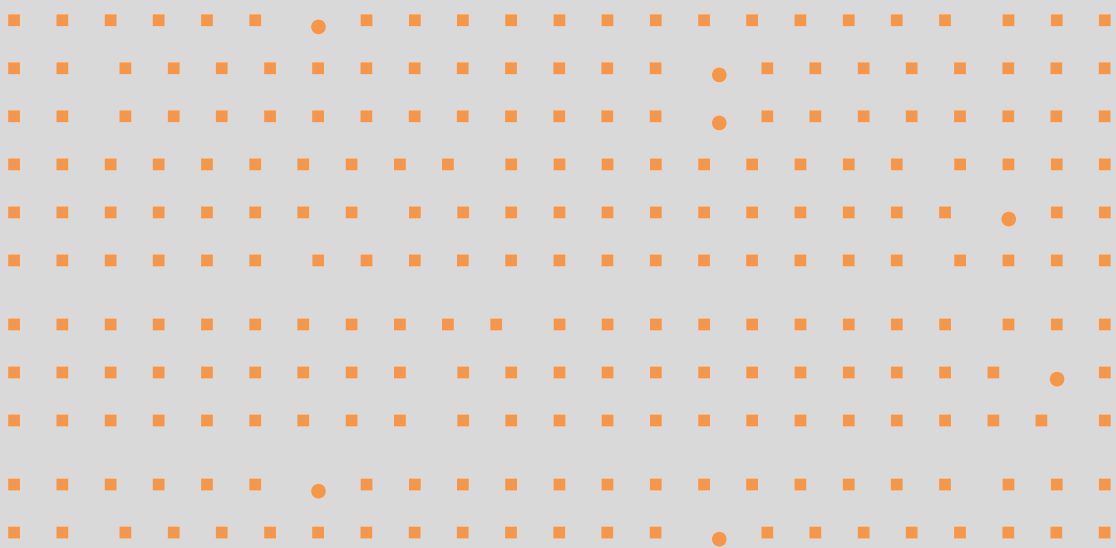


GROUNDS FOR PROHIBITING THE ACTIVITIES
OF THE PARTY CONSERVATIVE MOVEMENT
AND ALT-INFO TV COMPANY

Legal Analysis



HUMAN RIGHTS CENTER



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GENERAL OVERVIEW

Alt-Info is a pro-Russian, propagandistic media platform, whose founders and presenters were involved in organizing and encouraging violent actions against Tbilisi Pride on July 5, 2021¹. The anti-Western, anti-liberal rhetoric of Alt-Info became even more clear after the violent events of July 5-6².

Alt-Info has a close connection with Russian ultra-nationalist philosopher Alexander Dugin, the founder of the Eurasia Movement, who was supporting via a social network the events taking place against ³ Tbilisi Pride on July 5, 2021, and later, appearing in Alt-Info shows at different times along with other Kremlin ideologists⁴.

The representatives of Alt-Info held a meeting on November 20, 2021, and founded a party Conservative Movement. Initially, the National Bureau of Public Registry suspended the party's registration due⁵ to technical issues, but later on December 7, the party was officially registered⁶. As of April 2022, the party has regional offices in about 18 municipalities while the number of offices is growing daily despite the protests of the public and opposition parties⁷.

Alt-Info stands out with violent acts, violence-inciting hate speech, and threats. Alt-Info presenters claim that aggression should be a necessary weapon for political and ideological struggle. They call on citizens to burn EU flags⁸. Over the years, Alt-Info has been fighting against the Western, Euro-Atlantic Course recognized by the international community and the Constitution of Georgia blaming the Western countries or institutions for interference in the internal affairs of Georgia, in colonialism against Georgia, in the fight against Georgian traditions and Christianity⁹.

Alt-Info and the party Conservative Movement argue that Georgia should definitely enter Russian security and economic systems for restoration of territorial integrity. For this purpose, the radical group of Alt-Info does not exclude the deployment of another Russian military base in Georgia. Further, in case of seizing the power, the radical group is going to "legalize" Russian military bases. Moreover, Alt-Info is propagating war.

Arguably, such positions are unprecedented even for the pro-Russian parties available up to the date in Georgia; thus, the issue requires special control, particularly when the information war machine is one of the main tools of Putin's imperialist ideology and Russian military aggression against Ukraine which is employed by Alt-Info and the party Conservative Movement for years. Moreover, during the years the Georgian authorities did not take specific steps against the Russian disinformation and propaganda campaign. Fighting the Russian disinformation is directly related to Georgia's security and the peace of the region.

¹The information is available at <https://bit.ly/38u21BE>

²The information is available at <https://bit.ly/3xYgW1C>

³The information is available at <https://bit.ly/3KnwTuf>

⁴The information is available at <https://bit.ly/3voGOSI>

⁵National Agency of Public Registry, decision N P21000039/3. <https://bit.ly/3gAX2zy>

⁶National Agency of Public Registry, registration of political Union of citizens. <https://bit.ly/3rWNohz>.

