



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
Harlem Désir**

**COMMENTS ON THE INITIATIVE OF THE PRIME MINISTER OF GEORGIA TO
ESTABLISH THE OFFICE OF MEDIA OMBUDSMAN**

Commissioned by the Office of the OSCE Representative on Freedom of the Media and
prepared by Dainius Radzevičius, Chairman of Lithuanian Journalists Union, independent
media law expert

August 2017

Table of Contents

1. Background	3
2. Executive Summary	4
3. Recommendations	6
4. Analysis	8
4.1 Introduction	8
4.2 Situation of Public Defender and Ombudsman institution in Georgia	10
4.3 Various institutions and organizations' readiness to consider an initiative for establishing the Office of Media Ombudsman	12
Annex I List of persons taking part in the discussions with the expert in Tbilisi	14

1. BACKGROUND

On 6 March 2017 the Prime Minister's Office of Georgia made an official announcement on the initiative to establish the Office of Media Ombudsman, inviting international media observers and international media experts for cooperation.

The initiative was reportedly stipulated by the fact, that there was no reason to have any question mark related to the freedom of speech and media, as well as media pluralism is secured in the country. It was stated that the initiative also aims to further strengthen the media environment of the country.

The new initiative was announced by the Prime Minister during the meeting with NGOs. The official text of the announcement is available at:

http://gov.ge/index.php?lang_id=ENG&sec_id=463&info_id=60132

This public statement was followed by the first feedback articles and comments, (e.g. <http://oc-media.org/media-ombudsman-initiative-met-with-scepticism-in-georgia/>, <http://agenda.ge/news/75620/eng>).

On 7 March 2017 the Government of Georgia formally requested recommendations from the OSCE Representative on Freedom of the Media regarding the establishment of the Office of Media Ombudsman.

In order to conduct a detailed analysis of the needs of different institutions and organizations and their readiness to implement the initiative of the Prime Minister of Georgia to establish the Office of Media Ombudsman, the Office of the OSCE Representative on Freedom of the Media engaged Dainius Radzevičius, Chairman of Lithuanian Journalists Union, independent media law expert. Mr Radzevičius paid a visit to Georgia to hear opinions directly from different stakeholders about the initiative. The visit to the country's capital, Tbilisi, took place on 1-2 May 2017.

2. EXECUTIVE SUMMARY

The practice of the functioning of the Media (or Press) Ombudsman is positively viewed in many cases, especially when the effective operations of this institution become an alternative to complicated, long-lasting and expensive, often entailing serious legal consequences, judicial disputes about the possible violation of human rights in the media or restrictions on freedoms of the press.

The emergence of such an institution in Georgia would be a new phenomenon, given that the existing constitutional system for ensuring rights and freedoms of expression is based on the assurance of freedom of the press and expression.

Issues regarding ownership of the media, discussions on the status and independent governance of the public broadcaster, as well as the influence of propaganda on information, necessitate a sensitive approach when it comes to any possible changes in the legal regulation of press activities. Therefore, the initiative of the Georgia's Prime Minister to establish the Office of Media Ombudsman can be and is viewed as an initiative to open a public debate on the need for such an institution and its likely status.

There are important conditions precedent to the emergence and operation of such an institution, including acceptance by and support from society, political consensus and legal certainty. With such a fresh initiative that was not expected by media institutions, political opposition and some authorities, a detailed analysis of the situation must include not only the analysis of good practices from other countries, but also the analysis of likely threats.

This review, therefore, covers not only the analysis of the legal framework of Georgia, but also actual practices in the area of press regulation and self-regulation, taking into account positions and views of many parties concerned. For the purpose of this analysis, maximum access to all the necessary sources has been provided by the Georgian authorities. The active participation and engagement of

non-governmental organisations and the media in deliberations on this issue means that the most appropriate solution will likely be found in the future with regard to the possibility of establishing the Office of Media Ombudsman in Georgia.

As the result of the analysis made and discussions held in Tbilisi the expert comes with the recommendations listed below.

