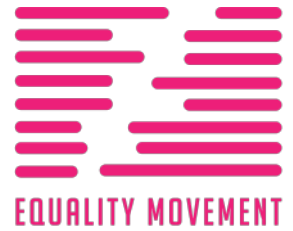




Partnership
for Human Rights



GRASS
REFORMANDA



ISFED
INTERNATIONAL SOCIETY FOR
FAIR ELECTIONS AND DEMOCRACY

Impact Assessment

of the Civic Platform “No To Phobia” on the Georgian law on protecting family values and minors

October, 2024

Contact: *Georgian Democracy Initiative*

Address: *Ilia Chavchavadze Avenue, 2nd Lane, N4-8, 2nd floor, Apt 6, Tbilisi Georgia*

Tel: +995 32 2 72 80 08

E-mail: *info@gdi.ge*

The document was prepared within the USAID Unity Through Diversity Program, implemented by the UNA Georgia with the financial support of the United States Agency for International Development (USAID). The views and opinions expressed in this report are those of the submitting organizations and do not necessarily reflect the views or positions of the USAID and UNA Georgia.



SUBMITTING ORGANIZATIONS:

- Georgian Democracy Initiative (GDI)
- Media Development Foundation (MDF)
- Partnership for Human Rights (PHR)
- Human Rights Center (HRC)
- Rights Georgia
- Tolerance and Diversity Institute (TDI)
- Georgia's Reforms Associates (GRASS)
- Equality Movement
- Tbilisi Pride
- International Society for Fair Elections and Society (ISFED)

Contents

1. Background and the context	4
1. Substantive issues and amendments in 18 different statutes	6
2. Alleged violation of Human Rights	10
2.1. Alleged violation of Right to Private and family life and Right to Equality	10
2.1.1. Legal Denial of same-sex Couples	10
2.1.2. Prohibition of adoption and/or foster care of a minor	11
2.1.3. Prohibition of any medical intervention aimed at changing sex	12
2.1.4. Prohibition of Legal Gender Recognition	12
2.2. Alleged violation of freedom of expression and freedom of assembly	13
2.2.1. Discouraging the use of gender-neutral terms	13
2.2.2. Prohibition of LGBTQ content in broadcasting	14
2.3. Alleged violation of the Right to education and the Convention on the Rights of the Child	20
2.3.1. Prohibition of LGBTQ Content in Education	20
3. Alleged violation of the principle Legal Certainty	20
3.1. Nullification of Gender-Ignoring References	20
4. Disproportionality of the fines	21
5. Comparative perspective	22
5.1. Russia, Hungary	22
5.1.1. Decision of the ECHR on the case of “Bayev and others v. Russia”	22
6. Conclusion	23

1. Background and the context

In May 2023, discussions commenced among the Members of the Parliament regarding the potential prohibition of "LGBTQ propaganda." On May 3, Pridon Injia, a deputy from the political party "European Socialists," emphasized the importance of adopting a law to ban LGBTQ propaganda.¹ However, Mamuka Mdinardze, the leader of the ruling party, asserted that such a law would be legally incorrect and, consequently, they would not entertain its adoption.²

A year after expressing the above-mentioned statements, in February 2024, during the briefing, Mamuka Mdinardze emphasized that the ruling party was planning to initiate the law against the pseudo-liberal ideology, which would have the same content as "fighting against propaganda".³ As a result, on March 24, 2024, the ruling party initiated the constitutional law on protecting family values and minors.⁴ The draft constitutional law was registered on 3 April. The law consists of two main articles. The first one refers to the various substantive issues discussed below. The second one sets forth the entry into force of the draft Constitutional Law upon publication.⁵

Given that the discussion pertains to the constitutional changes, the ruling party is obliged to hold consultation meetings with the population. The first meeting was held on 22 April in Kutaisi.⁶ Following this, meetings were held in Ambrolauri, Ozurgeti, Batumi, Zugdidi, and Mestia.⁷ All the meetings held in regions were saturated with sexist and homophobic statements.⁸ In several regions, homophobic statements and opinions were sounded by both the participants and the representatives of the ruling party. It is also noteworthy that during each meeting, the same questions with almost the same wording were asked by the participants, which creates the sense that the participants were "trained" by the representatives of the ruling party in advance.

In this context, it is essential to note that homophobic statements were made not only at the local level but also during international conferences. In particular, on 25 April, The Prime-Minister of Georgia, Irakli Kobakhidze participated in the Conservative Political Action Conference (CPAC), which was

¹ In GD's satellite groups, they actively started talking about the issue of banning "LGBT propaganda". Available [here](#)

² The adoption of such a bill is not considered in the GD - Mdinardze on banning "LGBT propaganda". Available [here](#)

³ Mdinardze: We will prepare a bill that will protect society from pseudo-liberal ideology. Available [here](#)

⁴ GD Pushes for Anti-LGBT Constitutional Law. Available [here](#)

⁵ The draft constitutional law. Available [here](#)

⁶ Constitutional discussions are taking place in the background of homophobic statements. Available [here](#)

⁷ Meeting in Ambrolauri and Ozurgeti. Available [here](#). Meeting in Batumi. Available [here](#). Meeting in Zugdidi. Available [here](#). Meeting in Mestia. Available [here](#).

⁸ Statements made during the meetings in various regions. Available [here](#)

held in Budapest, Hungary. Kobakhidze stated that *“the number of LGBTQ people in the US has tripled in the past seven years.”*⁹

On 4 June, Shalva Papuashvili, the Chairman of the Parliament of Georgia, introduced a bill aimed at protecting minorities and family values, under the same name as the draft constitutional law.¹⁰ The introduction of a bill, rather than a constitutional amendment, is likely due to the ruling party, "Georgian Dream," lacking the constitutional majority of at least 113 MPs in parliament. The bill was registered without any constitutional amendments, however, it is a copy-paste of the initially planned constitutional changes. The introduced bill covers various aspects including marriage, child adoption, sex change surgeries, and the indication of gender in state-issued documents.¹¹ It also addresses what is termed as "prohibition of propaganda" in the educational sector, the dissemination of information, public gatherings and demonstrations, and labor rights. The proposed legislation seeks to amend 18 different statutes, establishing a unique legal status and regime specifically concerning LGBTQ individuals.

