

The Relation of “Desecration of the State Coat of Arms or of the National Flag of Georgia” to Freedom of Expression

Abstract

The paper addresses the relation of the descriptive part of Article 343 of the Criminal Code of Georgia to Article 17 of the Constitution of Georgia, which establishes the rights to freedom of opinion, information, mass media and the Internet. The practice of local and international courts is reviewed, that clearly shows the importance and complexity of this issue.

The model of freedom of expression that is enforced in Georgia nowadays, in turn, is based on the American standard, which imposes higher requirements for the restriction of the right than the ones in any European country. It is this nuance that gives importance to the mentioned issue. At the same time, the planned legislative amendment in the country, which deals with the punishment of insults to the symbols of the European Union, coincides in content with the subject matter of the article and, possibly, with the development of a debate on its constitutionality; The case of Ani Gachechiladze v. the Parliament of Georgia makes the topic more interesting within the framework of which the judges of the 2nd panel of the Constitutional Court of Georgia will have to discuss the constitutionality of Article 343 of the Criminal Code.

The paper is based on the analysis of case law and doctrine, the research is carried out using logical, systemic, comparative and historical methods.

Introduction

The Constitution of Georgia¹⁸⁰ acknowledges and protects universally recognized human rights and freedoms as eternal and supreme human values. Among the fundamental rights, freedom of opinion is of particular importance for the formation of a democratic society.

The current model of freedom of expression in Georgia adopts the approach developed by US case law, which is the best mechanism for protecting freedom of expression ever created by the

¹⁷⁹ Student of *Ivane Javakhishvili* Tbilisi State University Faculty of Law.

¹⁸⁰ №786 Constitutional Law of the Republic of Georgia of 1995 - Constitution of Georgia. Available at <<https://matsne.gov.ge/document/view/30346?publication=36>>.

US Supreme Court.¹⁸¹ That is why it is interesting to see whether the existence of the entry of Article 343 ("Desecration of the State Coat of Arms or of the national flag ") of the Criminal Code of Georgia¹⁸² ("CCG") is justified as it is in the current version. The paper aims to make a legal analysis of this issue, and it was considered appropriate to discuss the planned legislative amendment, which provides for the punishment of insults to the symbols of the European Union.

Within the topic, it will be demonstrated the approaches of Western European countries and the United States to symbolic expression, as well as an analysis of planned legislative amendment; The essence and purpose of Article 343 of the Criminal Code will be discussed; The case of Ani Gachechiladze v. Parliament of Georgia¹⁸³ will be analyzed and, finally, as a conclusion, author's opinion will be established about the topic under consideration.

1. Desecration of the state symbols, state coat of arms and of the national flag

1.1 European standard - French and German

In France in 2003, when President Chirac was attending a football match, he was offended by the fact that after the French team lost the match, the team fans burned the French flag on the stands of the stadium. Chirac soon left the stadium and instructed French Minister of Interior to prepare a new legislative initiative. Insults to the state flag was punishable by up to six months of imprisonment and by a fine of up to 6,000 francs under 2003 law.¹⁸⁴ In 2010, changes were made in the legislation and the illustration of any type of inscription or photo on the French state flag became punishable, as well.¹⁸⁵

Germany punishes not only the burning of the German flag, but also the defiling of the EU flag and the flag of any other country, for which imprisonment for up to three years is provided.¹⁸⁶ This legislative amendment (meaning the criminalization of burning the flags of other states) is a result of the events that took place in 2017, when Israeli flags were publicly burned by up to 2,500

¹⁸¹ Okruashvili, M., Kotetishvili, I., Freedom of Expression. Freedom of Expression in the United States and Europe, Volume I, Kintsurashvili, T., Ed., Liberty Institute, with financial support from the United States Agency for International Development (USAID), Tbilisi, 2005, 80. Available at <<https://liberty.ge/wp-content/uploads/2012/11/I-I.pdf>>, [16.08.2021]

¹⁸² №2287 Law of Georgia of 1999. Available at <<https://www.matsne.gov.ge/document/view/16426?publication=235>> [16.08.2021]

¹⁸³ The text is available at <<https://www.matsne.gov.ge/ka/document/view/4697684?publication=0>>.

¹⁸⁴ Okruashvili, M., Kotetishvili, I., supra note 3, 80.

¹⁸⁵ The EU Countris will Punish You for Disrespecting their Flags, Euronews. The material is available at <<https://www.euronews.com/2017/11/09/which-country-has-the-harshest-punishments-for-disrespecting-flags-and-national>>, [16.08.2021].