⁷The information is available at <https://bit.ly/3rUFiFg>

⁸The information is available at <https://bit.ly/3MBIRIQ>

⁹The information is available at <https://bit.ly/38uLP35>

CONSTITUTIONAL GROUNDS FOR PROHIBITING POLITICAL PARTIES

Article 60 (4)(f) of the Constitution of Georgia¹⁰ and Article 19 (1)(c)¹¹ and Article 35 of the Organic Law of Georgia on the Constitutional Court of Georgia provide that it is within the competence of the Constitutional Court of Georgia to examine the constitutionality of the political unions of citizens and their activities.

Article 23 (3) of the Constitution of Georgia gives us an important definition of what is considered unconstitutional in this case: **"The establishment and activity of a political party that aims to overthrow or forcibly change the constitutional order of Georgia, infringe on the independence or violate the territorial integrity of the country, or that propagates war or violence or incites national, ethnic, provincial, religious or social strife, shall be inadmissible. The establishment of a political party on a territorial principle shall be inadmissible."**¹² The same prohibition is laid down by Article 5 (2) of the Law of Georgia on Political Unions¹³. Furthermore, according to Article 35 of the same Law, the prohibition of the party is only possible by the decision of the Constitutional Court of Georgia.

Although, on the one hand, the Constitution of Georgia guarantees freedom of expression and the specific form of its institutional fulfillment i.e. the creation of a political union, at the same time, the Constitution of Georgia allows for the prohibition of a political party that infringes and threatens the sovereignty of the State, the fundamental values enshrined by the Constitution and the foundations on which the Constitution of Georgia is based.

Moreover, the preamble of the Constitution of Georgia adopted on August 24, 1995, clearly refers to the firm will of Georgian citizens "to establish a democratic social order" and "to enhance state independence".

Thus, the founding documents of the State of Georgia and national legislation clearly reaffirm state and national sovereignty. However, it would be impossible to attain such goals where the Constitution of Georgia and therefore the democratic rule of Georgia are not "militant". In addition, "the enemies of democracy should not be allowed to use the rights and freedoms of democracy to undermine it"¹⁴.

ANALYZING THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

The term "militant democracy" was coined in English by a German philosopher, Karl Loewenstein, who was exiled from Germany during the 1930s and worked at Yale¹⁵. The European Court of Human Rights occasionally uses the terms "militant democracy" or "democracy capable of defending itself". Scholars in turn more actively use the term when

¹⁰Constitution of Georgia, article 60 (4)(f). <https://bit.ly/3xEydfy>

¹¹Organic Law of Georgia on the Constitutional Court of Georgia, article 19 (1)(c) <https://bit.ly/3Mgnl6P>

¹²Article 23(3) of the Constitution of Georgia: <https://bit.ly/3xEydfy>

¹³The Law of Georgia on Political Unions, Article 5 (2). <https://bit.ly/3xFNy01>

¹⁴Rory O'Connell, militant Democracy and human Rights Principles: <https://bit.ly/3JVbhLU>

¹⁵Rory O'Connell, militant Democracy and human Rights Principles, p. 84.: <https://bit.ly/3JVbhLU>

discussing the Strasbourg jurisprudence¹⁶.

The concept of "militant democracy" may include several actions, limitations on specifically political rights (voting, running for office, freedom of expression, assembly, etc.) imposed on political parties and movements, or presumed adherent of such parties or movements, where it is alleged those parties, movements or individuals are using political rights to undermine democracy¹⁷. Other early advocates of militant democracy include another refugee from Nazism, Karl Mannheim. *According to Mannheim, "the meaning of democratic tolerance is not to tolerate the intolerant"*¹⁸. A militant democracy is not an interminable talking shop¹⁹ and it is capable of identifying the political enemy that it has to combat²⁰.

A militant democracy implies the imposition of some kind of restrictions when the realization of the right of democracy threatens the origins of democracy. One of the justified restrictions is the prohibition of a type of political party that creates the above threats, namely: *Propagates war or violence, or incites national, ethnic, regional, religious, or social hatred*. Such restrictions operate in many countries of the Council of Europe, notably, the constitutions of Germany and Italy provide for the mechanisms to secure "militant democracy".

Article 17 of the European Convention on Human Rights from 1950²¹ provides a similar doctrine of abuse of rights: *Nothing in this Convention may be interpreted as implying for any State, group, or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention*²². The European Convention, by all means, provides for reasonable restrictions^{23,24} on the rights in a democratic society and for weakening the rights under the special situation when the fate of the nation is in danger.

The rights and freedoms protected by the articles of the Convention, which may infringe the rights and freedoms of others, shall be subject to restrictions. Consequently, the main purpose of Article 17 is to deny the rights to the persons who aim to harm the rights and freedoms of others by exercising their rights or freedom. On the other hand, the issue of prohibition of political parties whose manifests are incompatible with democratic principles is mainly discussed in terms of Article 11 of the Convention (freedom of assembly and association). Whereas, Article 3 of the first additional Protocol is considered only as a supplementary mechanism²⁵.

¹⁶ P. Harvey, "Militant democracy and the European Convention on Human Rights" (2004) 29 (3) European Law Review 407-420.