On June 20, four committees, the Human Rights and Civil Integration Committee, the Education, Science, and Youth Affairs Committee, the Sector Economy and Economic Policy Committee, and the Health Care and Social Issues Committee held a joint session to review the draft law “on Family Values and the Protection of Minors” and the associated package of bills during its first reading.¹² During the session, discriminatory statements were made by the committee members. All four Committees unanimously supported the submission of the legislative package for the first reading at the plenary session. The proposed draft law was reviewed by the Legal Issues Committee, which supported the law and legislative package.¹³ It is noteworthy that on 2 September, the Legal Issues Committee also discussed and approved the draft Law for the second reading.¹⁴ The law was adopted on the final third reading on September 17 with 84 votes in favor and 0 votes against.¹⁵ It is vital that on 2 October, the president of Georgia, Salome Zourabichvili, refused to sign the bill.¹⁶ However, on 3 October, the law was signed by Shalva Papuashvili, the

⁹ "The so-called Liberals put the identity of nations at risk" - Kobakhidze in Hungary. Available [here](#)

¹⁰ "Georgian Dream" initiates a new bill restricting LGBT rights. Available [here](#)

¹¹ The Parliament is setting about the Committee considerations of the legal package on the Protection of Family Values and Minors. Available [here](#)

¹² Joint Session of the Human Rights and Civil Integration Committee, the Education, Science, and Youth Affairs Committee, the Sector Economy and Economic Policy Committee, and the Health Care and Social Issues Committee. Available [here](#)

¹³ Four Committees Jointly Discussing Draft Law on Family Values and the Protection of Minors. Available [here](#)

¹⁴ The Legal Issues Committee discussed the legal package on the Protection of Family Values and Minors for the II reading. Available [here](#)

¹⁵ Parliament adopts Anti-LGBT Law legislation in third hearing. Available [here](#)

¹⁶ The president did not sign the propagandistic and homophobic law. Available [here](#)

Chairman of the Parliament.¹⁷ According to Article 14 of the law, the law will finally enter into force on the 60th day after the publication of the law.

It is important to note that it is not the first time when the Georgian Dream instrumentalized LGBTQ individuals during the pre-election period. In 2016, it was actively pushing the agenda to amend the constitution and define marriage as “*a union of a woman and a man for the purpose of founding a family.*” After gaining a majority in the parliament, the Georgian Dream adopted the constitutional amendments and among other issues redefined the provision on marriage.

1. Substantive issues and amendments in 18 different statutes

The law defines terms such as "woman," "man," and "biological sex," explicitly excluding recognition of any other genders. Additionally, the law defines the term such as “promotion” as the relevant information or actions covered by this law are considered to promote a person's identification with a biological sex and/or gender different from their own biological sex, or to promote relationships expressed as sexual orientation or incest between individuals of the same biological sex, if, in the opinion of an objective observer, the information or actions suggest that a person belongs to no biological gender and/or identifies with a gender different from their biological sex, or if relationships between individuals of the same biological sex, expressed through sexual orientation or incest, are presented positively or as exemplary. Moreover, while evaluating whether the information or actions are promotions, the content, form, and type of the information or actions should be taken into account, along with the form, method, time, and space of their dissemination or implementation, the circumstances under which they were shared or implemented, and the audience to whom this information or action was addressed.

Furthermore, it is noteworthy that after the second reading, the legislator changed the definition of “marriage” and concretized that “*marriage is a voluntary union between a man and a woman for the purpose of creating a family, in accordance with the requirements established by the legislation of Georgia. A union between individuals of the same biological sex cannot be registered or recognized as a marriage by any legal act. Any such union, registered or recognized as a marriage abroad, has no legal force in Georgia.*” Moreover, “*The registration or legal recognition of any alternative form of union as marriage is not allowed.*”

¹⁷ Speaker Papuashvili signs Anti-LGBT bill into law. Available [here](#)

Such unions, even if registered or recognized abroad, have no legal force in Georgia.”

Key amendments outlined in the bill affect several legislative acts:

1. **Civil Code of Georgia (Article 1106)** – As the bill provides a new definition of “marriage” and does not accept any other “non-traditional partnerships”, the changes are foreseen in the Civil Code of Georgia, where the definition of “marriage” will be provided according to the proposed bill. Particularly, the new definition of “marriage” clarifies that man and woman as *“two people with different biological sex”*. Furthermore, the proposed law directly states that *“It is not allowed to register or acknowledge a legal relationship based on a sexual orientation between individuals, where at least one person identifies with a gender different from their biological sex or their sexual orientation is not heterosexual.”*
2. **Law of Georgia on Adoption and Foster Care (Articles 4.5 and 4.6)** – the proposed bill prohibits LGBTQ individuals from adopting a child and taking foster care of them. Subsequently, the same changes are planned in the Law on Adoption and Foster Care, which prohibits child adoption and foster care for the individual who *“self-assigns to a gender different from his biological sex or their sexual orientation does not belong to the category of heterosexuality”*.
3. **Law of Georgia on Health Care (Article 14¹)**– the bill and changes in the law on Health Care will prohibit individuals from undergoing any surgery or medical manipulation that aims to change the initial biological sex.
4. **Law of Georgia on Civil Status Acts (Article 6¹)** – the proposed law and the amendments in the law on Civil Status Acts prohibit *“recording a person's gender different from their biological sex in the civil registry record and/or on the civil registry certificate”*. Moreover, the new articles will prohibit registering any civil act, which will contradict the definition of marriage determined in Georgian legislation (the bill and Civil Code of Georgia) and/or will record any act recognizing any kind of other partnership or alternative marriages (Article 54¹).
5. **Organic Law of Georgia on Georgian Citizenship (Article 1²)**, which prohibits the reference to a gender different from the biological sex in any document.

