodyguard, security alarm systems, etc.); d) temporary or permanent change of the place of residence [within the country]; e) evacuation of a person to another country (relocation)