

Law of Georgia on the Freedom of Speech and Expression

Chapter I. General Provisions

Article 1. Definition of terms

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

- a) statement – information publicly disseminated or disclosed by a person to a third party;
- b) opinion – value judgment, a viewpoint, a comment, as well as expression of ideas by any means reflecting the attitude to a person, an event or a subject that does not contain verifiable or deniable facts;
- c) object of expression – a topic or an issue, which is being discussed with respect to which opinions are expressed;
- d) Advocacy – a statement the author of which aims at or obviously assumes provoking certain actions;
- e) Defamation – a statement containing an essentially substantially false facts causing damage to a person or his reputation;
- f) Obscenity – a statement, which does not have a political, cultural, educational or scientific value harshly violating universally recognized ethical norms of society;
- g) Public interest – the interest within society (and not a simple curiosity of individuals) to the events related to the exercise of public self-government in a democratic state;
- h) Administrative agency – an agency, institution or a person specified in Article 2, paragraph 1, sub-paragraph "a" of the General Administrative Code of Georgia except for the Public Service Broadcasting;
- i) Public figure – an official specified in Article 2 of the "Law of Georgia on Conflict of Interests and Corruption in public service"; a person whose decision or opinion has a substantial influence over the public life; a person attracting public attention in relation to certain issues due to his specific actions;
- j) Private person – a natural or legal person that is not a public figure or an administrative agency;

- k) State secret – information, which is considered a state secret by the rule prescribed under the "Law of Georgia on State Secrets" that is subject to the state protection;
- l) Commercial secret – information specified in Article 272 by the General Administrative Code of Code; information on an administrative agency is not a commercial secret;
- m) Personal secret – information having personal value that should be protected according to the law as well as the information or facts with respect to which a person has a reasonable expectation of inviolability of private life. Information on an administrative agency shall not be considered a private secret;
- n) Professional secret – secrecy of confession, information confided to a Parliament member, a doctor, a journalist, a public defender, a lawyer in the course of their professional activities as well as information having professional value, which became known to a person on condition of confidentiality in the course of performance of this person's professional duties, the disclosure of which information may cause damage to the professional reputation of the person. Information, which is not a state secret, or another person's private or commercial secret as well as information on an administrative agency shall not be considered a professional secret.
- o) Clear and foreseeable law – a norm worded with due accuracy, which does not have general, ambiguous and unclear provisions enabling a person regulate his activity and anticipate its legal consequences; o) Narrowly tailored law – a norm establishing a direct requirement, specific criteria and an exhaustive list of restrictions, containing guarantees against inexpedient use of this norm;
- p) Legitimate aim – values protected by Article 24, paragraph 4 and Article 26, paragraph 3;
- q) Non-discrimination – prohibition of making various decisions in case of identical facts and the commitment of equal treatment;
- r) Restriction critically necessary in a democratic society – a restriction deriving from a legitimate aim, which is intended for protection of the vital and unalterable values for the existence of a democratic society and that can be carried out only when all other reasonable and sufficient steps for achieving the legitimate aim are exhausted.
- s) Proportionality of a restriction – a restriction pursuant to a legitimate aim and critical necessity, which is the most effective and the least restrictive means for achieving the legitimate aim. Application of stricter norms shall take place only when otherwise it is impossible to achieve a legitimate aim and meet the requirements of the pressing need;

t) Absolute privilege – complete and unconditional release of a person from the liability envisaged by law; u) Qualified privilege – partial or conditional release of a person from the responsibility liability envisaged by law. A person may lose the privilege under a reasoned justified decision of the court due to a culpable conduct.

v) Media – printing or electronic means of mass communication including the Internet.

Article 2. Interpretation of the Law

The interpretation of this Law shall be made in accordance with the Constitution of Georgia, the international commitments undertaken by Georgia, including the European Convention on Human Rights and Freedoms and case law of the European Court of Human Rights.

Article 3. Freedom of speech and expression

1. The State recognizes and protects the freedom of expression as an inherent and supreme human value. In the course of discharge of the authority, people and the State are bound by these rights and freedoms as by directly applicable law.

