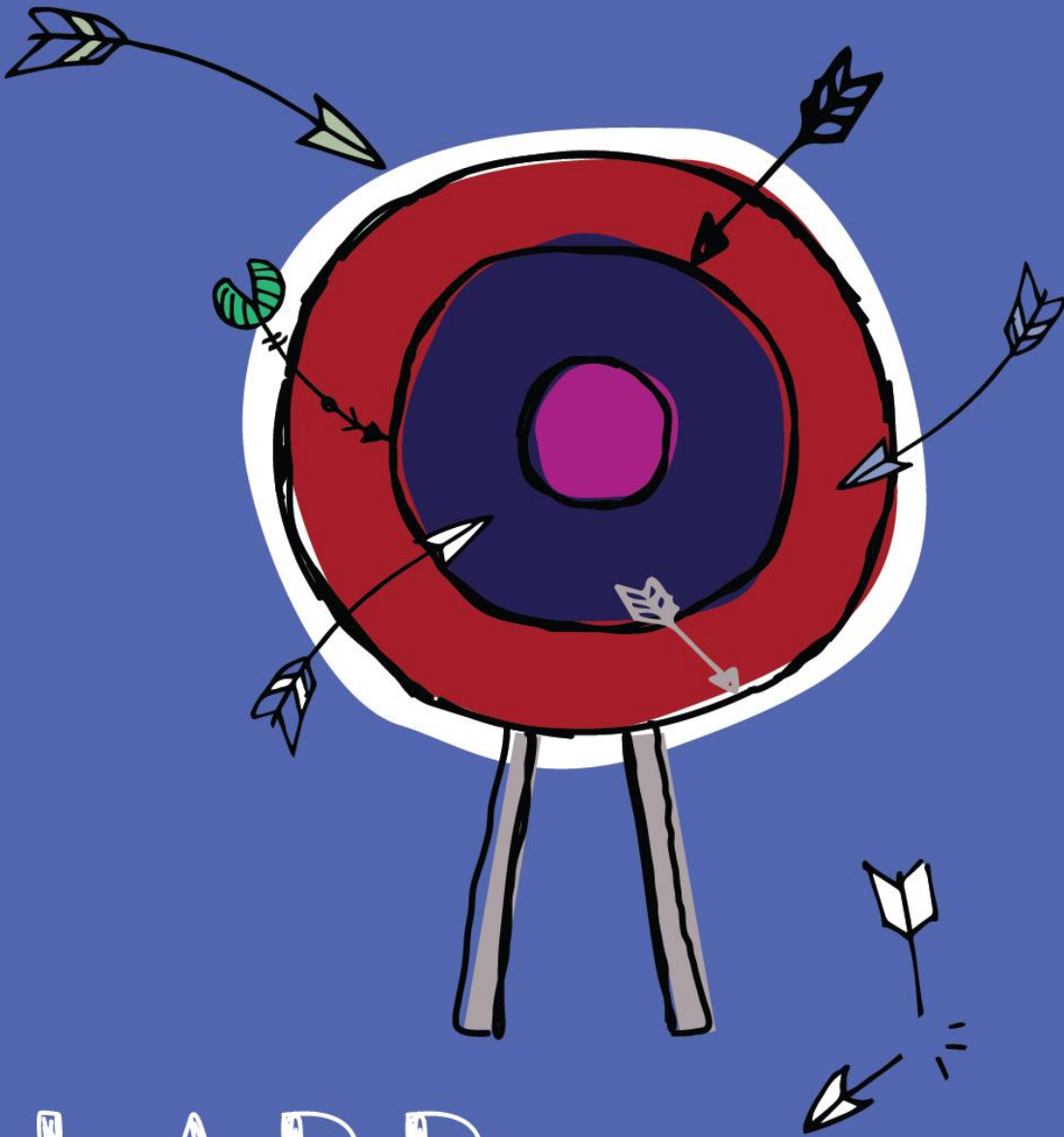




2023



SLAPP

Cases in Georgia

A new threat to media freedom



Georgian Democracy Initiative (GDI)

Special Report

Regarding SLAPP Cases in Georgia

May 2023

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Introduction and Main Findings

Legal disputes initiated by high-ranking political officials, members of the Georgian Dream, and others related to them on the grounds of defamation have recently become one of the tools for the restriction of media freedom. According to the observation of Georgian Democracy Initiative (GDI), in 2021-2023, the so-called attacks against critical media and human rights defenders initiated and significantly increased the tendency to address the Courts with SLAPP (Strategic Litigation Against Public Participation) lawsuits. A SLAPP represents an apparently groundless defamation lawsuit initiated by politically or financially influential entities/individuals. The aim of these lawsuits is not to protect honor, dignity, or company reputation but to silence publicly active citizens and create financial barriers for them. However, SLAPPs also have a “chilling effect” beyond individual cases, undermining the development of a healthy and pluralistic environment where citizens can exercise civil initiatives.

Considering the above, this report aims to investigate the practice of coordinated, strategic litigation directed against civil society organizations and journalists operating in Georgia, the purpose of which is to suppress civil engagement. The report examines the legal features connected to SLAPPs, the legal status of human rights defenders and journalists, and the jurisprudence of SLAPP cases in Georgia. To this end, the report is based on the examination of the results of the strategic litigation conducted by GDI in the general courts, the experience accumulated within the said litigation, the analysis of Georgian and foreign legislation, and the case law of the European Court of Human Rights. The report is largely based on cases heard in the general courts between January 2021 and April 2023. According to GDI, at this stage, no less than 38 defamation cases are being reviewed in the general courts. Currently, GDI provides legal assistance to the media and journalists in 12 ongoing cases. Based on the analysis of the aforementioned cases, it is clear that most of these disputes have similar characteristics, suggesting their systematic campaign nature. It is noteworthy that among them:

- around 31.5% of disputes are initiated by city mayors; 13% - are by MPs; 13% - are by ministers/heads of state agencies; 8% - are by police officers; 26% - are by persons/institutions allegedly connected to “Georgian Dream”;
- 56% of the claimants in these disputes demand excessive moral damages from the defendants with the intention of creating significant financial barriers for them;
- defendants in 92% of lawsuits are three critical media (Mtavari Arkhi, TV Pirveli, and Formula) and journalists working in these TV Companies.

Notably, the trend toward the increased number of SLAPP disputes is even more alarming considering the approach adopted by the general courts. The judges virtually do not discuss and ignore the dangers inherent in such disputes to civil engagement. As a result, they take no notice of the existing standards for the protection of freedom of expression in Georgia and rule in favour of groundless claims.

The report elaborates on the approach adopted by the Courts. These have been identified after multivariate observations of SLAPP disputes. These are as follows:

- General court judges show a heightened interest in lawsuits filed by people connected to the government and hear them in unusually speedy, tight time frames;
- The general courts ignore the statutory provision regarding the allocation of the burden of proof and place it on the defendants;
- While assessing the apparent groundless nature of the lawsuit, the Courts approach the issue formally and do not examine the plaintiffs' underlying intentions for pursuing lawsuits initiated on the grounds of defamation;
- The Courts do not maintain a balance between the right to privacy and freedom of expression when delivering decisions;
- The Courts do not discuss the existence of grounds for termination of the disputes in question properly;
- In the course of SLAPP disputes, the general courts in certain cases do not give the participating parties an equal opportunity to present evidence, which may represent a violation of the principle of adversarial proceedings and equality of arms;
- The Courts fail to take into consideration the measures taken by journalists before publishing disputed statements and, in many cases, oblige them indirectly to disclose a confidential source;
- The Courts do not absolve defendants from liability despite the existence of legal provision (qualified privilege) and do not discuss the contribution of contested statements to the development of a democratic society;
- Irrespective of the legal provision, which considers media owners as appropriate defendants in defamation disputes, judges hold individual journalists responsible as well and thus do not discuss the issue of improper defendants;
- The Courts award large amounts of moral damages to defendants.