¹⁷Loewenstein, K. "Millennium Democracy and Fundamental Rights," (1937) 31 (3) American political Science Review 417; Loewenstein, K. "Militant Democracy and Fundamental Rights, II" (1937) 31 (4) American political Science Review 638-658; "Legal control of political extremism in Europe Democracy I" (1938) 38 Columbia Law Review 591.

¹⁸Mannheim, Karl, *Diagnosis of our Time* (London; K. Paul, Trench, Truber & co., 1943), 49. See also Lerner, Max, *It is later than you think: The need for a militant Democracy* (New Brunswick, N.J.:J. Transition publications, 1980, [1943].

¹⁹ Carl Schmitt, *The Crisis of the Parliamentary Democracy* (Cambridge: MIT Press, 1988, 1923). <https://bit.ly/38ZPI05>

²⁰ Carl Schmitt, *The concept of the political* (New Jersey: Rutgers UP, 1976). <https://bit.ly/3KUI7xX>

²¹The European Convention on Human Rights and Freedoms, Article 17. <https://bit.ly/37wCFCK>

²²Letsas, G., *The Truth in Autonomous Concepts: How to Interpret the ECHR*, 2004. <http://www.ejil.org/pdfs/15/2/351.pdf>

²³European Convention on human Rights and Freedoms, Article 8 (2), 10 (2), 11 (2). <https://bit.ly/37wCFCK>

²⁴The European Convention on Human Rights and Freedoms, Article 15. <https://bit.ly/37wCFCK>

²⁵Refah Partisi (the Welfare Party) and others v. Turkey [GC], 2003; Linkov v. the Czech Republic, 2006; Parti nationaliste basque - Organization régionale d'Iparralde v. France, 2007).

Because of the threat to the constitutional order, during the Cold War, several states took measures to restrict the political rights of movements. For example, the Constitutional Court of the Federal Republic of Germany banned the successor to the Nazi Party and the Communist Party²⁶ when Germany adopted the laws regulating the loyalty of civil servants. The European Court refused to challenge the loyalty laws and considered such restrictions justified²⁷.

In practice, there are many reasons brought to justify the use of militant democracy tools. Usually, this includes a fight against political violence, control over racist and ultra-right parties, protection of the principles of fundamental human rights, the transition to democratic governance, and protection of the territorial integrity of the country²⁸. In this regard, the professor of constitutional law, Samuel Issacharoff, speaks of the threats created by rebellious, separatist, and anti-democratic parties²⁹, in case of which, it is justified to restrict the political rights of the movement.

The Strasbourg Court has long to deal with militant democracy in terms of the persistence of racist or fascist parties, further in terms of German loyalty laws, and political violence in the United Kingdom and Ireland³⁰.

In European countries, some restrictions are imposed against the political movements that are involved, defending, or connected with violent politics. For example, the United Kingdom and Ireland have introduced restrictions for parties associated with paramilitary groups in Northern Ireland. These restrictions were also allowed by the national courts and the European Court of Human Rights.

In 2003, the Spanish Parliament adopted a law on political parties to allow banning the party Batasuna associated with the violence of ETA. The Constitutional Court of Spain recognized the validity of the law³¹ dissolving Batasuna in 2003 and justified the imposed restrictions³².

In the case *Herri Batasna and Batasuna v. Spain*³³, the European Court held that parties are free to attain any objectives which are compatible with democracy, and the means used to achieve the objectives are legitimate and democratic³⁴. However, a state must be able to take action and this must be done in a timely manner. This is compatible with positive

²⁶Socialist Reich Party case [1952] BVerGE 2, 1, found in Kommers, institutional Jurisprudence of the FRG, Communist Party case [1956] BVerfGE 5, 85, found in Kommers, Constituent Jurisprudence of the Federal Republic of Germany.

²⁷T. Kosiek v. Germany (1986) 9 EHRR 328 with Vogt v. Germany (1996) 21 EHRR 205. See Harvey, "militant Democracy and the European Convention on human Rights" (2004) 29 (3) European Law Review 407, 413-414. Conor Geart.

²⁸M. Basedau, M. Bogaards, C. Hartmann and P. Niesen, "Ethnic Party Bans in Africa: A Research Agenda" (2007) 8 (6) German Law Journal 617-634.

²⁹S. Issacharoff, "Fragile Democracies" (2007) 120 Harvard Law Review 1405, 1433-1447. 28.

³⁰ P. Harvey, "Militant democracy and the European Convention on Human Rights" (2004) 29 (3) European Law Review 407-420. <https://bit.ly/39lOeOk>

³¹ Basque Regional Government Challenge to the Law on Political Parties STC 48/2003, 12 March 2003. <http://www.tribunalconstitucional/>

³²Ian Cram, "Constitutional response to extremist political associations – ETA, Batasuna and democratic norms" (2008) 28 (1) Legal Studies – Society of Public Teachers of Law 68-95; Victor Ferreres Comella, "The New Regulation of Political Parties in Spain and the Decision to Outlaw Batasuna" in A. Sajo (ed.) *Militant Democracy* (Utrecht: Eleven International Publishing, 2004); L.Turano, "Spain: Banning political parties as a response to Basque terrorism" (2003) 1(4) *International Journal of Constitutional Law* 730-740; K.A. Sawyer, "Rejection of Weimarian Politics or Betrayal of Democracy?: Spain's Proscription of Batasuna under the European Convention on Human Rights" (2003) 52 (6) *American University Law Review* 1531-1581.