Additionally, the proposed legislation prohibits providing any kind of information in the educational sphere that is directed to promote identifying a person as a gender different from their biological sex, a relationship indicated

by a sign of sexual orientation, relationships between individuals of the same biological sex or incest. Subsequently, the legislative changes are foreseen in the following legislations:

6. **Law of Georgia on Early and Preschool Education (Article 1.7)**
7. **Law of Georgia on General Education (Article 8¹)**
8. **Law of Georgia on Vocational Education and Training (Article 4¹)**
9. **Law of Georgia on Higher Education (Article 3¹)**
10. **Law of Georgia the Code on the Rights of the Child (Article 1(p))** – the foreseen changes define the term “the information considered as dangerous for the child” as “*the information aimed at inciting violence or crime, sexual content, promotion of a person belonging to a gender different from his biological sex, a relationship expressed as a sign of sexual orientation between representatives of the same biological sex or incest, as well as information that involves the use of alcoholic beverages, tobacco, narcotic drugs, gambling or details scenes of violence, murder or cruel, inhumane treatment*”.
11. **Law of Georgia on Broadcasting (Article 16(i¹))** – the prescribed changes does not allow broadcasters to spread information regarding the genders different from biological sex, the relationship between same-sex individuals, or the popularization of incest. This prohibition refers to the creative work as well, particularly the scenes which represent intimate relationship between same-sex couple or incest (Article 59²). Additionally, Article 63(2¹⁰) refers that the broadcasters are prohibited from publishing advertisements which represent individuals with genders different from their biological sex.
12. As the proposed legislation refers to restricting publishing the advertisements representing the aforementioned content, the similar changes are foreseen in the **Law of Georgia on Advertising (Article 1 (13¹))** as well.
13. **Law of Georgia on Freedom of Speech and Expression (Article 9 (b¹))** – the prescribed changes refer to regulation of the content of speech and expression which may be established by law, if it concerns the information regulated by the proposed bill.
14. The proposed bill regulates the content of assemblies and demonstrations, the changes are intended in the **Law of Georgia on Assemblies and Demonstrations** as well. Particularly, Article 9 (6) prohibits holding the manifestation promoting the relationships between same-sex persons, individuals with a gender different from their biological sex or incest. Moreover, Article 13 (8) permits Law

enforcement agencies to use special measures prescribed by law, if the demonstration will not terminate within 15 minutes of the warning. Furthermore, based on the Article 14 the executive body of the municipality is permitted not to allow the manifestation, if the police have the obvious information that the manifestation will be directed to popularization of the same-sex relationships, individuals with genders different from their biological sex and incest.

15. **Labour Code of Georgia (Article 14¹)** – According to new amendments the reference toward an employee which is directed towards ignoring biological sex or promotes ignoring them, is null and void. Additionally, according to the proposed law, May 17th will be declared as a holiday to honor the sanctity of the family and respect for parents.
16. **The same changes are foreseen in the Law on Public Service (Articles 4(5), 9¹, 80(3), 84(2), 84¹(7), 126¹(2))** too.
17. As the Article 12 of the proposed bill states that the **responsibility** will be prescribed by the Georgian legislation, legislative modifications are scheduled in the **Administrative Offences Code of Georgia** as well. Particularly, the following actions are considered as administrative offenses:
 - The spread of advertisement containing and promoting information regarding same-sex relationships, individuals with a gender different from their biological sex, or incest. An individual will be fined 800 GEL (approximately 270 Euro) for this offense, while a legal entity will face a fine of 2500 GEL (830 Euro).
 - Providing minors with information containing the same content as mentioned above results in a fine of 1,000 GEL (approximately 300 Euro) for individuals, and 3,000 GEL (approximately 1,000 Euro) for legal entities.
 - Entering information containing the same content into educational programs will result in a fine of 1,500 GEL (500 Euro) for individuals and 4,000 GEL (1,300 Euro) for legal entities.

The cases will be discussed by various administrative bodies depending on the content of the administrative offense.

18. **The Criminal Code of Georgia (Article 176¹)** – The foreseen amendments aim to punish individuals based on the criminal code, if they conduct the same administrative offenses twice. The punishment includes a fine, deprivation of the right to hold office or engage in activities for up to three years, or imprisonment for up to two years. Additionally, individuals performing surgeries to change biological sex or other

medical manipulations may face a fine, be deprived of the right to hold office or engage in activities for up to three years, or imprisonment for up to four years.

It is noteworthy, that on 25 June, the Venice Commission published its opinion on the draft constitutional law “on Protecting Family Values and Minors”. It is crucial that as the draft constitutional law has the same content as the bill, the opinion of the Venice Commission is relevant in this regard. The Venice Commission regretted that the legislative initiative was “*touching upon highly sensitive issues launched in a period of time characterized by vigorous and prolonged mass protests and strong political and societal tensions, all the more so in circumstances where this is happening only a matter of months before the elections, disregarding the concerns raised by several international observers*”. They recommended conducting a deep analysis regarding the impacts of the law on all segments of society, especially the representatives of various sexual and gender minorities. Additionally, the commission stated that the proposed law carries the risk of creating a “*hostile and stigmatizing atmosphere against LGBTQI people in Georgia*”. Therefore, the commission recommended to “*reconsider this legislative proposal entirely and to not proceed with its adoption.*”¹⁸

2. Alleged violation of Human Rights

2.1. Alleged violation of Right to Private and family life and Right to Equality

2.1.1. Legal Denial of same-sex Couples

The right to private and Family life, privacy, and correspondence is guaranteed under Article 15 of the Constitution of Georgia (hereafter “Constitution”) and under Article 8 of the European Convention of Human Rights (hereafter “Convention”). The case law of both the Constitutional Court of Georgia and the European Court of Human Rights (hereafter “ECHR”) underscores its importance in a democratic society and the state’s negative and positive obligations.