1. What is a SLAPP?

The values of media freedom, pluralism, freedom of expression, and freedom of receiving information are safeguarded by Article 17 of the Georgian Constitution and Article 11 of the European Convention on Human Rights. The European Court of Human Rights has emphasized on numerous occasions that these rights are inseparable from democracy, and without them, a tolerant and democratic society cannot exist.¹

Unfortunately, the state's method of limiting freedom of expression advances every year, frequently achieved through exploiting the ambiguous provisions (gray areas) in legal norms. Strategic Litigation Against Public Participation (SLAPP) which originated in the United States in the 1980s by George Pring and Penelope Kanan, professors at Denver University, is recognized as one such innovation for curbing freedom of expression. The term SLAPP refers to filing apparently groundless lawsuits by politically or economically influential persons against active members of society (journalists, NGOs, activists) based on defamation. Such legal actions are aimed at limiting their freedom of expression and increasing their financial burden.² Thus, the purpose of SLAPPs is not to seek justice for its initiators but to intimidate, silence, punish victims and attack their financial resources.³ It is crucial to understand that threats posed by SLAPPs go beyond individual cases having a “chilling effect” on everyone actively engaged in public life and trying to take a stand on issues of public importance.⁴ Even though initially the SLAPP phenomenon was mainly used against activists, journalists, and human rights defenders, today it can be targeted at any member of society, irrespective of their status. Anyone who condemns cases of abuse of power by private or public entities can fall victim to these practices.

The initiator of a SLAPP may be a private entity that wants to protect financial or reputational interests. SLAPPs can be initiated by government officials as well to protect their positions or agencies. Ultimately, this leads to a suppression of discussion on matters of public interest. Thus, SLAPPs are designed to entangle and burden active members of society in protracted and arduous legal proceedings. These lawsuits have the dual effect of depleting their financial and temporal resources while sending a message to others that any attempt to raise issues of public concern will similarly be subject to legal retaliation.

¹ Handyside v. the United Kingdom, 7 December 1976

² George W. Pring, SLAPPs: Strategic Lawsuits Against Public Participation, 7 Pace Envtl. L. & Rev. 3 (1989), 3-4, available: <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1535&context=peir>

³ Maria Diaz Crego, Micaela Del Monte, Strategic lawsuits against public participation (SLAPPs), European Parliamentary Research Service, 2022, 1, available: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI\(2022\)733668_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI(2022)733668_EN.pdf)

⁴ Ibid.

The proliferation of SLAPPs globally is also evident in Georgia, which is occurring against the backdrop of events that have transpired in recent years. Having in mind various governmental measures against the media, recent years have seen a coordinated SLAPP campaign mainly targeting media companies and their journalists critical of the government.

1.1 How to Identify a SLAPP?

International human rights law does not yet recognize a universal definition of SLAPP. Notwithstanding, international coalitions, academic researchers and other stakeholders have developed criteria and model legal acts by which we can determine whether a particular case represents a SLAPP.

International and local human rights organizations advocate that SLAPPs jeopardize freedom of expression. Contrary to that, SLAPP initiators often refer to the right to a fair trial. They argue to have the right to address the Courts to protect their reputations. It is true that any legal dispute causes discomfort and requires the mobilization of temporal and financial resources. However, unlike SLAPPs, their purpose is not to limit the rights protected by the Constitution in an unjustifiable fashion. Therefore, to avoid ambiguities, it is significant to define in an accurate manner what criteria indicate the existence of a SLAPP case.

The following are the criteria used by the Coalition Against SLAPPs in Europe (CASE):⁵

1. Is the legal action brought by a private party? (The private party includes every individual, including politicians and government officials, except for state institutions). The primary legal circumstance that distinguishes SLAPPs from traditional government-imposed censorship is that private parties are the initiators.
2. Does the legal action target acts of public participation? Public participation is a broad term that encompasses any effort to engage in an issue of societal or political significance: journalism, advocacy, whistleblowing, peaceful protest or boycotts, activism, or simply speaking out against the abuse of power.

In cases of positive answers to both questions, one should evaluate the following issues:

3. Has the lawsuit been brought with the purpose of silencing, shutting down, or discouraging the acts of public participation?
 - Claims are unusually unreasonable or disproportionate;
 - Plaintiffs engage in procedural maneuvers designed to drive up costs;

⁵ Available at: [The Coalition against SLAPPs in Europe \(the-case.eu\)](https://www.the-case.eu/)

- Plaintiffs exploit their economic advantage to put pressure on the defendant(s);
- The lawsuit targets individuals rather than just the organization they work for;
- The arguments relied upon are legally or factually baseless;
- Plaintiffs use the court process not only to harass defendants but also to intimidate and pressure third parties who may wish to express critical views against the plaintiffs;
- The lawsuit appears to be part of a broader campaign to bully, harass, or intimidate the defendants;
- The plaintiff has a history of SLAPPs and/or legal intimidation.

Additionally, to identify SLAPPs, one can use the legislative proposal prepared by the European Commission in April 2022 for a directive on the protection of persons who have become victims of SLAPPs.⁶ Article 3 of the Directive considers as SLAPPs such lawsuits that have an unsubstantiated and groundless nature. The Plaintiffs' true intention in these cases is not to compensate for the damages suffered but to limit civil involvement. According to the same article, SLAPP indicators are as follows:

- A) The disproportionate, excessive, or unreasonable nature of the claim or part thereof;
- B) The existence of multiple proceedings initiated by the plaintiff or associated parties concerning similar matters;
- C) Harassments, intimidations, or threats on the part of the plaintiffs or their representatives.

The criteria utilized in the US are as follows:

1. The lawsuit intends to limit civil engagement and issues of public importance;
2. The request is legally unfounded - there is no prospect of its satisfaction.⁷

⁶ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”), available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0177>

⁷ Shutting Out Criticism: How SLAPPs Threaten European Democracy: A Report by CASE [20220316 CASE report \(squarespace.com\)](https://www.casespace.com/20220316-CASE-report).

1.2 Actions Taken Against SLAPPs in Other Countries

Currently, no legislation against SLAPPs exists across the European Union and the Council of Europe. The situation is the same in European countries. Despite the legal vacuum against SLAPPs in Europe, active political and legal processes take place to protect the rights of SLAPP victims.