³³*Herri Batasuna v Spain* application nos. 25803/04 and 25817/04, 30 June 2009.

³⁴ *Ibid*, paragraph 79.

obligations under the Convention³⁵. Underlining these principles, the Strasbourg Court admitted that there were a number of facts indicating that the parties encouraged “the climate of social confrontation” and offered covert support to ETA³⁶. The court also elaborated upon the issue that omissions or a lack of response from the politicians to such facts can constitute acts indicating the stance of the political party³⁷.

The European Court of Human Rights recognized the dissolution of the political party in Spain to be compatible with Article 11 of the Convention. According to the Court, the State may not be required to wait until the political party has seized power and made the steps to implement the policy that is incompatible with the standards of the Convention and democracy. At the same time, the danger of that policy for democracy must be sufficiently established and imminent³⁸.

Concerning the dissolution/prohibition of political parties or unions, an important case is *Vona v. Hungary*³⁹. The applicant in this case was the chair of the Hungarian Guard Association founded in 2007 by members of the political party Movement for a Better Hungary. The stated aim was “preserving Hungarian traditions and culture”. The Association, in turn, founded the Hungarian Guard Movement, the objective of which as defined in its charter was “*to defend Hungary, defenceless physically, spiritually and intellectually*”.

In December 2009, following the judgment by the national court of Hungary, the Association was disbanded due to the rallies and demonstrations organized by the Movement throughout Hungary. The rallies were organized inter alia in the villages where the Roma population resided calling for the protection of Hungary from Gipsy criminality.

The judgment was appealed by the applicant before the European Court of Human Rights. The Court concluded that in this particular instance the Hungarian authorities have not violated Article 11 of the Convention. The Court recalled that, as with political parties, the State was entitled to take preventive measures to protect democracy against associations if a sufficiently imminent prejudice to the rights of others undermined the fundamental values upon which a democratic society rested and functioned.

In this case, a movement created by Hungarian Guard Association had led to demonstrations conveying a message of racial division, which, reminiscent of the Hungarian Nazi Movement (Arrow Cross), had had an intimidating effect on the Roma population. Indeed, such paramilitary marches had gone beyond the mere expression of a disturbing or offensive idea, which is protected under the Convention. This was due to the physical presence of a threatening group of organized activists. Therefore, the only way to effectively eliminate the threat posed by the movement had been to remove the organizational backup provided by the association.

³⁵ Ibid, paragraph 82.

³⁶ Ibid, paragraph 85.

³⁷ Ibid, paragraph 88.

³⁸ *Refah Partisi (the Welfare Party) and others v. Turkey*, ECHR, Judgment of 13.2.2003, paragraph 102, *Herri Batasuna and Batasuna v. Spain*, ECHR, judgment of 30 June 2009, paragraph 81.

³⁹ CASE OF VONA v. HUNGARY (Application no. 35943/10); JUDGMENT, STRASBOURG, 9 July 2013, FINAL 09/12/2013. <https://bit.ly/3KpZHIR>

As noted, where the movement is against fundamental constitutional or human rights principles, sometimes this fact is used to explain the restrictions imposed on political rights. This happened in the case of *the Welfare Party* in Turkey: the alleged observance of Sharia by the Welfare Party and the introduction of personal laws contradicting the principle of secularism were used to explain the dissolution of the party⁴⁰.

The Constitutional Court of Turkey ordered the dissolution of the Welfare Party on the grounds that the party was against secularism. It is noteworthy that at that time, indeed, the Welfare Party was in the coalition government being the largest party represented in the Turkish parliament.

The European Court of Human Rights considered in the case *Refah Partisi (the Welfare Party) and Others v. Turkey* that a political party may promote a change in the law or the legal and constitutional structures of the State on two conditions: *a) the means used to that end must be legal and democratic; b) the change proposed must itself be compatible with fundamental democratic principles*⁴¹.

In this case, the Court took into account the statements and actions of the party leaders, the goals and policy set by the party and held that the independence from religion and the principles inherent to the rule of law were more important than the right of a political party to exist and work in the political arena of the country. The Court believes that the existence of political parties aiming at changing the objectives and basic democratic values as enshrined in the Constitution of the country (as this was the case with the Welfare Party wishing to govern the country by the laws of Sharia and the Islamic religion) may be restricted. Thus, the Court did not consider the prohibition of the Welfare Party by the Constitutional Court of Turkey as a violation of Article 11 of the Convention.