¹⁸⁶ Burning EU and other flags can now bring German jail term. BBC News. The material is available at <<https://www.bbc.com/news/world-europe-52674809>>, [16.08.2021]

protesters. In doing so, they protested President Donald Trump's declaration of Jerusalem as the capital of Israel.¹⁸⁷

The aforementioned examples show how low standards protect freedom of expression in leading European countries such as France and Germany. Fans protested by burning the French flag, while activists took a stand on the current events by burning the Israeli flag. Their actions fit perfectly into the model of the legitimate framework of freedom of expression established by the US Supreme Court; By this standard, the punishment of symbolic expression is strictly limited, which, unfortunately, is not agreed to in France and Germany.

1.2 United States Standard

According to the First Amendment to the US Constitution, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."¹⁸⁸ With this amendment, the American people have reinforced, out of many rights, the most important one - freedom of thought and expression. It should be noted that the criminalization of insults to state symbols has a long legal history in the USA. Since the beginning of the twentieth century, there have been nearly forty court rulings regarding desecration of the flag in the United States.¹⁸⁹

In the beginning, we will briefly address *Brandenburg v. Ohio*,¹⁹⁰ in order to clearly see the defense test developed by the judges to establish a high standard of freedom of expression. Then, in the context of desecration of the flag, among the many interesting solutions, we will discuss the cases: *Texas vs. Johnson*¹⁹¹ and the *United States v. Eichmann*¹⁹².

1.2.1 Brandenburg v. Ohio

Brandenburg was found guilty under the Ohio Criminal Syndicalism Act¹⁹³. "According to the act, the call for committing a crime, sabotage, violence or illegal action to achieve political or industrial

¹⁸⁷ The Israeli Flag Burning Prompts German Foreign Minister *Sigmar Gabriel* to Back Outlawing it. Deutsche Welle. The material is available at <<https://www.dw.com/en/israeli-flag-burning-prompts-german-foreign-minister-sigmar-gabriel-to-back-outlawing-it/a-41806074>>, [16.08.2021].

¹⁸⁸ Constitution of the United States of America, *Ugrekheldze M., Ed., Kobaladze, A., Baramidze S., Tr.*, Tbilisi, 1993. Available at <http://dspace.nplg.gov.ge/bitstream/1234/6905/1/Amerikis_Konstitucia..pdf>, [16.08.2021]

¹⁸⁹ 2019 Constitutional Lawsuit №1423, Ani Gachechiladze v. Parliament. Available at <<https://www.constcourt.ge/ka/judicial-acts?legal=1434>>, [16.08.2021].

¹⁹⁰ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

¹⁹¹ *Texas v. Johnson*, 91 U.S. 397 (1989).

¹⁹² *United States v. Eichman*, 496 U.S. 310 (1990).

¹⁹³ See description at <<https://www.mtsu.edu/first-amendment/article/942/criminal-syndicalism-laws>>.

reform was punishable." The Supreme Court, in a unanimous decision, unequivocally rejected the doctrine that developed in *Whitney v. California*¹⁹⁴. The court presented the most comprehensive mechanisms for freedom of expression.¹⁹⁵

According to the *Brandenburg* test, in order to ban expression, three elements are necessary: a direct and unequivocal call for a violation of the law; An expression that, by its very nature, calls for an immediate violation of the law and a high probability that the call will result in imminent lawless action.¹⁹⁶ According to the test, if the above signs were not clearly visible, even the incitement of violence and hatred is protected by the First Amendment.¹⁹⁷

1.2.2 Texas vs. Johnson

In 1984, demonstration was held against the policies of President Ronald Reagan and the actions of Dallas-based corporations. During the demonstration, Gregory Johnson burned an American flag in front of Dallas City Hall, after which he was arrested and sentenced to two years in prison and fined \$2,000.

After the hearing in the Texas Supreme Court, the court overturned conviction, indicating that the burning of the flag was an expressive conduct that was protected by the First Amendment to the U.S. Constitution.¹⁹⁸ Accordingly, the decision was appealed to the US Supreme Court, which agreed with the arguments of the Texas court and, at the same time, explained even more clearly the content of freedom of expression. The Court held that such an expression should be accompanied by a "communicative element" [of opinion], the existence of which, was obvious in the present case. After emphasizing this, the Court also discussed the issue of public order protection, where it ruled that public order was not endangered, as well as underlined the fact that the mere assumption that this type of expression might be taken by the population as an offensive is not sufficient to restrict the right to expression.¹⁹⁹ The court emphasized that "Johnson's punishment for flag burning means punishing him for the political protest he sought to express by burning a flag."²⁰⁰

The U.S. Supreme Court upheld the ruling of the Texas Supreme Court and stated that criminal conviction of Johnson was contrary to the First Amendment to the U.S. Constitution.²⁰¹

¹⁹⁴ *Whitney v. California*, 274 US 357, Supreme Court 1927.