In April 2021, the European Parliament passed a resolution highlighting how journalists, especially investigative journalists, become victims of SLAPPs aimed at reducing public scrutiny of governments and preventing their accountability.⁸ Subsequently, in November 2021, the European Parliament adopted a self-initiated report focusing solely on SLAPPs with an overwhelming majority. With the resolution, the European Parliament called on the Council of Europe to prepare a proposal providing a protective legal mechanism to journalists, human rights defenders, and civil society who fell victim to SLAPPs.⁹

On 27 April 2022, the European Commission adopted a legislative initiative submitted to the European Parliament and the Council to protect the rights of SLAPP victims. The Directive analyzes the impact of SLAPPs across Europe on the legal status of journalists and human rights defenders and proposes legal mechanisms to defend against SLAPPs. For example, Article 9 of the Directive obligates states to adopt legislation that would deny SLAPP suits at an early stage of litigation.¹⁰ If the relevant EU bodies adopt the Directive (it would only apply to civil cases), journalists, activists, or human rights defenders who are victims of SLAPP will be equipped with an efficient legal mechanism, improving their legal situation.

The Council of Europe also addresses the need for legal mechanisms against SLAPPs. A Committee of Experts on SLAPP cases was established by the Ministerial Committee in November 2021 aimed at preparing a recommendation on SLAPPs by 2023.¹¹

Contrary to Europe, legislation against SLAPPs exists in the United States and Canada. Currently, 34 US states have adopted some form of anti-SLAPP legislation, which mainly serves two purposes: to provide for the possibility of refusing to accept SLAPP claims at an early stage and to offer SLAPP victims a legal mechanism to demand fair compensation from SLAPP initiators for lost time and expended resources.¹²

⁸ European Parliament resolution of 29 April 2021 on the assassination of Daphne Caruana Galizia and the rule of law in Malta (2021/2611(RSP)), available: [TA MEF \(europa.eu\)](#)

⁹ European Parliament, Strengthening Democracy and Media Freedom and Pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs, and civil society, available: [Procedure File: 2021/2036\(INI\) | Legislative Observatory | European Parliament \(europa.eu\)](#)

¹⁰ Ibid.

¹¹ Available at: <https://www.the-case.eu/coe-recommendation-update>

¹² Reporters Committee for Freedom of the Press, Anti-SLAPP Legal Guide, Available at: <https://tinyurl.com/43aue3vp>

In the United States, SLAPPs are considered a violation of rights protected by the First Amendment to the Constitution, such as freedom of expression, freedom of the press, and the freedom of assembly and association. Although there is no anti-SLAPP legislation at the federal level in the United States, in 2020, the Uniform Law Commission approved the Uniform Public Expression Protection Act, which aims to ensure consistency between the different anti-SLAPP laws in the States.¹³ Anti-SLAPP laws in the US offer SLAPP victims such safeguards as follows:

- A broad range of SLAPP protection mechanisms provided by law;
- Suspension of court proceedings upon filing of an anti-SLAPP motion;
- Shifting of the burden of proof to the plaintiff to defeat an anti-SLAPP motion;;
- The right to an immediate interlocutory appeal;;
- Reimbursement of financial costs, court costs, and attorney's fees caused by the SLAPP;
- The possibility of a broad interpretation of the anti-SLAPP legislation and a presumption in favor of an anti-SLAPP motion until proven otherwise.¹⁴

The anti-SLAPP laws allow defendants to petition the court to prove that the underlying intention of the lawsuit is to restrict freedom of expression without any valid justification rather than to protect against defamation. If the defendant files an anti-SLAPP motion, the underlying case stays. During the review of the anti-SLAPP motion, the burden of proof initially rests with the author (defendant), who must substantiate that the legal prerequisites for utilizing the anti-SLAPP statutes are in place and that the plaintiff's claim is a SLAPP. Thenceforth, the burden of proof shifts to the plaintiff. The plaintiff must show the court that his goal is not to restrict freedom of expression but to protect against defamation as there is a reasonable basis for granting the request. If the plaintiff fails to meet the burden of proof, the court grants the motion to the defendant and dismisses the proceedings between the parties - the court will no longer hear the SLAPP lawsuit. In such cases, the SLAPP initiator bears financial and legal costs incurred by the SLAPP.¹⁵

2. Media Environment in Georgia

In recent years, the media environment in Georgia faced significant obstacles. Radical social groups, government representatives, and their public statements negatively affected the quality

¹³ Available at: [Public Expression Protection Act - Uniform Law Commission \(uniformlaws.org\)](https://www.uniformlaws.org/).

¹⁴ Available at: [Anti-SLAPP Statutes: A Report Card - Institute For Free Speech \(ifs.org\)](https://www.ifs.org/).

¹⁵ Ibid.

of protection of media freedom. The fact that Georgia dropped from 60th to 89th place in 2022 compared to 2021 in the press freedom index serves as a confirmation.¹⁶

Some of the principal factors contributing to the deterioration of the media environment in Georgia include but are not limited to

- Persecution of professional journalists, the ineffectiveness of investigative agencies in the investigation of criminal acts committed against them, and verbal attacks on the media by government representatives;
- Politically motivated criminal cases against media managers and founders, such as the case of the former general director of Mtavari Arkhi, Nika Gvaramia, are particularly prominent. According to the Public Defender, the arrest was politically biased and violated Article 18 of the European Convention on Human Rights;
- Cases of mass illegal surveillance of journalists and related inefficiency of investigative agencies;
- Defamation lawsuits against journalists and media outlets, coupled with the government's open use of courts to suppress critical opinion threatening freedom of the press, speech, and expression. The danger is further exacerbated by courts upholding such claims unreasonably;¹⁷
- Decisions of the National Communications Commission of Georgia on fining broadcasters or declaring them lawbreakers. In some cases, the decisions do not meet reasonable standards of justification and contradict the practice established by the Commission, thereby failing to adhere to its own standards.

You can read more about the challenges and the legal situation facing journalists in GDI's 2022 Report on the State of Human Rights¹⁸ and 2022 Report on Freedom of the Media.¹⁹

3. Human Rights Situation of Human Rights Defenders

The human rights situation of human rights defenders in Georgia deteriorated during the reporting period. Several key factors contributed to the deterioration are but are not limited to

¹⁶ Available at: <https://rsf.org/en/country/georgia>

¹⁷ Available at: <https://bit.ly/3nfZjXZ>

¹⁸ Available at: [Human Rights in Georgia, 2022 \(gdi.ge\)](https://gdi.ge/human-rights-in-georgia-2022)

¹⁹ Available at: [Freedom of Media in Georgia \(gdi.ge\)](https://gdi.ge/freedom-of-media-in-georgia)

- Mass cases of covert surveillance of human rights defenders by the State Security Service and the ineffectiveness of related investigative bodies;
- Discrediting campaigns against human rights defenders and civil society organizations by the ruling political force and related media. The draft law on Transparency of Foreign Influence²⁰ initiated by members of the ruling majority and fully supported by the Georgian Dream deserves special attention. The purpose of the draft law was to establish a control mechanism for civil society organizations and media and to discredit them in the eyes of the public. Consequently, following large-scale demonstrations against the Russian law on March 6-7-8, 2023, the draft law failed to gather the necessary votes for adoption in the second reading. One deputy voted in favor of the draft law, while 35 deputies voted against it. As a result, the ruling political force had to reject the adoption of the draft law in the second reading.
- Physical attacks on human rights defenders and inefficiency of related investigative bodies;

You can find more about the human rights situation of human rights defenders in GDI's 2022 report on the State of Human Rights.²¹

4. Georgian Legislation on Defamation

It would be a plausible and fair observation to say that Georgian legislation protects freedom of speech and expression to a high standard. Before reviewing the existing SLAPP cases in Georgia, it is essential to examine the standard established by law regarding defamation.

