

Law against False Information – A Chance to Eradicate Real Threats or the Imposition of Censorship in Georgia?

As early as in her New Year address and later at an 11 January press conference, the President of Georgia, Salome Zurbashvili, spoke about libel and its potential regulation. The President has particularly emphasised libel in social media: “Today, social networks provide an environment which lacks a sense of responsibility. When we speak about media, of note is that the media has its own rules of behaviour and, therefore, a citizen is more protected. However, when we deal with social networks which are sometimes anonymous and sometimes manipulated by some other country, we have to think in this direction.” In order to corroborate her arguments, Salome Zurbashvili cited a French example and stated that the “country has not only adopted a law against libel; in particular, during the election campaign period, but the Constitutional Court has also ruled that it does not contradict either freedom of speech or fundamental human rights as enshrined in the Universal Declaration of Human Rights.”

As mentioned previously, President Zurbashvili's press conference was preceded by her own New Year address when she voiced the issue of regulating libel for the first time. It was followed by the Christmas Epistle of the Georgian Catholicos-Patriarch, Ilia II, where the head of the Georgian Orthodox Church spoke about the “domination of the distorted perception of the freedom of speech.” Ruling party representatives have also commented upon the statements of the President and the Patriarch. The Speaker of the Parliament of Georgia, Irakli Kobakhidze, in his statement in regard to the initiative on libel, did not exclude the prospect of regulation if it could be fit within the limits of the freedom of expression. No matter how hard we try to link the President's initiative to an ugly Facebook campaign targeting her during her campaign period as well as to her own personal discomfort, the libel regulation issue was masterfully presented as an example of unity between the country's political and religious leaders.

The aforementioned statements and libel regulation issue, in general, are not novelties for the Georgian reality and as a variety of marginal groups portrayed it as a problem, it has been the subject of public discussion in the past years, too. The Legal Sciences Academy, which is a non-commercial entity of public law registered in 2015, was one such stakeholder which gained public spotlight by submitting a legislative proposal to the Parliament of Georgia which envisaged criminal prosecution for facts of libel and slander. In 2018, Patriotic Alliance of Georgia MP, Emzar Kvitsiani, also came forward to initiate the criminalisation of libel.

It was obvious even for the Georgian Dream Parliamentary Majority members in the past years that the criminalisation of libel and inserting it back into the Criminal Code of Georgia could be associated with

grave consequences. Mamuka Mdinardze, MP, stated: “As a lawyer, I think that eventually this will be a team position – criminalisation of libel is a step backwards and absolutely contradicts the universally recognised principle of the freedom of speech.” It seems that in 2019, however, the libel regulation issue or, at least, a respective discussion on the matter no longer constitutes a threat to the freedom of speech and expression for the Parliamentary Majority.

Of importance is that both the President and the Georgian Dream leaders cited the French Law against the Manipulation of Information in order to argue for the necessity or the possibility of regulating libel. The Georgian interpretation of the objectives of the law as well as the definition of legal protection is different from French legislation and was related to the potential regulation of libel. In fact, the aim of the French law is to protect against spreading false and manipulated information during an election campaign period which might contribute to state instability and instigate uncontrollable processes.

Law of Georgia on Freedom of Speech and Expression

The freedom of speech and expression is one of the cornerstones of a democratic society. This freedom provides a principal pillar for both individual self-realisation and societal development. This is why this freedom serves as a watershed between authoritarian and democratic nations. Given its importance, restricting the freedom of speech in a democratic society is only rarely necessary. The boundaries of such a necessity become even narrower when it comes to media freedom. Taking into account the extremely high value of both of these freedoms, their restriction requires exceptional justification in a democratic society.

On 24 June 2004, the Parliament of Georgia adopted the Law on the Freedom of Speech and Expression which put the country’s legal space in line with the practice of the European Court of Human Rights. Of additional note is the fact that the OSCE published a comparative legal research study in regard to forms of legal prosecution for libel in OSCE countries in 2017. The OSCE research study positively assessed the libel legal regulation form in Georgia where the country belongs to the category of those few nations where libel is not criminally prosecuted.

Currently, in accordance with the Law on the Freedom of Speech and Expression, thought is protected by absolute privilege and, therefore, a value judgment cannot be considered as libel. No matter how unacceptable or extreme the forms used to express thoughts are (which does not involve pretence to prove specific facts), an individual’s thoughts are still an expression of his subjective attitude and cannot serve as a ground for legal prosecution. The most important standard introduced by the 2004 law was the “decriminalisation of defamation” because a lever that could potentially be used by any ruling party to restrict the freedom of speech and be a political instrument to fight opponents disappeared from legislation.



French Law – Regulating Libel or a Fight against Russian Influence

The law adopted in France has become a matter of controversy in many European capitals. There are few who can doubt France’s democratic credentials although open opposition still emerged which questioned the law’s conformity with the freedom of speech and voiced concerns about the risks associated with the enforcement of the law. Naturally, it is a welcoming fact that Georgian politicians actively follow discussions unfolding in Europe and try to take European practice into consideration in the policy formation process. However, there are several fundamental problems in regard to the context of the discussion about the French law. Regrettably, the law was interpreted in a wrong direction and its scope became narrower. The statements of Georgian politicians indicate that they use the law, which was adopted to prevent spreading false information during the election campaign period in France, as an argument to prove the necessity of a stricter responsibility for libel in Georgia. Given such an interpretation, the aim of law – to use it as an efficient lever against daily threats from the Russian Federation – is out of sight. Mechanisms for the fight against Russian propaganda remain vague.

