

On Freedom of Speech and Expression

Chapter I - General Provisions

**Article 1 - Definition of terms**

The terms used in this Law shall have the following meanings:

- a) statement – information communicated by the statement maker publicly or to a third party;
- b) thought – a value judgement, point of view, comment, or expression of opinion in any form, which reflects the attitude toward a person, event or object, and does not contain any fact that may be either confirmed or denied;
- c) subject of expression – a topic or issue of judgment, on which various viewpoints are expressed;
- d) appeal – a statement, the author of which aims to cause or obviously provokes certain action;
- e) defamation – a statement containing a substantially false fact inflicting harm on a person; a statement damaging a person's reputation;
- f) obscenity – a statement, which does not have any political cultural, educational or scientific value and which rudely violates the universally recognised ethical norms;
- g) public attention – public interest (and not mere curiosity of individuals) towards events that are connected to the execution of public self-government in a democratic state;
- h) administrative body – a body, institution, or person defined by Article 2(1)(a) of the General Administrative Code of Georgia, except the public broadcaster;
- i) public figure – an official defined by Article 2 of the Law of Georgia on Conflict of Interest and Corruption in the Public Service; a person, whose decision or opinion has important influence on the public life; a person who attracts public interest as a result of certain actions on his/her part in relation to some issues;
- j) private person – a natural or legal person who is neither a public figure nor an administrative body;
- k) state secret – information, which is recognised as a state secret, under the procedure provided for by the Law of Georgia on State Secrets and that is subject to the protection by the State;
- l) trade secret – information defined by Article 27<sup>2</sup> of the General Administrative Code of Georgia; information on an administrative body shall not be a trade secret;
- m) (deleted – 25.5.2012, No 6328);
- n) professional secret – the secret of confession, information disclosed to a member of Parliament, a member of the High Council of an Autonomous Republic, a doctor, journalist, human rights defender, or advocate with regard to 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;
- o) clear and transparent law – a norm formulated with due preciseness that does not contain general, ambiguous or vague provisions, and gives the opportunity to a person to regulate his/her own actions, as well as preliminarily, clearly define their legal consequences in advance;
- p) narrowly tailored law – a norm, which imposes a direct requirement for restriction, specific criteria and an exhaustive list, and contains guarantees against misusing the norm;
- q) legitimate aim – benefits protected by Article 24(4) and Article 26(3) of the Constitution of Georgia;
- r) non-discriminatory practice – the prohibition against making different decisions in the event of identical circumstances and the obligation of equal treatment;
- s) restriction critically needed for a democratic society – a restriction which derives from a legitimate aim, and serves to protect the benefits of critical and vital importance for the existence of a democratic society, and which may be executed only when all other reasonable and effective means of attaining the legitimate aim have been exhausted;
- t) proportionality of restriction – a restriction of a legitimate aim and critical need that is the most effective and the least restrictive means for achieving the aim; stricter measures shall be applied only when achieving the legitimate aim and satisfying the critically needed requirements is otherwise impossible;
- u) absolute privilege - a complete and unconditional release of a person from a liability provided for by law;
- v) qualified privilege – a partial or conditional release of a person from a liability provided for by law; a person may lose the privilege as a result of



having committed a criminal act, if this is necessary to achieve the legitimate aim;

w) media – a print or electronic means of mass communication, including internet.

*Law of Georgia No 6328 of 25 May 2012 - website, 12.6.2012*

*Law of Georgia No 4000 of 10 July 2015 - website, 20.7.2015*

## **Article 2 - Interpretation of the Law**

This Law shall be interpreted according to the Constitution of Georgia, international legal obligations undertaken by Georgia, including the European Convention on Human Rights and Fundamental Freedoms and case law of the European Court of Human Rights.

## **Article 3 - Freedom of speech and expression**

1. The State shall recognise freedom of speech and expression as eternal and supreme human values. The people and the State shall be bound by these rights and freedoms, as well as by the applicable legislation, during the execution of authority.

2. Everyone, except an administrative body, shall have the freedom of expression, which shall imply:

a) absolute freedom of thought

b) freedom of political speech and debate

c) the right to look for, receive, create, keep, develop, and disseminate information and ideas in any form

d) unacceptability of censorship, editorial independence and pluralism of the media, the right of a journalist to protect the secret of information source and to make editorial decisions based on his/her conscience

e) academic freedom to learn, teach, and research

f) freedom of arts, artistic creativity and invention

g) the right to speak any language and to use any script

h) the right to charity

i) freedom of exposure and protection of expositors

j) freedom from compulsion to express his/her own opinion on faith, religion, conscience, ideology, ethnic, cultural or social belonging, origin, family, property and rank status, as well as on all other circumstances, which may become the basis for violation of the persons' rights and freedoms.