According to Article 1 of the Law of Georgia on Freedom of Speech and Expression, defamation is a statement containing an essentially false fact and causing harm to a person, resulting in defamation.

Georgian legislation provides for the following guarantees in defamation cases:

A) A statement shall not incur liability for defamation if made 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); .²² Upon confirmation of such a circumstance, the court terminates proceedings;

²⁰ The draft law is available at: [მომქებნე კანონმდებლობა \(parliament.ge\)](https://parliament.ge)

²¹ available at: [Human Rights in Georgia, 2022 \(gdi.ge\)](https://gdi.ge)

²² The Law of Georgia on Freedom of Speech and Expression, Article 5, Paragraph 1, Sub-Paragraph A.

B) 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;²³

C) Litigation on defamation may not concern the protection of personal non-property rights of a governmental or administrative body.²⁴ Additionally, according to legislation, a statement shall not incur liability for defamation if made 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;²⁵

D) The burden of proof for the 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;²⁶

E) The legislation sets different standards for defamation against private and public entities/individuals. Specifically, in a defamation case initiated by a public official besides the responsibility to substantiate the circumstances provided for private individuals (A person shall bear responsibility under the civil law for defamation of a private entity if the plaintiff proves in court that the statement of the respondent contains a substantially false fact concerning the plaintiff and that the plaintiff suffered damage as a result of this statement),²⁷ the Plaintiff must also prove that 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 the spreading of a statement containing a substantially false fact.²⁸ Additionally, In considering the issue of granting the status of a private entity or public figure, any reasonable doubt, which cannot be confirmed under the procedures established by the law, shall be resolved in favor of granting the person the status of a public figure;²⁹

F) Thought shall be protected by an absolute privilege³⁰ while, in considering the issue of granting the status of a thought or a fact, any reasonable doubt, which cannot be confirmed under the procedure established by the law, shall be resolved in favor of granting the piece of information contained in the statement the status of a thought;³¹

²³ The Law of Georgia on Freedom of Speech and Expression, Article 6, Paragraph 3.

²⁴ The Law of Georgia on Freedom of Speech and Expression, Article 6, Paragraph 4.

²⁵ The Law of Georgia on Freedom of Speech and Expression, Article 5, Paragraph 1, Sub-Paragraph B.

²⁶ The Law of Georgia on Freedom of Speech and Expression, Article 7, Paragraph 6.

²⁷ The Law of Georgia on Freedom of Speech and Expression, Article 13.

²⁸ The Law of Georgia on Freedom of Speech and Expression, Article 14.

²⁹ The Law of Georgia on Freedom of Speech and Expression, Article 7, Paragraph 3.

³⁰ The Law of Georgia on Freedom of Speech and Expression, Article 4, Paragraph 1.

³¹ The Law of Georgia on Freedom of Speech and Expression, Article 5, Paragraph 5.

H) Defamation cases in Georgia do not result in criminal liability under any circumstances. Instead, an individual may only face civil liability for defamation under the country's legislation;

I) 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.³²

As previously stated, the Georgian legislation defines a high standard of freedom of speech and Expression. Nevertheless, plaintiffs and judges in SLAPP cases in Georgia often deviate from the high standards established by law.

5. SLAPP Cases in Georgia

In 2021-2023, there has been a notable increase in SLAPP lawsuits filed against critical media organizations and human rights defenders in Georgia, primarily based on allegations of defamation. An increased rate of defamation lawsuits initiated in courts was recorded in 2021. However, the trend continued to gain momentum, and by 2022-2023, the number of defamation lawsuits addressed to the Courts against critical media and human rights defenders reached as high as 38. In a significant number of those cases (that have been already examined in the court room), the City Court rendered judgments in favor of the plaintiffs, while the Court of Appeal upheld the decisions of the first instance.

It is worth emphasizing that the disputes mentioned above share similar characteristics, leading us to believe that this trend has taken on a systematic campaign nature and is being employed by government officials to curtail the rights of the media and human rights defenders. It is also worth noting that the number of such lawsuits grows expeditiously. One of the reasons for such acceleration may be the approach adopted by the Courts towards SLAPP lawsuits.

In the following subsections, we assess disputes related to defamation initiated by influential people over the past 2.5 years according to the criteria typical of SLAPP disputes. The following information makes it clear why they can be considered as SLAPP suits.

5.1 Claimants and Defendants in SLAPP Cases

SLAPP actions are distinguished from other litigations by the parties involved and their role in society. Commonly, in similar types of cases, the claimant is a person who enjoys a certain degree of public influence, whereas the defendants are representatives of the media or civil society critical of the claimant's activities.

³² The Law of Georgia on Freedom of Speech and Expression, Article 18.

It is worth emphasizing that in Georgia, the initiators of defamation lawsuits are usually government officials or persons related to them (mostly, their close relatives or active supporters and donors of the ruling party - “Georgian Dream”).³³ To illustrate, Irakli Kobakhidze's mother, Tamar Zaalishvili, filed a defamation lawsuit against TV Pirveli³⁴ (it is noteworthy that, on September 20, 2022, the Tbilisi City Court ruled in favor of Tamar Zaalishvili and ordered the defendant media to pay moral damages of 5.555 GEL).³⁵ The situation is similar in the case of the brother-in-law to Irakli Kobakhidze, Davit Patsatsia, who currently holds the position of Minister of Internally Displaced Persons of the Autonomous Republic of Abkhazia who also filed a lawsuit against TV Pirveli. One can also find lawsuits filed by institutions related to the oligarch. For instance, JSC Bank Cartu related to Bidzina Ivanishvili is currently in dispute in the Tbilisi City Court with TV Pirveli and its journalists, Nodar Meladze and Maka Andronikashvili.

Cases in GDI's operation, as well as various other sources, reveal that claimants of the recent defamation cases against entities active in the field of public scrutiny are:

- Mayors of 12 self-governing units
 - ❖ Kakha Kaladze - the Mayor of Tbilisi;
 - ❖ Mayors of Tskaltubo, Kutaisi, Kareli, Aspindza, Adigeni, Chiatura, Poti, Kvareli, Ninotsminda, Borjomi and Marneuli;
- 5 Members of Parliament or persons possibly related to them
 - ❖ Temur Gotsiridze - Member of the Parliament of IX convocation by the “Georgian Dream” party list;
 - ❖ Ivliane Tsulaia - Member of the Parliament of IX convocation by the “Georgian Dream” party list;
 - ❖ Nino Tsilosani - Member of the Parliament by the “Georgian Dream” party list;
 - ❖ Isko Daseni - Member of the Parliament by the Georgian Dream party list;
 - ❖ LTD ‘Beverli Jgupi’ - (possibly connected to Member of the Parliament by the “Georgian Dream” party list - Goderdzi Chanqseliani);

³³ See the appendix for brief descriptions of important SLAPP cases brought to court

³⁴ Irakli Kobakhidze's mother, Tamar Zaalishvili, is suing TV PIRVELI. visit. <https://bit.ly/3VySs7X> [last visit: 20.02.2023]

³⁵ Irakli Kobakhidze's mother won against TV PIRVELI in the Court, visit. <https://bit.ly/3P3njXP> [last visit: 20.02.2023]