3. RECOMMENDATIONS

Taking into account the analysis of the received materials, general observations made during the meetings in Tbilisi, international practice and OSCE commitments in the area of freedom of the media, the following recommendations are given:

- The initial proposal by the Prime Minister to establish the Office of Media Ombudsman should be explored through a wide-ranging public debate with engagement by representatives of the media, academic community, NGO sector and a cross-section of political representatives. The Office of Media Ombudsman needs acceptance and a high degree of public confidence among various groups of the society.
- A careful and responsible analysis needs to be made to assess whether or not the existing institutions and organizations (Public Defender, Charter of Journalistic Ethics, etc.) in the area of media regulation and self-regulation of media issues can address the challenges expected of the new position of Media Ombudsman. It could be reasonable to discuss what these institutions lack in order to work more effectively.
- While such an institution should be established only after full engagement of all actors, the expert so far is not convinced that establishment of this institution is indeed necessary.
- Another option, as a first step on the way for establishing the Office of Media Ombudsman, is for the Government to consider working with the Office of the OSCE Representative on Freedom of the Media to identify an international media expert who would work directly with and in Georgia and give recommendations and advice to various parties concerned involving the stakeholders from the Government, the Parliament, international organizations, national NGOs, and the media regarding the improvement of the legal environment for media activities and tackling of new challenges (such as propaganda, improvement of media literacy and self-regulation). Such a person would not be the Media Ombudsman in the traditional sense, and should not be given this title. This position could rather be called the Principal Media Adviser or Independent Media Adviser with a

mandate to operate independently of the Government for a certain period of time, provide regular reports assessing the situation of media freedom in Georgia and recommendations for its improvement and serve as an intermediary between different stakeholders. This person should be an internationally and nationally renowned figure who would command trust of all stakeholders.

4. ANALYSIS

4.1. Introduction

Ombudsman (a Swedish term meaning representative) means a representative having the mandate of its electors, a human rights defender. A very important aspect of an ombudsman's office (including press ombudsman) is its independence from executive authorities. Any act on the part of the executive or other bodies of the government influencing the activities of the Press or other ombudsman can be regarded as a possible infringement of, not only the independence of this institution, but also as undermining the possibility for effective, impartial and professional defense of human rights.

Different European countries have different ombudsman institutions. They are usually referred to as pre-litigation review bodies for complaints against the media. They are closely related to media or journalist self-regulatory organizations. For example, such organizations exist in Ireland, Sweden and Lithuania, and, in all of them, media (press) ombudsmen have close relationships with media self-regulation institutions. Naturally, the competence and powers of the press ombudsman differ from country to country. In many cases, the press ombudsman plays the role of a moderator when reviewing complaints against journalists or media activities and the application of good practice standards. In some cases when the adopted decision is violated, they may even impose certain penalties, including financial penalties.

However, the key function of the institution of the Press Ombudsman is not to punish the media, but to seek a balance between good journalistic practice, guaranteed freedom of the press/ freedom of expression and the security of human rights. The Press Ombudsman usually seeks a peaceful settlement and its effective functioning is largely based on the trust placed in the Ombudsman by different groups of society. The substantial authority, transparent activities and high professionalism of the Ombudsman effectively prevents, for the most part, its decisions from reaching the stage of judicial proceedings. The Ombudsman usually seeks to make its activities as transparent and accessible by journalists as possible so that society can track its work. The Ombudsman provides information to the media about the initiation of investigations, decisions made in favor of claimants, important draft recommendations to institutions and any decision to close an investigation. In

addition, the Ombudsman informs society and the media about its work through annual reports, latest statistical data, contributions to public debates and initiatives as well as about other public-relevant issues relating to the office of the Ombudsman.

Therefore, in the light of the announced initiative of the Prime Minister of Georgia to establish the Office of Media Ombudsman, the request of the Georgian authorities to the OSCE Representative on Freedom of the Media (RFOM) is highly welcome. OSCE participating States consider freedom of expression a fundamental and internationally recognized human right and a basic component of a democratic society. Free media is essential to a free and open society and for holding governments accountable.

The role of the OSCE Representative on Freedom of the Media is also to help participating States uphold their media freedom commitments. The RFOM provides legal reviews on proposed media legislation, which include thorough analyses and recommendations how legislation might be amended to comply with international standards.

The RFOM monitors media developments in its participating States for violations of free expression. This includes monitoring and demanding accountability for murders, attacks and harassment of journalists and prosecution of journalists and members of the media for their professional activities; reviewing legislation that can affect free expression and legislation regulating the media. The RFOM also engages in media development through training and support for editors and journalists.