2. Everyone except for administrative agencies enjoy the right to freedom of expression that implies the following: a) Absolute freedom of opinion; b) Freedom of political speech and debates; c) Obtaining, receipt, creation, keeping, processing and dissemination of any kind of information and ideas; d) Prohibition of censorship, editorial independence and pluralism of the media, the right of a journalist to keep confidential the source of information and make editorial decisions based on his own conscience; e) Academic freedom of learning, teaching and research; f) Freedom of art, mastery and inventions; g) The right to speak any language, use any alphabet; h) The right to charity; i) The right to whistleblow and protection of the whistleblowers; j) freedom from coercion, freedom to express opinions on religion, belief, conscience, ethnical, cultural and social belonging, origin, family, property and social position as well as all the facts that may become a ground for restriction of his rights and freedoms.

3. This Law does not disregard other rights, freedoms and guarantees provided for by the Constitution of Georgia and other universally recognized rights freedoms and guarantees

related to the freedom of expression, which are not reflected herein but naturally derive from the universally recognized rights and freedoms.

Article 4. Freedom of thought and appeal

1. The freedom of thought shall be protected as an absolute privilege.
2. Advocacy shall be protected by a qualified privilege. An incitement shall cause liability envisaged by law only when a person commits an intentional action that creates direct and substantial danger of an illegal consequence.

Article 5. Freedom of political and court speech

1. A statement shall not cause liability for defamation if it is made: a) during political debates as well as with respect to performance of the official duties by a member of the Parliament or an local assembly; b) at a pre-trial or court hearing, before a public defender, at a meeting of the Parliament or an local assembly as well as their committees within official authority of a person; c) upon the request of an authorized body. 2. In case of filing a suit on defamation, the court shall verify the facts specified in the first paragraph of this Article at the preparatory meeting held with the participation of the parties. In case of confirmation of such facts, the court shall make a ruling provided for by Articles 209 and 273 of the Civil Procedures Code of Georgia that does not cause the consequences specified in Article 18 of this Law.

Article 6. Court guarantees

1. A person shall be authorized to apply to court with a request to avoid or eradicate consequences of violation of the rights guaranteed and protected by this Law as well as a request to restore the right violated as a result of interference.
2. In case of a court dispute related to the defamation published by a journalist in the media, the defendant shall be the owner of the media.

3. The subject of a court dispute on defamation cannot be a statement, which is related to an indefinite group of persons or/and in which the claimant is not unambiguously identified.
4. A court dispute on defamation cannot be initiated on the private non-property rights of a deceased person, protection of state or administrative bodies.
5. During a court dispute on defamation an improper defendant is a person, who is not the author of the statement or the editor or a person who technically ensured dissemination of the statement except for the case when he clearly and directly supports the statement.
6. During a court dispute on defamation, the court shall take measures for settlement of the dispute between the parties. It is authorized to postpone the deliberations of the case and fix a period for a settlement, which should not exceed one month.

Article 7. Standard and Burden of proof

1. Any restrictions of the rights guaranteed and protected by this law shall be based on incontrovertible evidence.
2. In case of restriction of the rights guaranteed and protected by this law, any doubt, which is not proved according to the rule prescribed by law, shall be decided against the restriction of these rights.
3. Any reasonable doubt which is not proved according the rule prescribed by law during dispute about assignment of status of private or public person should be interpreted in favor of assignment of a status of the public figure.
4. Any reasonable doubt which is not proved according the rule prescribed by law during dispute about assignment of status of public interest or curiosity, shall be decided in favor of assignment of a status of the public interest.
5. Any reasonable doubt which is not proved according the rule prescribed by law during dispute about assignment of status opinion or fact to a statement should be interpreted in favor of assignment of status of opinion.
6. The burden of proof of restriction of the freedom of expression lies upon the initiator of the restriction. Any doubt, which is not proved according the rule prescribed by law, shall be decided against the restriction of the freedom of expression.

7. The refusal of the respondent on the case of restriction of the freedom of expression to disclose a professional secret or the source cannot be the only ground for making a decision against the respondent.

Chapter II. Grounds and Rules for Restriction

Article 8. Grounds for restriction of the freedom of speech and expression

1. Any restriction of the rights recognized and protected by this Law can be established only if it is introduced by a clear and foreseeable, narrowly tailored law, and good protected by the restriction exceeds the damage caused by the restriction.

2. Restrictions recognized and protected by this Law shall be: a) directly intended at fulfilment of a legitimate aim; b) Critically necessary in a democratic society; c) Non-discriminative; d) Proportionally restricted.