- 5 Ministers/Heads of State Agencies
 - ❖ Grigol Liluashvili - Head of the State Security Service;
 - ❖ Zhuansher Burchuladze - Minister of Defense of Georgia;
 - ❖ Davit Patsatsia - Minister of Internally Displaced Persons of the Autonomous Republic of Abkhazia;
 - ❖ Jaba Putkaradze - Minister of Finance and Economy of Adjara;
 - ❖ Ketevan Bakaradze - Minister of Health and Social Protection of the Autonomous Republic of Abkhazia;
- 3 Police officers
 - ❖ Genry Gvinjilia - Deputy Chief of Vake-Saburtalo Main Division of Tbilisi Police Department;
 - ❖ Gela Kvashilava - Unit Commander of the Samegrelo-Zemo Svaneti Division under the Patrol Police Department of the Ministry of Internal Affairs;
 - ❖ Ioseb Alavidze - former head of the Tbilisi Internal Affairs Division;
- 5 persons allegedly connected to the government and the Georgian Dream
 - ❖ Tamar Zaalishvili - mother of Irakli Kobakhidze;
 - ❖ Ucha Mamatsashvili - cousin of Bidzina Ivanishvili;
 - ❖ Giorgi Gachechiladze (“UCNOBI”)- open supporter of Georgian Dream;
 - ❖ Roman Chkhenkeli - an influential businessman, a person probably related to Irakli Gharibashvili;
 - ❖ Bakur Kighuradze - Georgian Dream donor, etc.;
- JSC Bank Cartu - Bank closely related to Bidzina Ivanishvili.

We believe that the position of the claimants, their connections with the oligarch Bidzina Ivanishvili, the government and government representatives, the content of the lawsuits, and their groundlessness indicate to their objective and attempt to abuse the lawsuit mechanism.

Nonetheless, it is worth emphasizing who the above lawsuits are filed against. As mentioned, targets of SLAPP lawsuits are commonly entities exercising civil engagement and public control. Therefore, in multiple cases, the opposing parties are entities that perform the function of the so-called watchdogs and exercise control over the government's activities. Usually, such are the media and its representatives, journalists, civil activists, and non-governmental organizations.

Recent trends observed in Georgia demonstrate that influential persons are filing lawsuits against critical journalists/media organizations and civil society representatives. Characteristically, according to the statistics we examined, out of 38 existing defamation lawsuits, 36 targeted media/journalists, and two involved civil organizations.

Thus, the identities of both the claimants, as well as the defendants, raise reasonable doubts about the underlying intentions behind the lawsuits and their qualification as SLAPP cases.

5.2 The Hidden Agenda Behind SLAPP Suits

Another characteristic that differentiates SLAPP actions from other types of lawsuits is the claimant's underlying intention. They do not seek justice, i.e. to restore violated rights but to suppress critical opinions directed against them. We believe the case in question applies equally to Georgia. The underlying intention behind defamation disputes initiated by influential people in Georgia is to bring critical media under censorship and not to restore their rights or provide correct information to the public. Several factors indicate those circumstances.

For example, it is worth noting the lawsuit initiated by Kakha Kaladze. With the legal action, he challenged the statements made on the live broadcast regarding buses purchased by the Tbilisi City Hall at a much higher price compared to other countries. The TV report made an alleged connection of these circumstances with the Tbilisi Mayor. Kakha Kaladze never addressed the issue of the disparities in bus prices compared to other cities despite multiple questions addressed to him³⁶ It is worth emphasizing that the Mayor of Tbilisi had the opportunity to state his position on the issue once again when Irakli Nadiradze, a member of the National Movement, asked him questions about it in the City Council.³⁷ However, neither the Mayor nor the Tbilisi City Hall issued any statement about the amount paid for the buses. Instead, the Mayor decided to file a lawsuit against the media and a journalist.

Similarly, other plaintiffs had the chance to communicate their views to the public through alternative means to have their positions heard, but they chose to objectify freedom of speech

³⁶ Kaladze states that information regarding the purchase of buses for a higher price is a lie, yet does not discuss the details; Visit: <https://bit.ly/3GwCi8L> [Last visit: 20.02.2023]

³⁷ Irakli Nadiradze to Kaladze - during the preceding mayoral term, you stole 60 million GEL. How many millions are you going to steal from the following bus tender? How many more millions should you send to Milan?, visit: <https://bit.ly/3Inh26n> [last visit: 20.02.2023]

and expression. It is worth noting, as an example, that TV companies often offer plaintiffs airtime to state their position during litigations, which they refuse. In particular, the defendants, TV companies Formula and Mtavari Arkhi offered the head of the State Security Service, Grigol Liluashvili, airtime as a condition for a possible settlement so that he could share his position with the public about the widely spread statements, but he declined. Additionally, there are instances where journalists visit the workplaces of the plaintiffs to obtain their comments and perspectives for preparing stories. Still, typically, the heads of the relevant state agencies refuse to cooperate. However, subsequently, they initiate legal proceedings claiming the spread of defamatory information.

In light of the aforesaid, we believe that the decision on the plaintiffs' part to appeal directly to the general courts and refuse other alternative means, and decline the possibility to comment on the issue indicates their intention to suppress critical opinion through the Courts.

5.3 Attempts to Create Financial Barriers

One of the purposes of SLAPP lawsuits is to create financial barriers for defendants to hinder their activities substantially. Claimants often demand unreasonably high amounts of moral damages to create such impediments. Additionally, defendants often have to pay additional litigation/attorney costs.

The current practices related to this matter in Georgia have been a cause for concern due to their problematic nature and potential negative consequences. For example, the influential businessman and cousin of Bidzina Ivanishvili, Ucha Mamatsashvili, demanded moral damages of 50.000 GEL from each defendant, NNLE Anti-corruption Movement and its two representatives (the total sum for the moral damages amounting to 150.000 GEL). Considering the court practice in similar disputes, this constitutes quite a large amount. Although The court granted the claim in part and awarded moral damages of 5.000 GEL for each defendant (which still is a large sum considering the court case law), the claimant appealed the decision at the Supreme Court of Georgia and demanded the full amount for moral damages requested initially.

Similarly, the Mayor of Tbilisi, Kakha Kaladze, demanded an unjustifiably high amount of compensation, 100.000 GEL. Moreover, eleven mayors (Tskaltubo, Kutaisi, Kareli, Aspindza, Adigeni, Chiatura, Poti, Kvareli, Ninotsminda, Borjomi, and Marneuli) demanded 55.555 GEL each from Mtavari Arkhi and Nika Gvaramia as a compensation for moral damages.

