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Freedom of Expression on Social Media in Georgia – Case for the Urgent Need of Online Regulation

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A B S T R A C T

The article discusses challenges existing that stem from the use of social media in Georgia and what are the legal mechanisms that can be put in place to address these challenges. The lack of case law in Georgian courts leaves Georgian users in a vulnerable state. Georgian users of social media feel unprotected when it comes to the violation of their basic human rights. These human rights violations have become very challenging for all countries but especially for fragile democracies like Georgia, where the majority of the population are active users of social media platforms (mainly Facebook). It is important that some sort of mechanism similar to the "Dispute Resolution Body" is put in place that would protect the rights of users of social media in Georgia.

Keywords: *social media, self-regulation, human rights, democracy, dispute resolution body.*

1. Introduction

Social media is actively used by a large part of the digital society in Georgia[3]. It is used not just by internet users but also by politicians. For example, the mayor of the capital, Tbilisi, Kakha Kaladze used his Facebook page to address the citizens of the city during his pre-election period, as well as throughout

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[2] https://doi.org/10.55367/UEGC6609
[3]It's about, *inter alia,* the creation of a social media account and its daily use.

his time in public service[4]. Quite frequently, social media is being considered a lawless space, and as a result, threats of defamation and violation of non-property rights often arise.

The present work serves as an effort to illustrate the challenges existing on social media in Georgia, and it proposes actions that are aimed at regulating these challenges (by proposing the creation of an alternative resolution body), the "**Dispute Resolution Body** ."Considering the existing reality, the adoption of a Dispute Resolution Body would serve the interests of many stakeholders in Georgia, and the creation of such a body would contribute towards the development of precedents and case law of social media. The basis of the discussion for setting up a Dispute Resolution Body in Georgia is fed by three aspects: high democracy index in the form of unlimited free speech, inconsistency and inadmissibility of disputes in Georgian courts on cases concerning social media law and reliability of international conventions and treaties by Georgian courts.

2. Research Methodology and Discussion

The research methodology for this article includes a review and analysis of Georgian case law that involves social media platforms, including cases from the Constitutional Court. In the framework of the research for this article, peer-reviewed journal articles have been analysed as well as existing legislative initiatives in respect of the regulation of media.

2.1 High Democracy Index

In Georgia there is almost no practice of censorship[5] and users are often considered to have absolute freedom: anyone can speak (express view) on any desirable topic, in any form. However, this is not entirely true. It is a well-known fact that criticism is an essential part of freedom of expression; however, articulating it in an indecent or unlawful manner should be limited by drawing certain boundaries. Thereby, personal rights are often violated, and this is being disguised with the protection of online free speech arguments.

One of the main reasons leading to this line of thought is the discussion set out in the law of Georgia on Freedom of Speech and Expression, where speech is protected by an absolute privilege. Although this rule follows international standards, one may interpret it to imply that freedom of speech and expression is an absolute right 6 And therefore, it shall not be restricted in any way (Meshkhishvili, 2020).

[4] See, e.g., https://www.facebook.com/kakhakaladzeofficial/videos/610562683447111 [11.09.2021].
[5] Some think that regulation represents censorship in itself; however, we shall consider this assessment with scepticism because regulations are significant for developing the rule of law.
[6] Compare interlocutory decision Nბს-962-920-2013 of 7 May 2015 of the Supreme Court of Georgia.

Democracy and free speech should not become a mandate for performing all types of activities on social media, as this would be a step towards creating chaos. Therefore, it is important that judicial practice is developed for social media.[7]

2.2 Judicial Practice and Challenges of Dispute Resolution

Judicial practice on social media law is gradually developing across the globe. The claims range on a number of issues from freedom of expression.[8] to family law[9], criminal law and labour law[10]. However, several challenges need to be discussed when considering Georgia (Zoidze, 2005):

Provisional Measure

The Civil Procedure Code[11] is not restricted in terms of the mechanism for the provisional measure in a court[12]. However, other challenges are encountered. For instance, the plaintiff requested denial of fake information disseminated on the internet and submitted a petition to Tbilisi City Court. The plaintiff requested that the respondent temporarily change the audience of the post (from public to only me) until the resolution of the dispute[13]. The court rejected such a request but failed to substantiate the grounds leading to such a decision[1415].

Resolution of a dispute might take up to two to three years; meanwhile, the disputed information is kept published so that viewing it by any person violates the plaintiff's interests over and over again (Jorbenadze, 2019). We might compare this situation to the context of the so-called "right to oblivion."[16] and "presumption of innocence."