It is noteworthy that the Constitutional Court of Georgia has not yet discussed addressing issues related to the recognition of same-sex couples and their marriage. However, under the case law of the ECHR, while the institution of marriage has undergone significant social changes since the adoption of the Convention, it does not obligate the States to grant a same-sex couple access to marriage. Instead, it provides a margin of appreciation to member states to

¹⁸ Venice Commission, CDL-AD(2024)021, Opinion On The Draft Constitutional Law On Protecting Family Values And Minors.

decide this issue themselves within their contexts.¹⁹ On the other hand, ECHR establishes the positive obligations for member states to provide legal recognition for same-sex couples,²⁰ ensuring adequate recognition and protection of their relationship.²¹

The Georgian legal system currently only recognizes marriage as defined by Georgian legislation. Notably, under the Constitution of Georgia, based on the 2017 constitutional amendments, “*Marriage is a union of a woman and a man for the purpose of founding a family, which shall be based on the equality of rights and the free will of spouses*”. Moreover, the Civil Code of Georgia defines marriage as a voluntary union of a woman and a man for the purpose of creating a family, which is registered with a territorial office of the Legal Entity under Public Law (LEPL) – Public Service Development Agency operating within the governance of the Ministry of Justice of Georgia (‘a territorial office of the Agency’). Therefore, Georgian legislation does not leave space for recognizing civil unions or partnerships of same-sex or unmarried couples. It is crucial that, on the other hand, under the proposed draft legislation, marriage will be defined solely as a union between “genetically male” and “genetically female” individuals. Hence, the proposed amendments restrict the existence of same-sex or unmarried relationships, which is inconsistent with the right to private and family life.

Furthermore, the exclusion of same-sex couples from the legal system also violates the right to equality (Article 11 of the Constitution and Article 14 of the Convention), as the differential treatment compared to different-sex couples constitutes unjustified discrimination.²² It is crucial to note that such regulations are based solely on considerations of sexual orientation, which is not aligned with the Convention.²³

2.1.2. Prohibition of adoption and/or foster care of a minor

Under the proposed bill, adoption and/or foster care of a minor are for married couples or single heterosexual individuals. Consequently, unmarried couples or LGBTQ individuals are not allowed to adopt or foster children. According to the case law of the ECHR, if the state grants the right to individuals to adopt or foster children, it falls within the scope of Article 14 of the Convention. This means that the individuals should not be differentiated on any ground.

¹⁹ ECHR, *Schalk and Kopf v. Austria*, 24 June 2010, application no. 30141/04, paras. 61-63; ECHR, *Chapin and Charpentier v. France*, 9 June 2016, application no. 40183/07, para. 48.

²⁰ ECHR, *Oliari and Others v. Italy*, 21 July 2015, application nos. 18766/11 and 36030/11, para. 177.

²¹ ECHR, *Fedotova and Others v. Russia* ([GC], 17 January 2023, application nos. 40792/10, 30538/14 and 43439/14, paras. 165, 178.

²² ECHR, *Maymulakhin and Markiv v. Ukraine*, 1 June 2023, application no. 75135/14, para. 80.

²³ ECHR, *Macatè v. Lithuania* [GC], 23 January 2023, application no. 61435/19, para. 209; and *Maymulakhin and Markin v. Ukraine*, *op. cit.*, para. 62.

Under the proposed amendments, the individuals are prohibited to adopt or foster care children solely on the grounds of their sexual orientation, which violates Article 14 of the Convention. Accordingly, the Venice Commission also mentioned that such provisions are contrary to European standards.²⁴

2.1.3. Prohibition of any medical intervention aimed at changing sex

According to the proposed bill, any surgery or medical manipulation that seeks to change the initial biological sex is prohibited. Under Georgian legislation, such medical intervention is neither banned nor explicitly regulated. Therefore, they are regulated under other medical interventions and surgeries.

Venice Commission underlined the opinion on Hungarian Constitutional amendments regarding the same issues, namely that individuals have a "right to a self-identity" based not only on their "sex at birth" but also on their "gender."²⁵ According to the ECHR case law, gender identity is one of the components of personal identity, which falls under the scope of Article 8 of the Convention.²⁶ Such right is recognized under the case law of the European Court of Justice of the European Union (CJEU).²⁷

The absolute prohibition of medical intervention aimed at changing sex hinders individuals' opportunity to self-identify, which creates a reality where the private life and true identity of the individuals are not recognized.²⁸ Therefore, the absolute prohibition of medical interventions aimed at changing sex is not in accordance with the right to respect private life.

2.1.4. Prohibition of Legal Gender Recognition

The planned amendments aim to indicate genetic data in the documents that are in accordance with the biological sex of individuals; therefore, under the proposed changes, LGBTQ individuals, even the ones who have taken medical interventions, will not be legally recognized. Under the ECHR case law, the scope of Article 8 of the Convention indicates a positive obligation for the States to give legal recognition of gender transition, both for people who have undergone gender reassignment surgery and those who do not wish to undergo such surgery.²⁹

²⁴ Venice Commission, CDL-AD(2024)021, Opinion On The Draft Constitutional Law On Protecting Family Values And Minors, para.40.

²⁵ Venice Commission, CDL-AD(2021)029, On The Constitutional Amendments Adopted By The Hungarian Parliament In December 2020, para.36.

²⁶ ECHR, *Garçon and Nicot v. France*, 6 April 2017, application nos. 79885/12, 52471/13 and 52596/13, paras. 95-96.