3. This Law shall not deny the rights, freedoms and guarantees, related to the freedom of speech and expression and protected by the Constitution of Georgia, as well as other universally recognised rights, freedoms and guarantees, which are not mentioned here, but which arise from the universally recognised principles of human rights and freedoms.

## **Article 4 - Freedom of thought and appeal**

1. Thought shall be protected by an absolute privilege.

2. Appeal shall be protected by a qualified privilege. Appeal shall lead to legal liability only when a person commits a deliberate action that creates obvious, direct and essential danger for illegal consequence.

## **Article 5 - Freedom of political speech and speech in court**

1. A statement shall not incur liability for defamation if made:

a) in the course of political debates, as well as in relation to carrying out his/her obligations by a member of parliament, the High Council of an Autonomous Republic, or Sakrebulo (local council);

b) at pre-trial and trial procedures, before the public defender, at the Parliament, the High Council of an Autonomous Republic, or Sakrebulo (local council) sessions, and at their committee sittings, within the limits of exercising his/her authority by a person;

c) at the request of an authorised body.

2. If a defamation suit has been filed, the court shall verify, with the participation of parties at a preliminary hearing, the circumstances referred to in the first paragraph of this article. If these circumstances have been confirmed, the court shall make a ruling under Article 209 and Article 273 of the Civil Procedural Code of Georgia, which shall not incur the results provided for by Article 18 of this Law.



## **Article 6 - Court guarantees**

1. A person shall have the right to file a request with the court demanding to avoid or prevent violation of the rights recognised and protected by this Law, as well as to restore the rights violated as a result of unlawful impact and intervention.
2. The owner of a media outlet shall be the respondent in the litigation on defamation published in the media outlet by a journalist.
3. A statement, which concerns an undefined group of persons and/or where the plaintiff is not clearly identified, may not be a subject of litigation on defamation.
4. Litigation on defamation may not concern the protection of personal non-property rights of a governmental or administrative body.
- 4<sup>1</sup>. A defamation suit for the protection of personal non-property rights of a deceased person may be filed by a person who has an interest worthy of such protection. The person may claim such protection of the name and dignity, which determines personality and which continues even after the death. Claiming for material compensation for moral damages caused by discrediting the name, dignity, honour or business reputation shall be inadmissible after the death.
5. In litigation on defamation, a person, who is not an author or editor of the statement, or a person who technically ensured the dissemination of the statement, shall be an improper respondent, except for cases in which such a person clearly and directly supports the statement.
6. In litigation on defamation, the court shall take measures for conciliation of the parties. The court shall have the right to postpone the hearing and appoint the time for conciliation, which should not exceed 1 month.

*Law of Georgia No 2681 of 2 October 2014 – website, 8.10.2014*

## **Article 7 - Standard and burden of proof**

1. Any limitation of the rights recognised and protected by this Law shall be based on incontrovertible evidence.
2. Any doubt on limitation of the rights recognised and protected by this Law, which cannot be confirmed under the procedure established by the law, shall be resolved against the limitation of these rights.
3. In considering the issue of granting the status of a private person or public figure, any reasonable doubt, which cannot be confirmed under the procedures established by the law, shall be resolved in favour of granting the person the status of a public figure.
4. In considering the issue of granting the status of public attention or curiosity, any reasonable doubt, which cannot be confirmed under the procedure established by the law, shall be resolved in favour of granting the event the status of public attention.
5. In considering the issue of granting the status of a thought or fact, any reasonable doubt, which cannot be confirmed under the procedure established by the law, shall be resolved in favour of granting the piece of information contained in the statement the status of a thought.
6. The burden of proof for limitation of freedom of speech shall lie with the initiator of the limitation. Any reasonable doubt that cannot be confirmed under the procedure established by the law shall be resolved against the limitation of the freedom of speech.
7. It shall be inadmissible in litigation on restriction of the freedom of speech that a respondent's denial to disclose a professional secret or its source becomes the sole grounds for making a decision against the respondent.

## **Chapter II - Grounds and Procedure for Restriction**

### **Article 8 - Grounds for restriction of the freedom of speech and expression**

1. Any restriction of the rights recognised and protected by this Law may be established only if it is prescribed by a clear and comprehensive, narrowly tailored law and the benefit protected by the restriction exceeds the damage caused by the restriction.
2. A law restricting the rights recognised and protected by this Law shall be:
  - a) directly intended to attain legitimate aims;
  - b) critically needed for the existence of a democratic society;
  - c) non-discriminatory;
  - d) proportionally restrictive.