Identification Challenge

Generally, the issue of formal admissibility of claims involving social media content is a big challenge in Georgia. This can be explained on two grounds: a) lack of specific legislation on the issue and b) sole guidance that exists is based on general rules as the court applies the same laws to social media claims as it would apply to cases of defamation transmitted using a broadcaster (for violating non-property rights).

[7] A non-existing, separated law only permits a person to continue a dispute in court based only on general rules.
[8] See, e.g., decision N ნს-697-651-2017 of 20 May, 2021, of the Supreme Court of Georgia.
[9] See, e.g., interlocutory decision ნ-5049-ქ-126-2018 of 2 May, 2019, of the Supreme Court of Georgia.
[10] See, e.g., interlocutory decision ნს-1124-1080-2016 of 10 March, 2017, of the Supreme Court of Georgia (descriptive part).
[11] According to the example, it concerns private legal disputes.
[12] This means that in case of sufficient substantiation, the mechanisms can be used for any case, including social media law.
[13] See interlocutory decision N2/22022-July 18 July 25, 2018, of Tbilisi City Court.
[14] Neither has the Court of Appeals satisfied the claim.
[15] See the number of the case: 2/19389-21 (Tbilisi City Court).
[16] Cf. 13.05.2014, №С-131/12.

For instance, a claim was issued by a plaintiff at Tbilisi City Court requesting an order to delete a group created on Facebook.[17] The claim is grounded on the circumstances that a group featured his nickname (e.g., JayJay) for cynical purposes as part of its name, “JayJay’s Jokes ."The nickname JayJay had been associated with a person whose social acquaintances were actively using the group, and each action arguably violated his non-property rights. JayJay (with his legal name) issued a claim in the court requesting deletion of the group, but the court's view was not supportive. Namely, the lawsuit failed to pass the formal (admissibility) stage, as, per the judge's view, a connection between the plaintiff and JayJay was not established.[18] As a result, the plaintiff was unable to protect his rights.

Challenges in Admissibility of a Claim

While writing this work, there is an ongoing formal process of examining the admissibility of a petition concerning the request to correct false information disseminated via YouTube and Facebook[19]. So far, a legal claim has been deemed to be inadmissible, and the following claims have also been denied:

- Publishing the “truth” in the same format as the original fake video or post was published;
- Restricting the audience of the Facebook post and YouTube video in question to ensure that its dissemination is restricted;
- Deleting Facebook friends and more than 30% of YouTube subscribers so that fewer users have access to video;
- Deactivating an account or partially deactivating an account spreading fake content.

The plaintiff claimed that if any of the requests are not satisfied by the court, the decision might become unenforceable, and the possible restitution of the plaintiff's rights might be under threat. As mentioned above, these claims failed to pass the formal admissibility stage, and at the time of writing this paper, the case has been appealed to the Court of Appeal.

Negative Context of Application of General Legislation

Considering the characteristics of social media, applying general rules might be somewhat problematic when it comes to online disputes. Whilst protecting online free speech, it is important to draw a difference between facts and opinions.
Paragraph 3 of article 18 of the Civil Code concerning the denial of the fake content uses the term "with the same means"[20]. However, this poses practical difficulties. For example, if a defamatory post was published via Facebook Story, which has a 24-hour long viewable function, and if a plaintiff requests that denial of the fake story was published, would the court in question be able to oblige the respondent to publish “the truth” using the Story function? In other words, if a person publishes a Story, will the "same means" be strictly interpreted, or can we consider a corresponding source for publishing the

[17] See the interlocutory decision N2/34293-November 18 November 30, 2018, of Tbilisi City Court.
[18] Ibid.

[19] Interlocutory decision N2/19389-August 21 August 6, 2021, of Tbilisi City Court.
[20] We imply on means of mass communication that, considering the current reality, shall include social media.

"truth"? Certainly, this would not violate the restitution of rights (especially the right to human dignity). Therefore, the court's assessment will most probably be based on a broader view, which requires the development of practice and case law.

Petty Hooliganism as a Result of Fallacious Development of Social Media Law

In the framework of applying laws designed for an offline world, the perception of activities in social media as petty hooliganism is a result of the improper development of social media law. For a better understanding, Article 166 of the Administrative Offences Code of Georgia defines petty hooliganism as: *"Swearing in public places, harassment of citizens or similar actions that disrupt public order and peace of citizens*. "
A member of a closed group on Facebook[21] uploaded the picture of another person in a negative context. The addressee applied to the court, claiming that an improper action had taken place in a public space. The Court of First Instance satisfied the claim and applied the sanction against the author of the post.[22] However, the Court of Appeal reversed the decision and assumed that petty hooliganism was not the case.[23]
Even if not upheld by the Court of Appeal, online misbehaviour over a published social media post was deemed to be "petty hooliganism" by the Court of First Instance. Traditionally, swearing on the streets (in public places) would be a classic example of petty hooliganism[24] and not online misbehaviour. This example demonstrates that laws that we apply to offline public space are at times unfit for digital space, and therefore referring to improper conduct online as "petty hooliganism" is inappropriate.