²⁷ European Court of Justice (ECJ), *P v S and Cornwall County Council*, 30 April 1996.

²⁸ ECHR, *L. v. Lithuania*, 11 September 2007, application no. 27527/03, para. 56-57.

²⁹ ECHR, *Hämäläinen v. Finland [GC]*, 16 July 2014, application no. 37359/09, para. 68.

It is noteworthy that in the case of *A.D. v. Georgia* ECHR already discussed regarding the legal recognition of individuals with the gender different from their biological sex in the context of Georgia. The Court assessed whether the issue at hand involves interference with rights or a state's positive obligation under Article 8 of the Convention, focusing on the legal framework for transgender individuals to change their sex/gender markers in civil-status records. It concluded that the case should be examined as a matter of the State's positive obligations. The Court noted that while states have a margin of appreciation in implementing these obligations, this margin is narrower when crucial aspects of personal identity are involved.

Additionally, the Court criticized the lack of clarity in Georgia's legal framework concerning the process for legal gender recognition. Despite legal provisions allowing for the change of sex markers, the absence of detailed procedural guidelines and medical requirements has led to inconsistent and arbitrary application. This lack of clarity and the resulting practical difficulties violate the requirement for quick, transparent, and accessible procedures for legal gender recognition, leading to a breach of Article 8 of the Convention.

The fact that the planned amendments exclude LGBTQ individuals from legal recognition by comprehensively prohibiting recording genetic data in the documents rather than the biological one means that the state does not even recognize their existence with the identity they have, which, among other things, entirely hinders their ability to participate in civil life under their real identity. Hence, the planned amendments are violating Article 8 of the Convention.

2.2. Alleged violation of freedom of expression and freedom of assembly

2.2.1. Discouraging the use of gender-neutral terms

Freedom of expression is guaranteed under Article 10 of the Convention and Article 17 of the Constitution. Under the planned amendments, the use of gender-neutral terms will be restricted. According to the Venice Commission, based on its communication with the law's authors, such “*provisions intend to prevent the adoption of guidelines, instructions, or more generally policies aiming at encouraging the use of a gender-neutral or gender-inclusive language.*”³⁰ Additionally, it refers to public authorities and private persons, presumably both natural persons and enterprises.

ECHR, *A.D. and Others v. Georgia*, 1 December 2022, applications nos. 57864/17, 79087/17 and 55353/19
ECHR, *X and Y v. Romania*, 19 January 2021, applications nos. 2145/16 and 20607/16.

³⁰ *Supra* 12, para.59

The amendments refer to the linguistic words not guaranteed under the Convention.³¹ However, the aim of the legislative changes is to restrict gender-neutral language by private individuals as well. Such provisions interfere with the scope of Article 10. According to ECHR, for the assessment of the violation of Article 10, it is crucial to analyze the legitimate aim of the provision and its necessity and proportionality in a democratic society. According to the Venice Commission's opinion, the legitimate objective of the provision is ambiguous; therefore, *“it is tough to see in what way such provision could be necessary for a democratic society.”*³² Moreover, such interference in using terms creates a “chilling effect” for the individuals to express their thoughts, beliefs, and opinions or spread the information. In other words, after the legal enforcement of the proposed amendments, individuals will have to think a lot about the terms they use and how they express their inner thoughts. Hence, it is highly questionable whether such provisions are in accordance with Article 10 of the Convention.

2.2.2. Prohibition of LGBTQ content in broadcasting

2.2.2.1. *Alleged violation of freedom of expression*

As mentioned above, Article 10 refers to the right to receive and impart information and ideas without interference by public authorities, regardless of frontiers. Like ECHR, the Constitutional Court of Georgia underlined that freedom of expression “includes not only those opinions or expressions that are acceptable to all, are positively perceived, considered likable to the taste and opinions of the society in its entirety or even to a large part of it and are not considered controversial, but includes ideas, thoughts or expressions that are unacceptable to the government, to a part of the society or individuals, are shocking, can infuriate society, individuals, could even possibly offend them, cause a public outcry, it also includes criticism and sarcasm.”³³ This provision and its interpretations do not mean this right has absolute characteristics. Consequently, the restrictions can be made. However, it should be prescribed by law, pursue legitimate aims, and be necessary in a democratic society.

The proposed amendments cover all productions, programs, and materials such as books, newspapers, magazines, leaflets, radio and television programs, blogs or online pages, songs, works of art, films, documentaries, performances, etc. Moreover, the terms “promoting” and “popularizing” in the proposed provisions are unclear and ambiguous.

³¹ ECHR, *Igors Dmitrijevs v. Latvia*, 30 November 2006, application no. 61638/00, para. 85

³² *Supra* 12, para.64

³³ *Ibid*, para.40

As a similar law is enforced in Russia and Hungary as well, the Venice Commission has already discussed the meaning of “propaganda of homosexuality.” As they noted, the term “covers any information or opinion in favor of same-sex family or intimate relationships, any attempt to change the hostile attitude of a part of the population towards LGBTI people, any attempt to counterbalance the sometimes deeply rooted prejudices, by disseminating unbiased and information of LGBTI issues. These provisions seem instead to have a blanket nature”.³⁴ Therefore, as the provisions are too ambiguous and unclear, they are incompatible with international standards.