According to the statistics examined by GDI, the plaintiffs are seeking moral damages from the defendant media/civic organizations in the following amounts:

- 11 mayors – 55555 Gel (19444 Euro) (each)

- 9 individuals - 3000 - 150000 Gel (1,050 – 52500 Euro):
 - ❖ Kakha Kaladze - 100000 Gel (35,000 Euro);
 - ❖ Ucha Mamatsashvili - 50000 Gel (17,500 Euro) per defendant (totaling 150000 Gel (52500 Euro));
 - ❖ Giorgi Bakhturidze - 50000 Gel (17,500 Euro)
 - ❖ Davit Patsatsia - 30000 Gel (10,500 Euro)
 - ❖ Gela Kvashilava - 10000 Gel (3500 Euro)
 - ❖ Nugzar Alughishvili - 10000 Gel (3500 Euro)
 - ❖ Tamar Zaalishvili - 5555 Gel (1944, 25 Euro)
 - ❖ Temur Gotsiridze - 5000 Gel (1750 Euro)
 - ❖ Bakur Kughuradze - 150000 Gel (52,500 Euro) from TV Pirveli, 150000 Gel (52,500 Euro) from Mtavari Arkhi, and 3000 Gel (1050 Euro) from Formula;
- 1 Individual - 3000000 Gel (1050000 Euro)
- 6 Individuals - 1 Gel (0.35 Euro)

It is essential to point out that, even though typically, the Courts refuse to satisfy claims for moral damages fully, they still grant it at least partially. Ergo, the second half of 2022 saw an increase in the rate with which the claimants harness this mechanism compared to the previous period. It is also worth mentioning that, initially, David Patsatsia, the Minister of Internally Displaced Persons of the Autonomous Republic of Abkhazia and brother-in-law to Irakli Kobakhidze, at first, asked the court to award moral damages of 1 GEL, later increasing the amount against the opposing TV company to 30.000 GEL. The increase in the amount coincided with the delivery of the judgment in favor of Kakha Kaladze a week earlier, which awarded him compensation for moral damages against the defendant. Occurring simultaneously, the Court of Appeal upheld the decision of the first instance that ruled in favor of Ucha Mamatsashvili. Aforestated indicates that incidents of awarding compensation for moral damages to the defendants give impetus to other claimants to increase their demands, given they have the procedural right to do so. Effectively, by creating significant financial difficulties for the defendants, these precedents prevent them from performing their professional and public duties.

5.4 Campagne Nature of SLAPP Suits

SLAPP disputes become increasingly alarming when they adopt characteristics of political campaigns, requiring additional effort from defendants to deal with them. We believe that the increase in the number of defamation lawsuits filed against critical media and human rights defenders is part of a joint campaign of government officials aimed at suppressing critical opinion and silencing journalists/media representatives and human rights defenders.

Both the increase in the number of SLAPP suits brought before the Court on defamation grounds, as well as the unusual similarities of their content, indicate the campaign nature of SLAPP suits in Georgia. To illustrate, as already mentioned, eleven mayors (of Tskaltubo, Kutaisi, Kareli, Aspindza, Adigeni, Chiatura, Poti, Kvareli, Ninotsminda, Borjomi, and Marneuli) filed lawsuits one after the other against Mtavari Arkhi and Nika Gvaramia. Every claimant requested the same amount of 55,555 GEL for moral damages. It is significant to emphasize that besides the matching amounts, the lawsuits were similar in terms of their content and legal reasoning behind them, which implies a concerted campaign nature through presenting these lawsuits to the Court.

It should also be brought to attention, that SLAPP lawsuits are mostly filed against the same TV companies. They mainly target the three critical media outlets - TV Pirveli, Formula, and Mtavari Arkhi. These TV companies have been subjected to verbal attacks or discrediting statements by government officials repeatedly. The initiative to combat disinformation announced by one of the SLAPP claimant, the Mayor of Tbilisi, Kakha Kaladze, on June 24, 2020, is noteworthy in that regard.³⁸ The initiative meant the launching of a Facebook show, Fist of Truth, where Kakha Kaladze would talk about fake news published in the media. However, the said initiative intended to discredit three critical media outlets. This was implied by the banner on Kakha Kaladze's official Facebook page with the logos of TV Pirveli, Mtavari Arkhi, and Formula displayed with the inscriptions - The Main Lie, The Formula of Lies, and The First Lie.³⁹ In June 2020, two episodes of The Fist of Truth streamed on Facebook. The mayor dedicated most of the showtime to reports aired on the main media outlets critical of the government.

Against this background, we believe that yet another manifestation of the campaign operating against critical media is the initiation of defamation disputes. The lawsuits target the three TV companies already mentioned above. It is essential to highlight that, at present, there are 13 ongoing defamation disputes against TV Pirveli, 17 against Mtavari Arkhi, and 5 against Formula. All of these lawsuits are initiated by people connected to the government, which makes us think

³⁸ Kaladze: We are starting to respond to each fake accusation - the Fist of Truth will hit everyone's nose and mouth. Visit: <https://bit.ly/3HfbU4t> [last visit: 20.02.2023]

³⁹ Kaladze Aired a project on Facebook in which he promised TV channels The fist of Truth, visit: <https://bit.ly/3NcHVOt> [last visit: 20.02.2023]

that the filing of defamation claims has taken on a campaign character manifested by the abuse of legal mechanisms by government representatives.

Considering the aforesaid, we believe that the criteria discussed above, typical of defamation disputes initiated by influential people in the past 2.5 years, emphasize the underlying intentions behind SLAPP cases in Georgia. The identity of the plaintiffs, the hidden agenda behind the lawsuits, and the attempts to create financial obstacles for those engaged in public discourse indicate the deliberate effort to limit freedom of speech and expression in Georgia.

6. Court Practice and General Approach to SLAPP Suits

As mentioned already, the increased number of SLAPP disputes is a widespread problem not only in Georgia but also in other countries. However, we maintain that the situation in Georgia is even more concerning considering the approach adopted by the general courts. Judges often ignore the dangers to civil participation inherent in such disputes and rule in favor of SLAPPers. We believe that the trend employed by the Courts has several fundamental causes, systemic and deeply rooted challenges among them.

After active observation of the progress of SLAPP cases, the following main problems related to the courts' approach have been identified:

6.1 Rapid consideration of SLAPP cases

In the European context many SLAPP cases are characterized by long proceedings, creating additional burdens to the national court system and wasting time and resources of defendant. Contrary, the situation in Georgia is quite different. The judges of the general courts show a particularly profound interest in the lawsuits filed by the authorities and people related to the oligarch Bidzina Ivanishvili. Typically, they review these cases in unusually short timeframes, even though the proceedings in the same legal category tend to be subject to significant delays.

To illustrate, the case of Ucha Mamatsashvili was reviewed by all three instances within 8.5 months (Tbilisi City Court - 4 months; Tbilisi the Court of Appeal - 2.5 months; and the Supreme Court of Georgia - 2 months). In the case of the head of the State Security Service, two instances delivered the decision within 8 months of filing the lawsuit (the Tbilisi City Court within -3 months; and the Court of Appeal within - 5 months). Finally, the adjudication of Kakha Kaladze's case in two instances took - 7 months (Tbilisi City Court - 5 months, and Tbilisi Court of Appeal - 2 months).

Additionally, it is noteworthy that the Tbilisi City Court has started the consideration of the JSC Bank Cartu (related to Bidzina Ivanishvili) lawsuit at an unusually fast pace. The first hearing will

be held two months after its admission (the date of the hearing was set four days after the filing of the counterclaim), even though the Courts are already overwhelmed with cases.

On the contrary, the Courts have been lingering the review of similar lawsuits filed by ordinary people for years. For example, in one of the cases litigated by GDI, where private individuals disputed defamation, the Tbilisi City Court ended the proceedings after four years.⁴⁰ However, the profound interest shown by the Courts toward lawsuits filed by influential people could indicate a lack of impartiality in the justice system.