Inadequacy of Existing Laws

General rules cannot become the best means to regulate content on social media. Moreover, even if legislation on social media law was in existence, there is still a need to solve social media-related disputes as quickly as possible, which would avoid any delays and contribute to developing case law on social media.

3. Georgia's Path to the EU Membership

Currently, Georgia is experiencing a transitional period. This can be explained by the association agreement with the European Union, which is a step towards becoming a full member of the European family.[25]In this view, Georgia plans to make an official application in the future.[26]

[21] The closed group had many members, including those persons who did not know each other but stayed in the group for certain grounds
[22] See decree of 25 September 2019 of Tbilisi City Court.
[23] See decree of N4/ა-889-December 19 December 9 2019 of Tbilisi Court of Appeals.
[24] See, e.g., decree N4/6241-October 14, 3 October, 2014, of Tbilisi City Court.
[25] Georgia is implementing various rules/institutions into legislation, which is the responsibility of the country.
[26] See the comment of the Minister of Foreign Affairs of Georgia: https://mfa.gov.ge/News/mzad-vart-2024-cels-gavaketot-ganackhadi-evrokavsh.aspx.

On its path to becoming a member of the European Union, Georgia shares western values, which is reflected in its legislation[27]. For example, Article 2 of the law of Georgia On Freedom of Speech and Expression states the following: *"This Law shall be interpreted according to the Constitution of Georgia, international legal obligations undertaken by Georgia, including the European Convention on Human Rights and Fundamental Freedoms and case law of the European Court of Human Rights*."
The application of international conventions plays an important part in Georgian judicial practice.[28]This means that during the transitional period, a free, less bureaucratic, and flexible environment in comparison to other member countries of the European Union, as well as the practice of reliance on international values, principles, regulations, and conventions by Georgian courts transforms Georgia into an important and reliable country for initiating novelties.

4. Creation of a Dispute Resolution Body of Social Media Law

The title of the Dispute Resolution Body of social media law can vary[29]. Before initiating set up of the Dispute Resolution Body, the following aspects must be considered:

Accelerated Timeframe

An accelerated resolution of disputes is very important when it comes to decisions involving social media. In comparison with dispute resolution in courts, adjudication in an alternate body such as the Dispute Resolution Body for social media cases would offer more flexible terms than those offered by courts.

Compliance with International Law

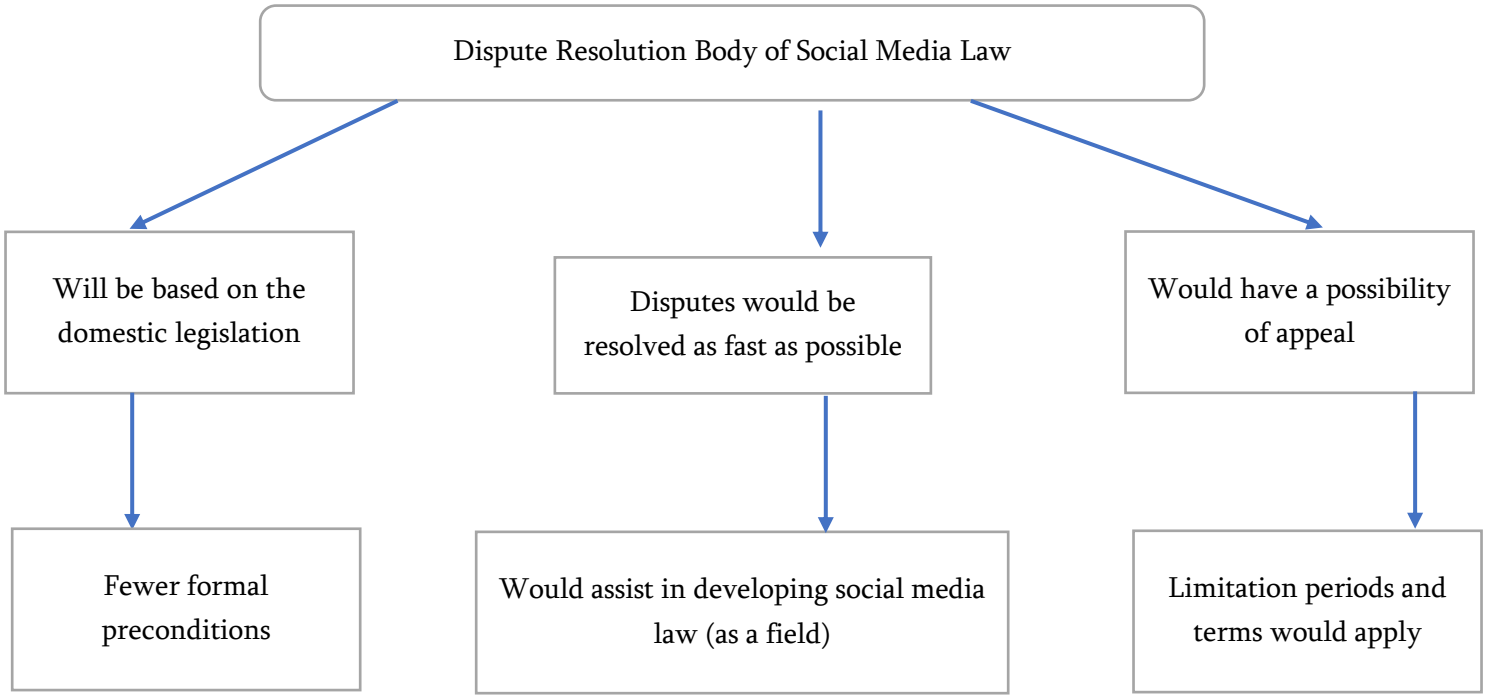
It is important to define which legislation shall the Dispute Resolution Body apply. Commonly, each country aims at creating legislation that would be most agreeable to its culture.[30]Therefore, it is hard to regulate a local issue by applying foreign law, as local context or public opinion.[31] might be contradicted[32]. Therefore, activities of such body shall submit to two aspects: a) local legislation[33]And b) international principles, hence – experience.