According to the explanatory note of the law, the legitimate aim of the law is to protect family values and minors. The Venice Commission underlined that the legitimate objective is too broad, and it is very unclear which aspect of the regulations protects family values and minors. It is noteworthy that ECHR already discussed such kind of regulations regarding Russia, where the court underlined that “there is no reason to consider that the preservation of family values as the foundation of society and the recognition of the social acceptability of homosexuality are incompatible, particularly in view of the growing general tendency to include relationships between same-sex couples within the concept of “family life.” The ECtHR also held that negative social attitudes, references to traditions, or general assumptions in a particular country could not be regarded as sufficient justification for the difference in treatment, any more than similar negative attitudes towards persons of a different race, origin or color”.³⁵ As the planned legislative changes are similar to Russian anti-LGBTQ law, it is clear that the regulations will reinforce stigma and prejudice, resulting in encouraging homophobia, which contradicts the rule of law and democratic society principles. It is crucial that the Human Rights Committee adopted its views expressing that such regulations marginalize and stigmatize LGBTQ individuals.³⁶

With regards to freedom of expression, as this properly guarantees to express as well as receiving information, within its scope falls the interest of minors to get relevant and appropriate information about sexuality, including homosexuality.³⁷ However, it is the states' discretion to ensure that information is provided to children, at what age, and with the support of which materials. It is also noteworthy that such regulation violates not only the children's right to receive information but also the rights of other individuals who want to receive information or express their opinions. Such kind of

³⁴ Supra 12, para.73.

³⁵ Supra 12, para. 79.

³⁶ Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2318/2013, 23 August 2018.

³⁷ Venice Commission, CDL-AD(2013)022, op. cit., paras. 60-65. See also, Venice Commission, CDL-AD(2021)050, op. cit., paras. 59-61.

restrictions must cause a chilling effect, stigmatizing LGBTQ individuals and encouraging homophobia.

Furthermore, it is noteworthy that such regulations risk the activities of NGOs, not only those working on LGBTQ rights but also the ones working in the direction of Sexual and Reproductive Health and Rights (SRHR). Some of their activities include age-appropriate non-formal education for children to raise awareness regarding SRHR. Since the children cannot get formal education regarding SRHR at school, NGOs were the only source of education and awareness-raising among students. Adopting the law also removes the opportunity for children to get age-appropriate information not only regarding SRHR but also sexual violence from nonformal educational sources.

2.2.2.2. Alleged violation of Freedom of Media

The proposed bill to amend the Law of Georgia on Broadcasting introduces significant restrictions on disseminating certain types of content. Specifically, broadcasters would be prohibited from airing information about genders different from biological sex, relationships between same-sex individuals, and the promotion of incest. These prohibitions extend to visual content representing intimate relationships between same-sex couples or incest, as well as advertisements featuring individuals whose gender differs from their biological sex.

According to the Law of Georgia on Broadcasting, the Georgian National Communication Commission (GNCC) is the responsible authority to respond to cases of violation of the aforementioned proposed provisions, which is concerning as the GNCC has consistently expanded its authority to scrutinize media content and enforce broadcasting regulations. Given its growing mandate and recent history of enforcement, such broad authority raises significant concerns about media freedom and independence.

First, the proposed provisions restrict freedom of expression and limit the diversity of viewpoints in Georgian media, particularly on sensitive social issues such as gender identity and sexual orientation. By banning certain types of content, the law could stifle open discussions and impede the representation of marginalized communities. This can harm media independence, forcing broadcasters to operate under strict, politically or ideologically driven content prohibitions and lead to a chilling effect on media outlets.

Second, granting the GNCC broad authority to analyze the content of aired programs could lead to overreach and potential abuse of power especially given long-standing concerns about the commission's impartiality and its close relationship to the Georgian government stated by international and national organizations. Therefore, under the proposed bill, media outlets, especially

those critical of the government, may face heightened scrutiny, resulting in self-censorship to avoid penalties or sanctions. Additionally, the GNCC's ability to determine what constitutes a violation of these provisions may be influenced by subjective interpretations, further limiting media freedom. Expanding the commission's power to monitor and penalize content creates an environment where media independence is compromised, and the free flow of information is endangered. This trend of increasing state control over media content risks undermining democratic principles and media pluralism in Georgia.

Therefore, the bill not only threatens the rights of media outlets but also risks giving too much power to the GNCC, which will weaken democratic values by restricting freedom of expression and reducing the variety of perspectives in the media.

2.2.2.3. *Alleged violation of Freedom of Assembly*

According to Article 21.1 of the Constitution of Georgia, “everyone, except those enlisted in the Defence Forces or bodies responsible for state and public security, shall have the right to assemble publicly and unarmed, without prior permission.” According to the Constitutional Court of Georgia, freedom of assembly is a particular form of expression that consists of the two equal elements: “assembly and manifestation as a form of expression of an opinion (formal side of the freedom of assembly) and a specific idea that an assembly or manifestation aims to express”.³⁸ This fundamental right allows an individual “to express his/her feelings and views (political, social, artistic, religious, etc). Assembly and manifestation can be an integral part of a political activity, serve expression of an opinion and receive and disseminate information, etc”.³⁹ Consequently, an interrelationship between freedom of assembly and expression and their fundamental role in the development of a democratic society and its individual members, its role in the freedom of discussion and exchange of opinions, in the participation in public processes and public administration or government accountability is evident.

Nevertheless, freedom of assembly is not an absolute right and may be restricted on the same grounds as freedom of expression.⁴⁰ This does not mean that interference in the freedom of assembly is permissible because the opinion expressed during a manifestation is unacceptable to a significant

³⁸ Decision of the Constitutional Court of Georgia N2/482,483,487,502, April 18 2011, on the case of Citizens 'Political Union "Movement for United Georgia", Citizens' Political Union "Georgian Conservative Party", Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens Dachi Tsaguria and Jishkariani, Public Defender of Georgia v. Parliament of Georgia ", para.II-4.

³⁹ Ibid.