Regrettably, the circumstances upon which the French President Emmanuel Macron announced the initiation of the law “against false information” in as early as December 2017 are ignored during the discussions about the French law in Georgia. At that time, in his speech about legislative changes, President Macron harshly criticised the Russian media; in particular, the Russia Today (RT) TV channel, and stated that RT was targeting him with disinformation during the 2017 French presidential election with the aim of sowing instability in the country.

Despite strong resistance, France adopted the Law against the Manipulation of Information on 20 November 2018. The proponents of the law believe that it will prevent other states from instigating instability in France by means of spreading false information.

In accordance with the French law, judges are authorised to order social media platforms to remove false information during an election campaign period. However, in order to judge the information as false and make it a subject of a court hearing, it is necessary to meet three criteria:

- News is clear
- News is spread deliberately on a large scale
- News disturbs the peace and influences the election results

All of the three parts are interconnected and without each other are unable to produce the so-called “negative effect” which the law seeks to prevent and punish. It is possible to say that the aforementioned parts constitute a certain test to prevent the law from bearing uncontrolled authority and ensuring that it serves the special purpose of forbidding a legislator from interpreting the law loosely and without limits. The Constitutional Council of France, which is the country’s highest constitutional authority,



emphasised the risks associated with such an interpretation of the law and the potential interference vis-à-vis the freedom of speech and expression. The Constitutional Council has discussed the purpose of the law and directly linked it with the election process. Of note is that the senators, who initiated the Law against the Manipulation of Information, discussed the already existing Law on the Freedom of Press, adopted in 1881, and unanimously acknowledged that the law is a sufficient legal tool for regulating criminal acts, including libel, whilst the necessity to adopt the new law was justified by the need to strengthen the fight against false information during an election campaign period. It is possible to say that state sovereignty and political independence were defined as legal goods, worthy of having legal protection.

Although the Constitutional Council has validated the law, it is difficult to predict whether or not the Government of France will be able to keep the balance or how efficient the law reinforcement process will be.

Legal Levers

According to the French law, one of the legal levers against the spread of false information is the authority of the French broadcast regulator to suspend or cease a foreign government-controlled broadcast which “infringes upon a country’s fundamental interests.” In addition, digital platforms were obliged to become more transparent. In particular, in the case of advertising during an election campaign period, they have to declare the customer and amount of payment. The sanction for violating this regulation can be one year in prison or a EUR 75,000 fine.

Despite such arrangements, the ruling party in Georgia and affiliated public figures have given explanations which are in contrast from the French legislation. As a result, the most significant aim of the law, which envisages the fight against the spread of false information and propaganda during an election campaign period, became of secondary importance. Therefore, the legal regulation and prosecution of libel and verbal slander between individuals has now become the law’s special purpose.

Georgian Perspective on Tightening the Legal Regulation against Spreading False Information

Fake news and the deliberate manipulation of public opinion pose a challenge not only for Georgia but for the whole of the West. French law, first of all, is directed against Russia’s malicious actions which in different forms aimed to interfere with the French presidential election and skew its results in the Kremlin’s favour.

Of importance is understanding that there are no ready-made recipes or efficient mechanisms to counter the threat of disinformation. France is the first country which sought to prevent one of the components of Russia’s malicious influence – fake news during an election campaign – at a legislative



level. However, in the absence of a law reinforcement practice, it is hard to assess how efficient the French model will be.

At her press conference, the President of Georgia highlighted the fact that foreign countries often manipulate information in Georgia through social networks. Georgia became a target of Russian disinformation much earlier as compared to any other European country and it would be better if the leader of the country spoke openly about this challenge and directed her initiative to counter Russian propaganda. Of note is that Russia's malicious influence is not confined to fake news and information warfare alone. The Kremlin employs a myriad of other methods to exploit the country's weaknesses in social, political, economic and foreign realms. Apart from fake news, Russia effectively uses ultra-nationalist groups, masquerading behind the "national" façade, as well as the so-called "useful idiots." Moscow uses them to cultivate scepticism against the West and democratic development, in general, and seeks to persuade the public that "salvation" is in Russia. It is also a deliberate policy of the Kremlin to gain influence over Georgia's key infrastructure and increase the country's economic dependence on Russia. This is only a short list of those risks and vulnerabilities that Georgia has vis-à-vis Russia's hybrid threats. Therefore, Georgia's response should be comprehensive and directed not against any single component of Russia's malicious influence but to prevent it effectively and entirely.

Civil society has been calling upon the Government of Georgia for a very long time that effective steps have to be made in order to counter Russian disinformation and hybrid threats, in general. In light of this challenge, the interpretation of the French law by Georgian leaders that the law regulates libel is fundamentally wrong. Given the hybrid challenges facing the country, it is of paramount importance that the President of Georgia, as well as the government and the parliament with the close engagement of the public sector, discuss the policy of counter-acting these threats. It is also possible to have a discussion about the French law but not with the kind of interpretation that is currently taking place in Georgia.

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