In conclusion, the Strasbourg Court held that the dissolution of the party was explained by three reasons: *1) the party did not meet the requirement that it would refrain from violent actions; 2) the party wanted to introduce a personal law for Turkish citizens (i.e. plurality of legal systems considering the religion); 3) and finally, the party was supportive of Sharia law.*

The European Court of Human Rights has repeatedly emphasized that political parties enjoy all the rights and freedoms envisaged by Article 11 (freedom of assembly and association) and Article 10 (freedom of expression) of the European Convention on Human Rights. However, the Court also held that the freedoms guaranteed by Articles 11, 9, and 10 of the Convention do not limit the member states to protect their institutions from the parties that undermine democratic institutions.

According to the practice established by the Strasbourg Court, "a political party may campaign for a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must in every respect be legal and democratic, and secondly, the change proposed must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite to

⁴⁰ Refah Partisi (Welfare Party) v. Turkey (2003) 37 EHRR 1.

⁴¹ Refah Partisi (the Welfare Party) and others v. Turkey, ECHR, Judgment of 13.2.2003, para 98.

violence or put forward a policy which does not comply with one or more of the rules of democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognized in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds ..."⁴²

These cases indicate the tolerance of the Court regarding the restrictions on political rights for radical right and racist movements.

PROHIBITION OF HATE SPEECH

Recognition of the importance of freedom of expression dates back to the post-World War II period when several international legal instruments were adopted. These documents, inter alia, recognize freedom of expression as a basic universal value being the basis of human rights amounting to the dignity of the person. Freedom of expression has a special place in the protection system of human rights and freedoms as it provides the basis for the possibility and scope to exercise other rights and freedoms.

Freedom of expression is a human right and is protected by Article 10 of the European Convention on Human Rights⁴³, as well as at the national level under Article 17 of the Constitution of Georgia⁴⁴. This right is one of the foundations of a democratic society playing an important role in the self-realization of all people. Freedom of expression includes the right to express ideas that may involve criticism, or be considered offensive, shocking, or disputable. However, freedom of expression is not limitless. In order to protect the rights of other people, states may impose sanctions or prevent some forms of expression that spread, encourage, incite, or justify hatred. It is necessary to preserve a balance between expressing opinions by people, on the one hand, and protecting the rights of others to avoid crime and disorder, on the other hand.

As for "hate speech", there is no universally recognized legal definition for the term⁴⁵. The definition of hate speech varies by country jurisdictions and specific types of laws. However, the Committee of Ministers of the Council of Europe adopted a recommendation #R (97) in 1997 defining the concept as follows: *"Hate speech shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities or migrants."* Hate speech can be expressed through verbal abuse, threats, and calling for violence against a group of persons on grounds of national origin, ethnicity, different color, religion, gender, orientation, disability, or other signs.

Hate speech may be classified into three main categories based on its content and possible harm to society. Based on existing legal mechanisms and developed legal doctrines, hate speech can be divided into three main categories: 1. Hate speech that is restricted by law and international acts; 2. Hate speech that may be subject to restrictions and 3. Hate

⁴²Yazar, Karataş, Aksoy and the people's Labor Party (HEP) v. Turkey, judgment of 9 April 2002, §49).

⁴³The European Convention on Human Rights and Freedoms, Article 10. <https://bit.ly/37wCFCk>

⁴⁴The Constitution of Georgia, Article 17. <https://bit.ly/3rUIS2j>

⁴⁵ECtHR, Factsheet hate speech, 2019.

speech that is protected by law. In this particular case, we are interested to define hate speech subject to restrictions. In this respect, international human rights law is less ambiguous. The law recognizes the effects of the most acute form of hate speech and obliges the contracting States to ban it. The most obvious example of this is the prohibition of direct and public incitement of genocide by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG). However, there are two prerequisites necessary for the prohibition, meaning the public nature and direct communication of such a statement.

Prohibited hate speech is additionally mentioned in the International Covenant on Civil and Political Rights (ICCPR). The ICCPR provides the basis for the restriction of freedom of expression in two different articles: 19 and 20.

The difference between these two norms, except for the legal goods protected by the norm, is that the limitation of freedom of expression under Article 19 (3) is not bounding⁴⁶, while Article 20 sets the imperative boundaries for the limitation⁴⁷. Further, whereas Article 19 (3) brings the protection of the reputation of others, national security or order, or public health and morals as the basis for restricting freedom of expression, Article 20 of the Covenant provides explicit grounds for similar restrictions envisaging the prohibition of incitement of all kinds of national, racial or religious hatred, discrimination, hostility or violence⁴⁸. Even though there were different opinions among the countries concerning the scope of regulation of the two norms⁴⁹, the UN Human Rights Committee (UNHRC) specifically discussed the conflict and declared that Article 19 (3) and Article 20 of the Covenant are compatible with each other⁵⁰. Consequently, Article 20 (2) of the Covenant can only be applied once it meets the requirements of Article 19 (3) of the same Covenant. Therefore, Article 20 absolutely prohibits a speech conveying discriminatory hatred amounting to discrimination, hostility, or violence.