⁴⁰ Ibid para.5

portion or the majority of the public. Namely, according to the Constitutional Court, *“in a democratic society, people have an obligation to tolerate opinions that they do not share or may even consider morally unjustified”*⁴¹ and *“in general, the state cannot restrict freedom of information because certain information or ideas may be emotionally irritating or encourage unacceptable behavior.”*⁴² Additionally, *“the state does not have the authority to divide opinions into the categories such as ‘right’ or ‘wrong’, ‘desirable’ or ‘undesirable’ and others.”*⁴³

The above-mentioned standard of the Constitutional Court is significantly in line with the approach of the ECHR, namely according to Article 11.1 of the Convention: *“Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”*⁴⁴ In interpreting this provision, the ECHR emphasizes the notions of pluralism, tolerance, and openness as the cornerstones of democracy and clarifies that democracy does not mean always prioritizing the majority's views.⁴⁵ It is the state that has an obligation to protect pluralism and tolerance.⁴⁶ Therefore, according to the ECHR, *“A peaceful demonstration may annoy or offend people opposed to the ideas or claims it seeks to promote. The participants must, however, be able, with the State’s assistance, to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community”*⁴⁷ and *“in a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.”*⁴⁸ According to the ECHR, freedom of assembly would be merely an illusory, inexistent guarantee if the state’s obligation were limited to its negative obligation to not intervene in the (exercise of) freedom of assembly.⁴⁹ Consequently, if necessary, the state has a positive obligation to carry out necessary measures in the sphere of relations between private parties as well, especially when it comes to the expression of unpopular beliefs and the representatives of minorities. In this regard, Article 14 of the European Convention should be taken into account: *“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language,*

⁴¹ Constitutional Court of Georgia, Citizens of Georgia - Giorgi Kipiani and Avtandil Ungiadze v. Parliament of Georgia, November 10 2009, N1/3/421,422, para.II-7.

⁴² Ibid.

⁴³ Constitutional Court of Georgia, Citizen of Georgia Yuri Vazagashvili v. Parliament of Georgia, September 30 2016, 1/6/561,568, para.II-41.

⁴⁴ ECHR, Identoba and others v. Georgia, May 12, 2015, Application no. 73235/12, para.93

⁴⁵ Ibid. para.94

⁴⁶ Ibid. para.95

⁴⁷ Ibid.

⁴⁸ Ibid, para.94

⁴⁹ Ibid.

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” In the ECHR decision against Georgia regarding the events of May 17th, 2012, the ECHR found that Georgia breached Article 3 as well as Article 11 in conjunction with Article 14 of the Convention.⁵⁰ In that decision, Georgia failed to ensure that the applicants, as supporters of the LGBTQI+ community, could conduct a peaceful march commemorating the day against homophobia and failed to protect them from an aggressive counter-demonstration despite knowing in advance about the dangers stemming from the prevailing homophobic environment.⁵¹ Therefore, according to the Court, the State failed to ensure the enjoyment of the freedom of assembly by the applicants without being discriminated against on the grounds of sexual orientation and gender identity. Accordingly, Articles 11 and 14 of the European Convention were violated.⁵²

In this regard, the proposed bill prohibits gatherings aiming to popularise single-sex family or intimate relationships, incest, adoption or foster care of a minor by same-sex family or non-heterosexual person, changing sex by medical intervention, or non-use of concepts defined by sex. As mentioned above, ECHR has already discussed cases against the Georgian government, particularly in the case of “*Identoba v Georgia*” ECHR interpreted that the Convention protects the expression of views regarding raising awareness about and advocacy of the rights of sexual minorities, including through a peaceful assembly.⁵³

ECHR discussed whether the gatherings, which have content that contradicts some people's opinions and insights fall under the scope of Article 11 of the Convention. ECHR discussed and concluded in various cases that even though content regarding same-sex relationships, medical intervention, etc., can be against some people's views, it falls under the scope of Article 11 of the Convention.

2.3. Alleged violation of the Right to education and the Convention on the Rights of the Child

2.3.1. Prohibition of LGBTQ Content in Education

According to the draft law in any educational institution, it is prohibited to provide information that aims to popularize single-sex family or intimate relationship, incest, adoption or foster care of a minor by a same-sex family or

⁵⁰ Ibid, paras 92, 100.

⁵¹ Ibid, paras 97-100.

⁵² Ibid, para 100.

⁵³ Ibid, para 97

non-heterosexual person, changing sex by medical intervention or non-use of concepts defined by sex.

Venice Commission underlined a few times that comparing incest with homosexual relationships is not the correct position, as ECHR also discussed that incest and pedophilia are criminal offenses and should be regulated based on the Criminal Code.⁵⁴ The proposed law can create a sense among society that homosexual relationships are criminal offenses like incest, which will stigmatize LGBTQ individuals and encourage homophobia.

As regards the right to education, according to ECHR, the educational system should prepare children for social realities, which could justify the sexual education of very young children attending kindergarten or primary school.⁵⁵ Additionally, according to the Convention on the Rights of the Child, children have the right to receive age-appropriate information concerning sexuality in a non-discriminatory manner.⁵⁶

It is noteworthy that the existing Georgian state policy does not allow students to get information regarding SRHR due to the resistance of the majority of society and the orthodox church. Currently, the draft law will fully and categorically restrict pupils from receiving age-appropriate sex education and any information regarding sexuality, including homosexuality. Therefore, in the future, children will have no information regarding their sexual and reproductive rights. Such complete and blanket restriction is against the right to education and violates the Convention on the Rights of the Child.

3. Alleged violation of the principle Legal Certainty

3.1. Nullification of Gender-Ignoring References

According to the interpretations of the Constitutional Court of Georgia, ECHR, and the Venice Commission, it is crucial that norms, especially the ones restricting something and putting responsibilities on individuals, should be very clear and foreseeable. This principle means that the norms should not be ambiguous. Particularly, the Constitutional Court of Georgia stated, *"The norm should be clear and consistent with the requirements of definiteness. A person should be able to understand exactly what the legislator requires and adjust their behavior accordingly. When analyzing whether the contested norms comply with constitutional standards, the Constitutional Court must determine whether the vagueness of the norm has led to a violation of rights"*.⁵⁷

⁵⁴ Supra 12, para.90

⁵⁵ ECHR, A.R. and L.R. v. Switzerland, 19 December 2017, application no. 22338/15, para. 44.