6.2 Shifting of the Burden of Proof

As already mentioned, Under Article 7 sub-Paragraph 6 of the Law of Georgia On Freedom of Speech and Expression, "the burden of proof when restricting freedom of speech rests with the initiator of the restriction. Any doubt which cannot be proved in accordance with the law shall be resolved against the restriction of freedom of speech." Thus, the law places the burden of proof in defamation suits on the claimant, not the defendant.

Nevertheless, the recent practice of the general courts regarding the shifting of the burden of proof is at odds with the existing legislative standards. Based on the standard practice observed in the general courts, when the statements relate to the claimant's alleged participation in a crime, the journalists must prove the accuracy of the disseminated information or take reasonable measures to verify the information. Thus, the courts disregard the special provision provided by the law and place the burden of proof on the defendant, which, on the one hand, contradicts the law, and on the other, endangers journalistic activity.

It is noteworthy that upon allocating the burden of proof, judges often appeal to the practice of the European Court of Human Rights (the case cited most frequently is the decision of the European Court of Human Rights in the case of *McVicar v. THE UNITED KINGDOM*). Nevertheless, their interpretation of the decision is quite manipulative, since they disregard the fact that the European Court of Human Rights does not provide a single mandatory standard for the distribution of the burden of proof. Instead, while assessing facts in that matter, the European Court of Human Rights is guided by the legislation of the countries parties to the convention. Thus, judges should utilize Georgian legislation, which sets a higher standard for the protection of freedom of speech and expression.

6.3 Definition of Apparently Groundless Claims for Defamation

As already mentioned, according to Article 18 of the Law of Georgia on Freedom of Speech and Expression, "if an apparently groundless claim for defamation has been filed that is aimed to

⁴⁰ Visit: <https://bit.ly/3Ey5yfo> [Last visit: 20.02.2023]

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." It should be noted that the general courts made a legally unjustified and disarrayed interpretation regarding the prerequisites for the initiation of the aforementioned legal mechanism.

The decision of the Tbilisi City Court of November 25, 2022 N2/29676-22 is interesting in that regard. The decision interprets an apparently groundless lawsuit as follows: "A lawsuit is apparently groundless when there is no prerequisite for filing it [...] Article 18 of the Law of Georgia on Freedom of Speech and Expression shall not be interpreted in such a way to derive the meaning that the denial to uphold claims brought under the said law automatically triggers this article. For this, it is necessary that the claim be groundless to the degree that there are no prerequisites for the assessment of its validity and no legal grounds are present (e.g., because the dissemination of information never happened)."

The standard for upholding an apparently groundless lawsuit, brought under Article 18 of the Law of Georgia on Freedom of Speech and Expression, are as follows: 1. Does the plaintiff intend to limit the freedom of speech and expression illegally? 2. Whether a claim is apparently groundless. We find a similar standard in the practice of the courts of the United States of America, where while considering the apparent groundlessness of the lawsuit, the Courts examine whether the purpose of limiting the freedom of expression of the initiator of the counterclaim is present; 2. Is there a prospect of the claim to be successful?⁴¹

Contrary to the standards set out by the European Court of Human Rights, while assessing the apparent groundlessness of the claim, the general courts in Georgia, approach the issue formally and do not examine what the plaintiff's underlying intentions behind the defamation claims might be. Such practices deprive SLAPP victims of a legal opportunity to protect their rights.

6.4 Balance Between the Right to Privacy and Freedom of Expression

Defamation disputes are typically characterized by a clash between two fundamental rights protected by the Constitution - freedom of expression and the right to private life. Against this background, the European Court of Human Rights has emphasized on numerous occasions the importance of maintaining a balance between Article 10 (freedom of expression) and Article 8 (right to private life) protected by the Convention.

It is worth noting that, according to one of the general principles defined by the European Court, freedom of expression enjoys a higher standard of protection when it contributes to a debate over issues of public interest. Moreover, the scope of permissible criticism against public figures

⁴¹ John Stossel v. Meta Platforms, inc., et all (Case No. 21-cv-07385-VKD), available: <http://climatecasechart.com/case/stossel-v-facebook-inc/>

is significantly broader, as there is no alternative to achieving freedom of political debate, which is a fundamental concept of a democratic society.⁴²

Ergo, it is essential that while assessing these lawsuits the general courts take notice of the definitions of the European Court on maintaining the balance between the right to private life and freedom of expression.

On numerous occasions, while examining SLAPP suits, the Courts have failed to discuss the necessity of striking a balance between these rights. Instead, they have delivered unconditional decisions in favor of the right to privacy, disregarding the need to maintain a fair and proportionate balance between the two rights. The courts fail to consider that statements at the heart of similar disputes often pertain to matters of public interest, which are being widely discussed among the public. For instance, the Courts overlook crucial topics like corruption, transnational crime, and efficient utilization of the state budget, among others, and the significance of engaging the public in the discussions related to these crucial issues.

Moreover, in the case of the Head of Secret Security Services, the Tbilisi Court of Appeal went as far as to state that considering the claimant's high-ranking position, the statements made against him caused even more significant reputational harm. In fact, the Court determined the interference in the claimant's private life precisely due to his high position and gave it clear precedence over freedom of speech. This approach contradicts the case law of the European Court of Human Rights. As already mentioned, European standards dictate that statements made against public figures enjoy a higher degree of protection of freedom of speech. Despite this, the Courts in Georgia fail to consider this principle, especially in cases involving influential people.

6.5 Continuation of Proceedings Despite the Existence of Grounds for Termination of Disputes

According to Georgian legislation, proceedings must terminate when the criteria stipulated by Article 5 of the Law of Georgia On Freedom of Speech and Expression are met. According to paragraph 1, sub-paragraph A of the Article, a statement shall not incur liability for defamation if made “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);”

Despite the fact, that the controversial statements disputed by Grigol Liluashvili were made by the politician, Member of the Parliament of Georgia, Levan Khabeishvili, the Tbilisi City Court did not take into account the legal provision and did not satisfy the defendant's motion to terminate the proceedings. Moreover, the judge did not grant the motion to TV companies Formula and

⁴² Decision of the European Court of Human Rights in the case of *Lingens v. AUSTRIA*, par. 42

Mtavari Arkhi to review the statements as made within the framework of political debates in order to stop the proceedings. It is worth noting that the Tbilisi Court of Appeal explained the meaning of political debate adequately and noted that "it should be interpreted as a public discussion on a matter of state-society importance, in the course of which people exchange opinions, and it cannot be considered in a narrow sense as a one-time discussion conducted in a formal environment among politicians. The Court added that a political debate is a process of discussing an issue of public importance. These could take place over a long period and involve all those who take a position on the issue under discussion publicly or otherwise engage in the political process, regardless of their political status. The chamber asserted that any issues related to the increased social interest that become a subject of discussion in the general public can be considered political." However, the court took a stance that the defendant's statements represented opinions rather than facts and were not made within the framework of political discourse. The argument supporting such a stance was that the defendant did not seek out the claimant's position. This adversarial approach by the Court is problematic as it could have a "chilling effect" on freedom of speech and public debate as a result.

6.6 Disregarding the Principle of Adversarial Proceedings and Equality of Arms

Although the principle of adversarial proceedings and equality of arms are one of the critical legal mechanisms in the adjudication process, when it comes to SLAPP cases, the general courts do not afford the parties equal opportunities to present evidence.