Article 9. Content regulation

1. Content regulation of the freedom of speech and expression can be established by law if it is related to: a) Defamation; b) Obscenity; c) Fighting words; d) Incitement to commit an offence; e) Threat; f) State, commercial, private or professional secret; g) Advertising, TV-shopping or sponsorship; h) Freedom of speech and expression of military serviceman, an administrative agency and its official, member or employee. i) Freedom of speech and expression of a detained person or a person with restricted liberty; j) Freedom of speech by a person without or limited legal capacity.

2. Content-based regulation can be only carried out through viewpoint neutral, non-discriminative regulations.

Article 10. Content neutral regulation

1. In case of a content neutral regulation, restriction of the object of expression shall be inadmissible.
2. Content neutral regulation can only provide for a non-discriminative restriction of the place, time and form, which does not affect the content of the information or ideas or the expressive effect or leaves a possibility of their expression through different means.

Chapter III. Protection of Confidentiality

Article 11. Protection of a professional secret and its source

1. The source of a professional secret shall be protected by the absolute privilege and no one shall be entitled to demand the disclosure of this source. In case of a court dispute on restriction of the freedom of speech, the respondent shall not be imposed the obligation of disclosure of a confidential source of information.
2. Disclosure of confidential information without consent of its owner or a reasoned court decision in cases prescribed by law shall be inadmissible.
3. The Court shall be authorized to make a ruling on securing evidences only with respect to disclosure of the part of information the necessity of the disclosure of which has been proved.
4. Confidential information received through disclosure can be applied only for the purpose it was disclosed.

Article 12. Liability for disclosure of a secret

1. A person shall be liable only for disclosure of a secret, which should be protected by him due to his official position or under a civil contract, and a disclosure of which creates direct and substantial danger to the values protected by law.
2. A person shall be relieved from the liability if the purpose of disclosure of a secret was protection of the lawful interests of the society, and if the protected good exceed the caused damage.

3. The freedom of expression shall not be restricted by the reason of inviolability of private life and protection of a personal secret with respect to an event that should be known to a person for the exercise of the public self-government in a democratic society.

4. A person is entitled to demand compensation of property and non-property (moral) damage for the violation of the rights provided for in paragraphs 1 and 2 of this Article.

Chapter IV. Defamation

Article 13. Defamation against a private person

A person shall be imposed civil liability for defamation against a private person if the claimant proves in court that the statement of the respondent contains essentially false facts directly related to the claimant, and this statement caused damage to the latter.

Article 14. Defamation against a public figure

A person shall be imposed civil liability for defamation against a public person if the claimant proves in court that the statement of the respondent contains essentially wrong facts related directly to the claimant, this statement caused damage to the latter, and which was made with advance knowledge of falsity, or the respondent acted with reckless disregard that caused dissemination of the information containing essentially false fact.

Article 15. Qualified privilege for defamation

A person shall have a qualified privilege for a statement containing essentially false fact if:

- he has taken reasonable steps to verify the accuracy of the fact, but failed to avoid a mistake and took efficient measures for the restoration of the reputation damaged due to defamation;
- The purpose of his action was protection of the legitimate interests of the society, and the protected good exceed the caused damage;
- He made a statement with the claimant's consent;
- His statement was a corresponding reply to a statement made by the

respondent against him; e) His statement was a fair and accurate reporting related to an event of public interest.

Article 16. Limits of liability for defamation

A person shall not be imposed a liability if he did not and could not know that he disseminated defamation.

Article 17. Compensation of damage caused by defamation

1. A respondent can be imposed obligation of publication of information on the court decision according to the rule prescribed by the court

2. It shall inadmissible to compel a person to apologize.

3. If a person makes a correction or denial within the term established by law, however, correction and denial is not sufficient for the proper compensation of the damage caused to the claimant, the respondent may be imposed compensation of property or/and non-property (moral) damage.

Article 18. Ill-founded claim on defmاتاion

In case of filing clearly ill-founded suit on defamation for the purpose of unlawful restriction of freedom of speech and expression, the respondent shall be entitled to claim from the respondent pecuniary compensation within the reasonable limits.

Article 19. Time Limitation for filing a suit

A suit on defamation shall be filed to the court within 100 days after the person got acquainted or could get acquainted with the statement.

Chapter V. Conclusive Provisions

Article 20. Invalidated act

From the moment of enactment of this Law, the "Law of Georgia on Press and other Mass Media Means" shall be invalidated.

Article 21. Enactment of the Law

This Law enters into force from the moment of its promulgation.

The President of Georgia

M. Saakashvili

Tbilisi

24 May, 2004