⁵⁶ Supra 12, para.95

⁵⁷ Constitutional Court of Georgia, Maia Natadze and others v. Parliament of Georgia and President of Georgia, October 26, 2007 N2/2/389.

The draft law contains an article that aims to amend the Labour Code of Georgia. Based on the changes, the reference toward an employee, which is directed towards ignoring biological sex or promotes ignoring them, is null and void. It is crucial that it is very ambiguous what the “reference toward an employee” means, what it refers to, and what kind of duties and responsibilities it creates for employees and employers. The law itself does not define this term, making it impossible to understand the meaning of this norm. Therefore, the principle of foreseeability of the norms is violated.

4. Disproportionality of the fines

According to the case law of the Constitutional Court of Georgia, the fines prescribed by law should be proportional and reasonable, enabling the state to achieve its legitimate aims. Particularly, the court stated: *“When determining the sanction for a specific injustice, the legislator is obliged to act in accordance with the constitutional principle of proportionality. The sanction imposed by the legislative body should, on the one hand, effectively achieve a legitimate and valuable goal, and on the other hand, should not result in excessive or disproportionate interference with basic human rights.”*⁵⁸

Based on the planned amendments in the Administrative Offences Code of Georgia, the fines are prescribed for violating the law that protects family values and minors. Particularly, as mentioned above (Para.21), the fines vary from 800 GEL to 1500 GEL for individuals and from 2500 GEL to 4000 GEL for a legal entity. It is ambiguous what legitimate aim the prescribed fines serve.

Furthermore, the sanctions are prescribed under the amendments of the Criminal Code of Georgia as well. Based on the Article 176¹ the punishment includes a fine, deprivation of the right to hold office or engage in activities for up to three years, or imprisonment for up to two years. Additionally, individuals performing surgeries to change biological sex or other medical manipulations may face a fine, be deprived of the right to hold office or engage in activities for up to three years, or imprisonment for up to four years. Since the prohibitions and restrictions on rights established by law lack justification, the imposition of such harsh sanctions only worsens the situation, making it increasingly difficult for LGBT people to live in Georgia. On the other hand, the law will significantly restrict NGOs, academic institutions, media organizations and in general, civil society representatives from operating peacefully and conducting their activities, aiming to develop democratic society.

⁵⁸ Constitutional Court of Georgia, Georgian Young Lawyers Association and Ekaterine Lomtadidze v. Parliament of Georgia, December 26, 2007, N1/3/407.

5. Comparative perspective

5.1. Russia, Hungary

It is vital that such regulations are adopted in Russia and Hungary as well. Particularly, in 2010, Russia adopted a law on protecting minorities from the information which can be harmful for their health and development. The law among other things regulates spread of information regarding non-traditional sexual relations, as well as demonstrations, where the expressed views can desire a child for changing their biological sex.⁵⁹ In 2022 the new law was adopted in Russia, which was against 'LGBTQ-propaganda', Pedophilia and fully banning any intervention for changing ones biological sex. It is crucial that as a sanction for the violation of the law is prescribed administrative detention up to 15 days, as well as fines. It is also crucial that the draft law of Georgia has the identical content as the 2022 Russian law.

The law with the same content is adopted in Hungary as well, which was harshly criticized by the international community.⁶⁰

5.1.1. Decision of the ECHR on the case of "Bayev and others v. Russia"

After the adoption of the Russian Law, three Russians were fined based on the Code of Administrative Offences and the law on protecting minorities because they held a demonstration in front of the school expressing that "Homosexuality is normal" and "They are proud of their homosexuality". The demonstrators expressed their views and criticized the government for adopting such a law and restricting children from getting age-appropriate information.

The Applicants argued that there was a violation of Article 10 (Freedom of Speech) and Article 14 (Discrimination on the ground of sexual orientation).

The Court ruled that there was a violation of Article 10 (freedom of expression) and Article 14 (prohibition of discrimination) of the Convention.

The Court assessed the government's justifications for the interference: protection of morals, health, and the rights of others. It found:

1. Protection of Morals: The Court rejected this justification, noting that while traditional views in Russia may oppose same-sex relations, there is a growing European consensus on protecting individual rights regardless of sexual orientation. The Court emphasized that protecting

⁵⁹ Russian law on protection of children from information harmful to the health and development of the child, Article 5. Available [here](#)

⁶⁰ 15 EU countries, including Germany and France, join legal case against Hungary's anti-LGBT law. Available [here](#)

sexual minorities does not disrupt traditional family values and that minorities often uphold traditional family structures.

2. Protection of Health: The government claimed that promoting same-sex relationships threatened public health. The Court disagreed, finding that educating young people about same-sex relations was beneficial and provided them with the necessary information to protect themselves.
3. Protection of the Rights of Others: The government argued that the law aimed to protect minors from positive images of homosexuality, which could encourage them to adopt a homosexual lifestyle. The Court criticized the laws for being vague and overbroad, lacking specificity on what constituted "promotion," and not being limited to specific contexts. It also pointed out that existing laws against pornography already addressed concerns about protecting minors.

The Court concluded that the legal provisions did not advance any legitimate aim and thus violated the applicants' Article 10 rights. Additionally, the Court found a violation of Article 14 due to the legislation's inherent bias against the homosexual minority, noting that the government failed to provide convincing reasons for this discriminatory treatment. The Court ordered the government to pay fines and costs.

6. Conclusion

As the law consists of vague, unclear, and ambiguous terms and entirely and blanketly restricts any activity in relation to LGBTQ individuals, it violates the constitutional and conventional rights of the individuals. Furthermore, such restrictions stigmatize LGBTQ individuals and encourage homophobia. At the same time, such regulations will harm the other groups of society, including broadcasters, NGOs, and children, who will not be able to get age-appropriate information, which would defend them from violence and would be orientated on their reproductive health.