Appeal Mechanisms

[27] For example, we could invoke the legislation on business: regulation of entrepreneurial, labour, insolvency, and other legal fields.
[28] See, e.g., interlocutory decision Nბბ-234-2020 of 17 March 2021 of the Supreme Court of Georgia.
[29] In this view, the practice of Ireland can be shared.
[30] Khubua, Theory of Law, Tbilisi, 2014, 85 and f.
[31] Common sense is implied.
[32] Contradiction against universally recognised principles shall not be implied; on the contrary, there's a need for consensus in this view.
[33] Procedural legislation with its formalities is not meant.

It is a person's constitutional right to apply to a court[34]. Besides, while examining the matter of violation of non-property rights within the self-regulatory context, the Constitutional Court of Georgia elucidated that this certainly falls within the jurisdiction of the court[35]. Therefore, it would be inappropriate if the decision of the Dispute Resolution body was final. This means that a party should be entitled to appeal against the decision of the Dispute Resolution Body by observing certain terms[36] or apply to a court to restore his/her rights on the basis of the decision of the Dispute Resolution Body.

Example: In this scenario, the Dispute Resolution Body has made a decision to order the deletion of publication from social media page as it violated basic human rights and was found to be "indecent."
In this case, the body will not be empowered to oblige the defendant to execute its decision but would rather act on its own to enforce the decision. Involvement and collaboration with social media platforms would be crucial at the execution stage; however, this point is beyond the scope of this article. Furthermore, in this scenario, the defendant would be able to apply to the court where he/she could substantiate that, contrary to the Dispute Resolution Body's decision, his/her post is not indecent.
Furthermore, only deletion of the post is not a sufficient action to restore the rights of the plaintiff. Therefore, he/she may apply to the court and also request compensation for moral damages.[37].



[34] See article 31 of the Constitution of Georgia.
[35] See the decision N1/3/421,422 of 10 November 2009 of the Constitutional Court of Georgia.
[36] The terms shall be flexible as well. Say, ten calendar days; it means that the term for applying to the body would be in compliance with the terms set of period of limitation set out in legislation, while for appealing the decision of the body, the same ten calendar days would be applicable as mentioned here
[37] On the basis of paragraph 6 of article 18 of the Civil Code, if, of course, the decision comes into force.

5. Conclusion

In summary, this article has attempted to illustrate practical challenges when it comes to disinformation and other problems that stem from social media in Georgia. Georgia, as a fragile and unconsolidated democracy, is under a huge risk of violation of the human rights of its internet users when cases concern social media. Due to its existing environment (readiness from stakeholders for a change), free and flexible environment, reliance on international principles, conventions, and regulations, and the strive for innovation, Georgia would be a good pilot country to set up a Dispute Resolution Body. Setting up the Dispute Resolution Body of social media law would offer users the flexibility that they are lacking in traditional courts. If the Dispute Resolution Body was set up, it would essentially become a body for developing case law on social media.

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