According to the additional definition made by the UN Special Rapporteur, the term "incitement" used in Article 20 includes an element of inevitability. In particular, the statements must create a real and imminent risk of discrimination, hostility, or violence⁵¹. Therefore, the article protects a special, narrow scope of expression and it cannot be extended to the expression of all kinds of hatred. In this part, the contracting States have a wide scope of discretion to decide themselves whether this or that expression constitutes hate speech.

In 2012 the Rabat Plan of Action was adopted. As a result of the solid work of UN Human Rights Office experts, the document carries the recommendations on the implementation of Article 20 (2)⁵². The Rabat Plan of Action suggests a six-part threshold

⁴⁶Article 19 (3) provides that freedom of expression "[...] may therefore be subject to certain restrictions [...]"

⁴⁷Article 20 underlines that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence "shall be prohibited by law".

⁴⁸ Ibid.

⁴⁹Annotation to the draft International Covenants on Human Rights, A/2929, 1 July, 1955, paras. 189-194. see <https://constcourt.ge/ka/judicial-acts?legal=1134> (Last seen: 10 August 2021).

⁵⁰General Comment 11: Prohibition of propaganda for war and inciting national, racial or religious hatred (Art. 20), 29 July 1983.

⁵¹The annual report of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (Special Rapporteur on FOE) to the General Assembly, (2012), A/76/357, para.44

⁵²The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, A/HRC/22/17/Add.4, Appendix, adopted 5 October 2012.

test defining the scope of the application of article 20 of the ICCPR. These are as follows: (1) the social and political context, (2) status of the speaker, (3) intent to incite the audience against a target group, (4) content and form of the speech, (5) extent of its dissemination and (6) likelihood of harm, including imminence.

HATE SPEECH IN ALT-INFO

Alt-Info being a radical group is distinguished by violent acts, hate speech, and threats inciting violence. Since the origin of Alt-Info, it provides propaganda against the Western, Euro-Atlantic course recognized by the allies and the Constitution of Georgia accusing the West of interfering in the internal affairs of Georgia, colonialism against Georgia, fight against Georgian traditions and Christianity⁵³. In addition to years of harmful anti-Western propaganda, the radical group of Alt-Info was the organizer of violent events on July 5-6, 2021 resulting in physical assaults of 53 media representatives. Lekso Lashkarava, a cameraman of TV Pirveli, who was a victim of brutal violence while performing his professional duties on July 5, was found dead at his home on the night of July 11⁵⁴.

After the Pride Week of 2021 was announced, hate speech by Alt-Info has been further strengthened. Zurab Makharadze, one of the presenters of the TV show publicly made statements about the violence that was directed towards LGBTQ+ people media, and western partners⁵⁵. On July 4, Guram Palavandishvili was also disseminating appeals conveying expressions of threats and warning about the use of force against the police in order to destroy the March of Dignity⁵⁶.

On July 5, at about 12 am, one of the organizers and founders of Alt-Info, Konstantine Morgoshia informed the counterprotesters that members of Tbilisi Pride were gathered at the office of Shame. Following his call, some of the counterprotesters moved to the office of Shame where they attacked journalists (including Lekso Lashkarava), abused them physically, damaged their equipment, and vandalized the office of Shame⁵⁷.

On July 5, the citizens gathered against Tbilisi Pride were called to commit violence by archpriest Spiridon Tskipurishvili publicly speaking from the rostrum at the protest⁵⁸.

Leaving these violent calls without legal response and the inefficiency of law enforcement agencies mainly due to the deficit of such political will among those in power, contributed to the violent developments the society witnessed on July 5-6⁵⁹. The goal of mass attacks on journalists was to make a long-term effect on their activities; a message to the opposition or liberal media to review their critical editorial policy and a warning to ordinary journalists about the possible consequences of their critical activities.

⁵³ More information: <https://bit.ly/38gZpaq>

⁵⁴ Illegal interference with the professional activities of journalists: selective justice, Human Rights Center, 2021. <https://bit.ly/3wuZzD9>

⁵⁵ Chronology of attack on the office of Shame and Lekso Lashkarava, 17.07.2021, is available at: <https://publika.ge/video/sirckhvili-as-ofissa-da-legso-lashqaravaze-tavdaskhmis-gronologia/>

⁵⁶ Opponents of Tbilisi Pride are gathering near Rustaveli subway station, among them are some clergymen, 05. 07.2021: <https://bit.ly/3kpXmmE>

⁵⁷ Chronology of attack on the office of Shame and Lekso Lashkarava, 17.07.2021, is available at: <https://bit.ly/3LrH4Wi>

⁵⁸ Why the archpriest is forgiven, while others would not be excused, 06.07.2021. See <https://bit.ly/36U00MR>

⁵⁹ Legal assessment of the events of July 5-6 (primary analysis), Social Justice Center, Tbilisi, 2021. <https://bit.ly/38yBnY0>

Nevertheless, the government did not just fail to take preventive measures eradicating punishable hate speech and protecting the peaceful protesters and journalists, but they fail to act in a proactive manner already against the outcomes to conduct a full-pledged and objective investigation that would hold liable many counterprotesters participating in the violence along with the natural and legal persons inciting the violence.