The RFOM also focuses on topics such as safety of journalists, media self-regulation, access to information, professional reporting on the internet, freedom of expression and new media technologies. The RFOM promotes sharing of best practices across the OSCE region to strengthen freedom of the media in line with international standards and OSCE principles and commitments. The RFOM helps the media create or develop self-regulation mechanisms that are independent from government control and are designed to uphold the quality of media. These can take the forms of ethics codes, press and media councils, or complaints commissions and in-house

ombudspersons. The RFOM supports such initiatives through training, expert advice, international roundtable meetings, and the publication of expert guidebooks.

4.2. Situation of Public Defender and Ombudsman institution in Georgia

In 1992 the Presidium of the State Council of the Republic of Georgia adopted a resolution on "Setting up a state committee for the protection of the inter-ethnic relations and human rights". However, with more focus placed on the protection of human rights, the Committee was soon renamed the Committee of Human Rights and Inter-Ethnic Relations of the Republic of Georgia. The Committee of Human Rights and Inter-Ethnic Relations coordinated activities of the state and governmental bodies as well as of organizations in the protection of political, civil, economic, social and cultural rights and discussed claims and applications regarding violations of human rights. Together with the law enforcement agencies, the Committee had the right to permanently care for and supervise compliance with the law on "*Freedom of the press and mass media*" in order to prevent administrative interference regarding the receiving, processing and dissemination of information by mass media sources. The public defender's institution was later set up on the basis of this Committee and the office was staffed with experienced employees. However, the powers of the ombudsman are broader today than the competences of the Committee.

The Public Defender of Georgia is a *national human rights institution with legal basis in the constitution*, which supervises the protection of human rights and freedoms within its jurisdiction in the territory of Georgia. It identifies the violations of human rights and contributes to the restoration of the violated rights and freedoms. The Public Defender is independent in its activities. It does not belong to any branch of government.

The Public Defender studies the cases of human rights violations both on the basis of the received applications and on his own initiative. As a result of the amendments made to the Organic Law of Georgia on the Public Defender in 2013, the Public Defender is authorized to submit to Parliament two candidates for membership to the Public Broadcaster's Board of Trustees and elect three members to the Legal Aid Board.

The Public Defender's institution has been granted “A” *status*, meaning it has fully complied with the UN Paris Principles. As a result, the Public Defender of Georgia has the right to take part in the work of the national human rights institutions at the international and regional levels with the right to vote, hold a position in the bureau/sub- committees of the Global Alliance of National Human Rights Institutions (GANHRI) and take part in the sessions of the Human Rights Council.

One of the important functions of the Public Defender is to conduct educational activities in the field of human rights. He organizes events and campaigns aimed at raising awareness of human rights uniting various target groups.

Statistics of complaints

- a) 2013: Freedom of expression – 5; Violence against journalists because of their professional activities – 8.
- b) 2014: Freedom of expression – 1; Violence against journalists because of their professional activities – 0.
- c) 2015: Because of some technical problems, unfortunately, the Public Defender’s Office does not have any statistics for free media and freedom of expression for the year 2015, however, information can be found in PD 2015 Parliamentary Report available at: <http://www.ombudsman.ge/en/reports/saparlamento-angarishebi>.
- d) 2016: Freedom of expression – 34.
- e) 2017 (four months): Freedom of expression – 0.

Parliamentary Reports of the Public Defender include a separate chapter on freedom of expression and the media environment in the country annually. The PD's assessment, dated 23/02/2017 on the developments in Public Broadcaster - "Public Defender's Statement on Action Plan Presented by Public Broadcaster's New Leadership" can be found here: <http://www.ombudsman.ge/en/news/public-defenders-statement-on-action-plan-presented-by-public-broadcasters-new-leadership.page>.

4.3. Various institutions and organizations readiness to consider an initiative for establishing the Office of Media Ombudsman

In order to fully assess the initiative of the Prime Minister of Georgia to establish the Office of Media Ombudsman, a visit has been paid to Georgia to hear opinions directly from different stakeholders. A number of meetings took place in Tbilisi on 1-2 May 2017 (see Attachment I).