### **Article 9 - Content regulation**



1. Regulation of the content of speech and expression may be established by law, if it concerns:

- a) defamation
- b) obscenity
- c) direct abuse
- d) incitement to commit a crime
- e) threat
- f) personal data, a state, trade or professional secret
- g) advertising, teleshopping, or sponsorship
- h) freedom of speech and expression of military personnel, an administrative body, as well as its official, member or employee
- i) freedom of speech and expression of an imprisoned person or a person with restricted freedom
- j) (deleted – 20.3.2015, No 3375).

2. Content regulation may be implemented only in the form of viewpoint of neutral, non-discriminatory restrictions.

*Law of Georgia No 6328 of 25 May 2012 - website, 12.6.2012*

*Law of Georgia No 3375 of 20 March 2015 - website, 31.3.2015*

#### **Article 10 - Content neutral regulation**

1. While exercising the regulation of neutral content, restriction of the subject of expression shall be inadmissible.

2. Regulation of neutral content may only imply a kind of non-discriminatory restriction according to the time, place and form of expression, which shall not influence the content of the information or ideas or the expressive effect, or leave an effective possibility of expressing them in other ways.

### **Chapter III - Protection of Secrets**

#### **Article 11 - Protection of professional secrets and their sources**

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 make a ruling on providing proof with relation to disclosure of only that part of confidential information, whose necessity for disclosure had been approved.

4. The confidential information received as a result of disclosure shall be used only for the purpose for which it was disclosed.

#### **Article 12 - Responsibility for disclosure of a secret**

1. A person shall be responsible only for the disclosure of a secret, protecting the confidentiality of which is either his/her official duty or the result of a civil agreement, and whose disclosure creates obvious, direct and essential danger for benefits protected by law.

2. A person shall be released from responsibility if a secret has been disclosed for the purpose of protecting the legitimate interests of society, and if the benefits protected exceed the damage caused.

3. The freedom of expression, in relation to events, the knowledge of which is necessary for a person in order to execute public self-government in a democratic state may not be restricted for the purpose of personal life immunity and personal data protection.

4. A person may demand reimbursement for property and non-property (moral) damages caused by the violation of rights protected under the first and second paragraphs of this article.

*Law of Georgia No 6328 of 25 May 2012 - website, 12.6.2012*



**Article 13- Defamation of a private person**

A person shall bear responsibility under the civil law for defamation of a private person, if the plaintiff proves in court that the statement of the respondent contains a substantially false fact in relation to the plaintiff, and that the plaintiff suffered damage as a result of this statement.

**Article 14 - Defamation of a public figure**

A person shall bear responsibility under the civil law for defamation of a public figure if the plaintiff proves in court that the statement of the respondent contains a substantially false fact in relation to the plaintiff, and that the plaintiff suffered damages as a result of this statement, and the falseness of the stated fact was known to the respondent in advance, or the respondent acted with apparent and gross negligence, which led to spreading a statement containing a substantially false fact.

**Article 15 - Qualified privilege for defamation**

A person shall be granted a qualified privilege for a statement containing a substantially false fact, if:

- a) he/she took reasonable measures to verify the accuracy of the fact, but was unable to avoid a mistake, and took effective measures in order to restore the reputation of the person damaged by the defamation;
- b) he/she aimed to protect the legitimate interests of society, and the benefits protected exceeded the damage caused;
- c) he/she made the statement with the consent of the plaintiff;
- d) his/her statement was a proportional response to the plaintiff's statement against him/her;
- e) his/her statement was a fair and accurate report in relation to the events attracting public attention.

**Article 16 - Limits of liability for defamation**

A person shall be released from liability for defamation, if he/she did not know and could not have known that he/she was disseminating defamation.

**Article 17 - Reimbursement of damage caused by defamation**

- 1. In relation to defamation, a respondent may be required by court to publish a notice on the court decision in a form determined by the court.
- 2. Forcing a respondent to apologise shall be unacceptable.
- 3. If the respondent makes a correction or denial within the time limit determined by the law, but publishing the correction or denial is not sufficient for proper reimbursement of the damages caused by the defamation to the plaintiff, the respondent may be required to reimburse property and/or non-property (moral) damages to the plaintiff.

**Article 18 - Groundless claim for defamation**

If an apparently groundless claim for defamation has been filed that is aimed to create an unlawful restriction of freedom of speech and expression, the respondent shall have the right to demand monetary compensation, within reasonable limits, from the plaintiff.

**Article 19 – Period of limitation**

A defamation suit shall be filed with the court within 100 days after the person familiarized or could have familiarized himself/herself with the statement.

**Chapter V - Final Provisions**

**Article 20 - Repealed act**

Upon entry into force of this Law, the Law of Georgia on Press and Other Means of Mass Communication shall be deemed null and void.



**Article 21 - Entry into force**

This law shall enter into force upon its promulgation.

**President of Georgia**

**M. Saakashvili**

**Tbilisi**

**24 June 2004**

**No 220-RS**