PROHIBITION OF WAR PROPAGANDA

In addition to using hate speech and spreading Russian propaganda, Alt-Info openly propagates war. In particular, the purpose of the statements by Alt-Info is to justify the war crimes including crimes against humanity committed by the Russian Federation [in Ukraine], such statements being prohibited under the Georgian legislation. One of such statements aired by Alt-Info: “ *It [Russia] does not fight [Ukraine] with full strength as to my mind [Russia] prefers to have fewer casualties among its army than among enemy and accidentally not to destroy the peaceful population along with the troops of the enemy*⁶⁰. ”

Georgian law prohibits airing programs that justify crime or idealize criminality. War crimes, including crimes against humanity being committed by Russia in Ukraine, are punishable under the law. All international conventions prohibit propaganda of war, including under Article 20(1) of the International Covenant on Civil and Political Rights, all war propaganda shall be prohibited by law⁶¹. Propaganda of aggressive war goes beyond the limits of freedom of expression. Under Article 56 (1) of the Law of Georgia on Broadcasters, “*any kind of war propaganda shall be prohibited*”⁶². Further, under Article 14 of the Law of Georgia on Broadcasters, a broadcaster shall create an effective mechanism of self-regulation based on the code of conduct allowing them to hear the complaints and react to them in a timely and just manner⁶³.

Georgian Democratic Initiative (GDI) filed a complaint with the National Communications Commission to recognize Alt-Info as an offender and held the TV company administratively responsible for positive assessments of the crime and idealizing criminality. GDI was requesting the authorities to hold Alt Info as an offender for spreading information with harmful effects on minors. According to the complaint, the TV company has tried to consider normal the effects of the aggressive military intervention of Russia, to provide moral grounds for the crimes against humanity, and justify such crimes. Thus, the author of the complaint believed that the criminal acts have been justified and the criminality idealized.

The Commission stated that reducing the war propaganda only to the harmful effects on minors is contrary to the idea and principles of Article 56 of the Law of Georgia on Broadcasters. Although the Communications Commission rejected the complaint, it still recognized the above-mentioned statement made by the TV company Alt-Info as war propaganda, indicating, however, that under the Broadcasters Law the spread of war propaganda could only be regulated within the self-regulation mechanism of the particular

⁶⁰ The information is available at <https://bit.ly/3LmSt9P>

⁶¹ Article 20 (1) of the ICCPR. <https://bit.ly/36RUkEI>

⁶² Georgian Law on Broadcasters, Article 56(1). <https://bit.ly/37MmhON>

⁶³ Ibid, Article 14.

broadcaster⁶⁴. Under Article 59¹ of the Law of Georgia on Broadcasters, reactions to the violations under Article 56 of the Law (except for the judgment (10.10.2009 N1/3/421,422) of the Constitutional Court of Georgia concerning Article 56(4)) may take place only within the self-regulation mechanism under Article 14 of the Law, while the decisions made by the self-regulation body may not be appealed to either court, commission or other administrative body as provided by paragraph 2 of the same Article (59¹).

UNCONSTITUTIONALITY OF THE ACTIVITIES OF THE PARTY CONSERVATIVE MOVEMENT

As noted above, the Constitutional Court of Georgia shall examine not only the grounds for creating a political party but also the activities of the party. Consequently, regardless of what the mission and objectives are provided in the charter of the party or other founding documents, the statements and actions of the party members conducted in real time matter the most.

One of the main stated goals of the party Conservative Movement and TV Alt-Info is to place Russian military bases on the territory of Georgia and to "legalize" Russian bases on the occupied territories. By spreading propaganda and disinformation in support of Russia, Conservative Movement and Alt-Info try to convince the public in arguments that Georgia should enter Russian security and economic systems for restoration of territorial integrity. The party leader openly declares that Russian military bases must be placed in Georgia and the issues of restoration of territorial integrity will be solved⁶⁵.

The pro-Russian, ultra-right party Conservative Movement has a plan of unity and integrity for Georgia as well as proposals for foreign policy approved by Russia. As Russian political analyst Aleksandr Dugin stated in his interview with Alt-Info, "we should not demonize Russian occupation, they confront NATO, while the fragmentation of Georgia was never the goal of Russian geopolitics. The empire has its logic [...]". Further, the party Conservative Movement states that Russia is not an occupant. Moreover, according to Aleksandr Dugin, *"Georgia needs sovereignty, independence and restoration of territorial integrity ... And who else can provide with the opportunity to restore territorial integrity even in theory?! Certainly not Washington. The key is in the hands of Russia ... Russia can get closer to Georgia geopolitically as this was the case at many stages of historical times."*⁶⁶

Moreover, the publicly stated goal of the party is to make Georgia and Russia strategic partners. They claim to endeavor to achieve close cooperation between Georgia and the Russian Federation in the military, economic and political spheres.