All meetings took place in the spirit of good will and constructiveness. Participants openly expressed their positions regarding the new initiative. To sum up the meetings, there are several general observations made by some parties concerned:

- It should be noted that the country has the institution of the Public Defender which has been functioning for more than two decades. This institution, inter alia, reviews complaints regarding alleged violations of human rights in the field of the media. As this institution acts on constitutional grounds, the establishment of the new Office of Media Ombudsman would encounter certain legal obstacles in relation to the functions and powers of other national human rights institutions.
- During the meetings with NGOs and political opposition there was constant references made to the politically and legally complicated situation, the case of Rustavi 2, the activities of the public broadcaster and the issue of its independence and impartiality. Therefore, there was a high level of skepticism among the interlocutors about the establishment of the new Office of Media Ombudsman.
- According to the interlocutors the initiative of the Prime Minister was neither pre-debated nor pre-agreed in public events or forums. Therefore, they think that the idea is very premature and requires further discussion, well-defined provisions and clarity of implementation.
- Many interlocutors (both from government institutions and the non-governmental sector) noted that public confidence is of highest importance to any ombudsman and Media Ombudsman in particular. Therefore, at stake is not the institution itself but the responsibility of such a person and his/her preparedness to perform the duties appropriately. Representatives from nearly all institutions and

organizations made it very clear that it would be very difficult to find a person with the ability to perform this role in Georgia given the current situation. Therefore, only an international expert would have the necessary authority.

- Representatives from the Government and Parliament noted that it is crucial for Georgia to seek the highest standards in the area of freedom of the press, hence why assistance was sought from the OSCE RFOM. They expressed openness for discussion of various models to come up with the good mechanism for advising Georgia on how to further improve the media environment. They also expressed readiness to listen and summarize all recommendations at the local and international level and to resolve this issue with the participation of all the stakeholders. It was further noted that obtaining assistance of international expert(s) is also vital in tackling legal and other issues relating to new challenges in the area of the media, including propaganda, media transparency and, possibly, media literacy. Attention was also paid to the clear need of the Government for expert support in the area of media activity.
- NGOs and representatives of the media and parliamentary opposition expressed their concern that the issue of the establishment of the Office of Media Ombudsman, which is currently supported only by the Government rather than by a broad-ranging consensus, would threaten freedom of expression and freedom of the press and would undermine democracy in the country.
- A number of participants noted that an international expert with the authority to carry out a monitoring, mentoring and consulting role on a permanent basis could be a reasonable solution in the current situation until the idea of establishing the Office of Media Ombudsman has been thoroughly debated and a decision made as to whether such an institution is necessary or not.

ANNEX I.

List of persons taking part in the discussions with the expert in Tbilisi:

1 May 2017:

Meeting with Mr. Ucha NANUASHVILI, Public Defender of Georgia

Meeting with local civil society representatives:

Ms. Ana NATSVLISHVILI, GYLA

Ms. Khatia JINJIKHADZE, OSGF Mr. George KLDIASHVILI, IDFI

Ms. Nata DZVELISVHVILI, Charter of Journalistic Ethics

Mr. Lasha TUGHUSHI, Expert

Mr. Zviad KORIDZE, Expert

Meeting with parliamentary majority MPs:

Ms. Tamar CHUGOSHVILI, First Deputy-Chairperson of the Parliament

Ms. Nino GOGUADZE, First Deputy-Chairperson of Foreign Affairs Committee (TBC)

Ms. Irina PRUIDZE, First Deputy-Chairperson of European Integration Committee

Meeting with opposition MPs:

Ms. Salome SAMADASHVILI, National Movement

Mr. Sergi KPANADZE and Mr. Giorgi KANDELAKI, Movement for Freedom –
European Georgia

Ms. Irma INASHVILI, Patriots of Georgia

Meeting with Mr. Mikheil JANELIDZE, Minister of Foreign Affairs

2 May 2017:

Meeting with representatives of local media organizations:

Ms. Natia KUPRASHVILI, Regional Media Association

Mr. Vasil MAHGLAPERIDZE, Georgian Public Broadcaster

Mr. Nika GVARAMIA, TV Rustavi 2
Mr. Giorgi BAKHTADZE, TV Imedi
Ms. Nino JANGIRASHVILI, TV Kavkasia
Mr. Zurab NAKEURI, TV Maestro
Mr. Paata KAKAURIDZE, TV Pirveli
Ms. Marina VASHAKMADZE, Radio “Freedom”
Mr. Goga TEVDORASHVILI, Media Palitra
Ms. Nestan TSETSKHLADZE, Netgazeti

Meeting with the representatives of the Prime Minister’s Administration:

Ms. Maia TSKITISHVILI, Head of Administration
Ms. Sopho JAPARIDZE, Prime Minister's Assistant on Human Rights Protection and
Gender Equality Issues
Ms. Natalia JALIASHVILI, Head of Human Rights' Secretariat of Government
Administration