For example, the Courts' biased approach towards the plaintiffs regarding the principle of adversarial proceedings is evident in the cases of Grigol Liluashvili and Ucha Mamatsashvili. In Grigol Liluashvili's case, the judge rejected nearly all motions made by the defendant TV companies and a Member of the Parliament, including those related to the submission of evidence. In the latter, the judge allowed witnesses who were expected to give favorable statements to Ucha Mamatsashvili (such as Zurab Noghaideli, Davit Narmania, and Davit Tlolabeishvili) to be questioned, while refusing to question witnesses who could have provided information about individuals involved in a transnational crime and an alleged corruption scheme, including Giorgi Kobulia, Levan Khabeishvili, and Nika Gvaramia.

This approach adopted by the Courts, coupled with the practice of shifting the burden of proof towards the defendants increases the likelihood of the plaintiffs winning the cases even further.

6.7 Ignoring Measures Taken by Journalists

It is noteworthy that, as per established legal practice, "spreading a false fact does not always constitute a basis for restricting the freedom of speech and expression. What is decisive is what measures and efforts were taken by the journalist when reporting the fact. If he/she fulfilled the duties and responsibilities assigned to him in connection with the verification of information

properly, he/she is not liable." Despite the fact that the manner in which the disputed information became known to journalists is of essential importance in the defamation disputes while adjudicating SLAPP cases the Courts often ignore the measures the journalists took before disclosing the information.

For example, in Grigol Liliashvili's case, both the Tbilisi City Court and the Court of Appeals disregarded the fact that the journalists from Mtavari Arkhi had conducted an investigative examination to verify the location of the so-called "call centers" before making any controversial statements. The journalists had visited the place where they thought the centers were located, spoken with various respondents who confirmed their existence, and drawn logical conclusions based on reasonable doubt. Despite this, the Courts failed to consider these facts.

A lack of comprehensive approach by general courts in SLAPP disputes leads to decisions that lack proper justification and are therefore illegal.

6.8 Qualified Privilege

Article 15 of the Law of Georgia on Freedom of Speech and Expression provides the criteria for granting a qualified privilege. Qualified privilege is a legal concept that refers to a partial or conditional exemption of an individual from legal liability that would otherwise be imposed by law. According to Article 15, a person is granted a qualified privilege for disseminating a 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.

As already mentioned, although the defendants apply appropriate measures to ensure the accuracy of the statements while carrying out their duties to protect the legal interests of the public, the Courts often fail to take these circumstances into consideration. They either fail to discuss the existence of a qualified privilege, or exclude it altogether without any examination.

For example, it is noteworthy that during the consideration of Kakha Kaladze's claim, the defendants, TV Pirveli and Maya Mamulashvili, pointed out that (a) they had the appropriate basis (publicly available sources) that provided reasonable grounds for drawing logical conclusions on disputed facts and (b) the information concerned issues of heightened interest at the moment. Thus, they argued, the benefits of participating in the public discourse surpassed the anticipated harm. However, the Tbilisi City Court excluded the grounds for granting a qualified privilege without any justification.

Thus, despite the safeguards that protect defendants in defamation disputes, the Courts make decisions without taking the existing legal provision into consideration.

6.9 Obligation to Disclose Confidential Source to Plaintiff

Pursuant to Article 11 of the Law of Georgia on Freedom of Speech and Expression, “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”.

Even though a confidential source enjoys absolute protection under the law, the general courts have made multiple attempts to force defendants to reveal confidential sources of information about the impugned statements. For instance, in Grigol Liluashvili's case, Mtavari Arkhi, the defendant, claimed to have relied on information from a confidential source, among others. However, the Tbilisi City Court found that the defendant TV companies failed to verify the credibility of this source. The finding was used as one of the grounds for deeming the case defamatory.

By interpreting the law in this way, the court essentially requires broadcasters to reveal the identity of their confidential sources in order to avoid civil legal action. This stance was echoed by the Tbilisi Court of Appeal, which stated that the defendants must prove the credibility of their sources. However, such interpretations by the Courts could set a problematic precedent, potentially discouraging sources from providing information regarding issues of public importance to the media.

6.10 Courts Rule Against The Ineligible Defendant

According to Georgian legislation, Article 6, paragraph 2 of The Law of Georgia on Freedom of Speech and Expression, "the owner of a media outlet shall be the respondent in the litigation on defamation published in the media outlet by a journalist." It follows that a person shall not be held personally liable while making statements on behalf of the media (organization).

Despite the existence of the aforementioned provision, many judges tend to overlook it. Consequently, decisions made in favor of plaintiffs tend to impose unnecessary burdens on journalists who are named defendants alongside media outlets. To illustrate, in the case of Kakha Kaladze v. Maia Mamulashvili and the TV company TV Pirvel, the court rejected the defendant's assertion that the presenter was an ineligible defendant. Consequently, both the media outlet and the presenter were held liable for defamation and ordered to pay compensation for moral damages, highlighting the potential legal risks faced by journalists in defamation cases.

In a similar case, the Chairman and the Executive Director of the NNLE Anti-Corruption Movement, while acting as representatives of the organization, made statements disputed by Ucha Mamatsashvili. They requested to be recognized as ineligible defendants. Yet, the Court rejected the motions. Although Article 6 Paragraph 2 of the Law of Georgia On Freedom of Speech and Expression explicitly applies only to media organizations, it would have been appropriate for the Court to adopt a similar approach to civil organizations and, thus, refuse to impose liability on both the organization and its representatives separately. However, despite this argument, the Court rejected the party's motion and held both defendants, the representatives of the organization and the entity itself, liable for the disputed statements.

6.11 Imposing Large Amounts for Moral Damages

The Courts' inclination to grant excessive moral damages to the defendants is a cause for significant concern. While, in some cases, the general courts may grant the claimants' claims for the imposition of moral damages partially, the amount levied does not adhere to the principle of proportionality and perpetuates a "chilling effect" on the freedom of speech and expression.

To illustrate, the Tbilisi City Court ordered the Anti-Corruption Movement and two of its representatives to pay a total of 15,000 GEL (5,000 GEL each) in the case brought by Ucha Mamatsashvili. Similarly, TV Pirveli and journalist Maya Mamulashvili were also required to pay a significant sum of 15,000 GEL for moral damages. It is apparent that in the context of similar disputes, the general courts tend to award disproportionately high amounts for moral damages to defendants in cases initiated by influential individuals. In multiple instances, the Courts fail to provide adequate reasoning as to why a simple denial of defamatory statements is insufficient for the claimant, despite the established legal practice that recognizes such denials as acceptable for restoring the rights of the plaintiff in defamation disputes. Although many plaintiffs cannot provide evidence to demonstrate the damage incurred as a result of the disputed information and consequently fail to prove that the denial of the statements is insufficient, it is unreasonable to award the requested amount of moral damages to the plaintiff based on the established practice of the general courts.

In addition, as already mentioned, the granting of moral damages by the Courts gives an incentive to other claimants to increase the amounts demanded, if they have the procedural right to do so, and therefore hinders the defendants' activities by creating financial obstacles.

Taking into account all the aforementioned factors, the approach adopted by the general courts further complicates the landscape of SLAPP disputes in Georgia, thereby causing concern. The Courts' particular interest in such disputes and their prompt resolution indicates that it is primarily the general courts that have played a significant role in the increase of SLAPP disputes initiated against civil engagement.