The course chosen by Georgia is not to enter the Eurasian Union. The declared goal chosen by Georgia based on the will of the people (following the results of the referendum), is to join European and Euro-Atlantic structures. Furthermore, integration into the European and Euro-Atlantic structures is confirmed by the main guiding document of Georgian which is the supreme law Constitution: *The constitutional bodies shall take all*

⁶⁴ The decision of the Communications Commission from March 24, 2022: <https://bit.ly/36T2zAz>

⁶⁵ The information is available at <https://bit.ly/3vITSbt>

⁶⁶ The information is available at <https://bit.ly/3xVjc9E>

*measures within the scope of their powers to ensure the full integration of Georgia into the European Union and the North Atlantic Treaty Organization.*⁶⁷ Mentioning the Euro-Atlantic Course is a very important declaration in terms of the formation of European democracy within the country as well as for defining the priorities of foreign policy for the country.

According to the assessments by HRC, all this when taking into consideration the present circumstances, is nothing more than recognizing the Russian military units in the occupied territories as lawful and supporting the violation of Georgia's independence and territorial integrity by the Russian Federation, which is clearly an anti-constitutional activity. Therefore, the activities and political agenda of the party Conservative Movement contradict the state priorities of Georgia. Notably, the members of the violent political party do not call the Russian Federation an occupant. Acting so even though the occupation is confirmed by the adoption of the Law of Georgia on Occupied Territories and various documents at the international level.

Politicians may hold their own political beliefs and opinions on particular events. However, this does not mean they are fully free. Restriction of freedom of expression is permissible when it obviously carries an anti-state character and contradicts the established order, the course chosen by the country.

Under the conditions when the party Conservative Movement intends to "legalize" Russian military bases and completely bring Georgia under the Russian "*security and economic systems*", this clearly indicates the main objective of the party to dismantle the existing order, subordinate the state to the aggressor neighbor and to destroy the opportunities of the state for democratic development.

Like the case of the Welfare Party of Turkey, the political agenda, activities, and campaign for changes by the Conservative Movement are contrary to fundamental democratic principles. In this case, the threat is also real and imminent as shown by the recent activation of pro-Russian forces in Georgia and large-scale violent events, including the events of July 5-6, 2021, which resulted in physical assaults against 53 representatives of the media while the TV Pirveli cameraman Lekso Lashkarava was found dead in his home at the night on July 11 after had been severely beaten on July 5. To the reality and imminence of the danger speaks the fact that Conservative Movement is going to register as an electoral subject for the next parliamentary elections. Thus, the party can actively engage in the pre-election campaign and gain the support of the electorate who are skeptical of the Western course chosen by Georgia.

Taking into consideration all the above, HRC estimates that the goal of the party Conservative Movement and TV Alt Info is to infringe on the independence of Georgia and compromise its territorial integrity. Therefore, the grounds for holding their activities unconstitutional and banning the party are real.

⁶⁷The Constitution of Georgia, Article 78. <https://bit.ly/38yneug>

CONCLUSIONS

Analysis of national and international law and that of the practice of the European Court of Human Rights shows that certain restrictions on political rights are required in a democratic society. According to the theory of Militant Democracy, a democratic state must be able to take injunctive measures against the political movement when it refers to undemocratic means (violence) and pursues anti-democratic objectives.

Consequently, the pro-Russian party, the Conservative Movement, which is distinguished by violent acts and violence-inciting hate speech and threats, supports the entry of Georgia into Russian "security and economic systems" and "legalization" of Russian military bases in Georgia, undermines the integration of the country into the European and Euro-Atlantic structures, should be subject to restrictions in political rights and must be dissolved. The constitutional grounds, needs, and justification for this are available both at the national and international levels. Moreover, violent propaganda spreading TV company Alt-Info which openly propagates war, and disseminates the statements resulting in hate speech and social confrontation, must be banned from broadcasting and for this purpose, the authorities must make all relevant steps.

RECOMMENDATIONS:

To the Georgian authorities:

- *It is crucial, the Government to adopt for the nearest future a unified and adequate strategy to fight the propaganda/threats coming from the Kremlin; otherwise, the ineffective and inefficiency policy of the State could cause the country to face very difficult challenges;*
- *The relevant documents shall officially define the Russian information war as a threat to the country;*
- *The Georgian Government must set up a group of experts to analyze disinformation and to react and fight against Propaganda;*
- *The State Security Service must declare the fight against the propaganda of the occupant Russia to be one of the priority directions of the Service.*

To the investigative bodies:

- *To ensure a thorough and objective investigation process in order to identify all persons involved in the violent events of July 5-6, 2021, to identify the organizers of the violent actions, and prosecute them legally in an appropriate manner.*

To the Parliament of Georgia:

- *Against the background of anti-Western and pro-Russian disinformation and hybrid threats, to strengthen the functions of parliamentary control including in terms of the supervision over the executive authorities in this regard;*
- *Stemming from the scales of Russian hybrid threats, to begin inquiries to study in depth the actions and sources of funding of Alt-Info and similar pro-*

Russian groups directed against the interests of the State of Georgia;

- *To increase the transparency and efficiency of the investigation process, to set up a multi-faction commission under the auspices of the Parliament, and to enhance the cooperation with the relevant agencies of the partner states in order to conduct the investigation effectively.*