¹⁹⁵ See supra note 12.

¹⁹⁶ *Okruashvili, M., Kotetishvili, I.*, supra note 3, 80.

¹⁹⁷ Hate Speech (Legal Framework for Georgia), Project "Promoting Human Rights Protection in Georgia", funded by the Government of the Kingdom of the Netherlands, Georgian Democratic Initiative, 2014. Available at <<https://www.gdi.ge/uploads/other/0/190.pdf>> [16.08.2021].

¹⁹⁸ See the amendment text at <<https://constitution.congress.gov/constitution/amendment-1/>>, [16.08.2021].

¹⁹⁹ *Kublashvili, K.*, *Fundamental Human Rights and Freedoms*, Tbilisi, 2020, 210-211.

²⁰⁰ *Ibid*, 211.

²⁰¹ *Ibid*.

1.2.3 The United States v. Eichmann

Johnson's case was faced with harsh political assessments. In 1989, Congress passed a law punishing the intentional destruction, burning, maintaining on the floor or on the ground, or trampling upon the flag of the United States.²⁰²

Adoption of the Flag Protection Act sparked protests. Four persons were arrested at the protest demonstration held in Seattle, and the police arrested Eichmann as well. The trial judges referred to the Supreme Court's decision in *Texas v. Johnson* and considered the arrest of persons inadmissible.²⁰³

The government appealed the decision to the Supreme Court. The case was opened under the title: *United States v. Eichmann*. The judges did not change the already established practice. The Flag Protection Act was declared unconstitutional. According to the decision: "The real purpose of the Flag Protection Act is to restrict communication and ideas, because otherwise no one will be interested in the fate of a simple piece of material - the flag - that every person can have. This Act was allegedly intended to punish the expressive conduct of flag burning"²⁰⁴. "The Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."²⁰⁵

1.3 Georgian standard

According to CCG: "Desecration of the State Coat of Arms or of the national flag" is criminalized and shall be punished by restriction of liberty for up to two years or with imprisonment for up to two years (Article 343). According to the interpretation made in the literature, the desecration of the state coat of arms or flag is inadmissible not only on the moral basis of our society, but also by the universally recognized norms of international law.²⁰⁶ The direct object of protection of this article is the authority of the state coat of arms and flag as a symbol of Georgia.²⁰⁷ Interesting is the fact that the subjects of the crime are citizens of Georgia, as well as stateless persons capable of having guilt who have attained the age of 14. In analyzing this Article, the term "desecration" is the most obscure, its definition is not presented in the literature and it is stated that "the objective part of the crime is conducted by desecration of the state coat of arms and flag in all ways and manners. It may be manifested in their intentional damage or destruction; In the depiction of an offensive

²⁰² Okruashvili, M., Kotetishvili, I., *supra* note 3, 71.

²⁰³ Kublashvili, K., *supra* note 21, 211-213.

²⁰⁴ Kublashvili, K., *supra* note 21, 211-213.

²⁰⁵ *Ibid.*

²⁰⁶ Lekveishvili, M., Mamulashvili, M., Todua, N., *Special Part of Criminal Law, Book II*, Tbilisi, 2017, 435.

²⁰⁷ *Ibid.*

inscription or drawing; in the use of coats of arms and flags in a manner unacceptable to morals, tearing down, trampling down, burning them, etc.”²⁰⁸ Such a definition of desecration gives rise to a wide range of state’s interference with the right to freedom of expression, that directly points to the vagueness and ambiguity of the norm. According to interpretation made by the European Court of Human Rights, "the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to his conduct"²⁰⁹. The provision in Article 343 cannot guarantee the protection of a person against the arbitrariness in application of law. A subject of law is not able to determine which action is prohibited by law and which action may result in legal liability, and as a result, the person is unable to guide his conduct in accordance with the rules established by law. The Article was amended twice in 2006 and 2017. The amendments did not address the descriptive part of the norm; Only the provision about the sentence has been changed, which does not change the fact that the norm grossly interferes with freedom of expression and places expressive conduct within a vague regulatory framework.

Publicity is necessary for a person’s act to be qualified in accordance with Article 343. Publicity means that the act is committed in the presence of even one person. According to the type of the guilt, the crime is committed with direct intent, which means that the person is aware of the fact that he is committing an act desecrating the coat of arms or the flag of Georgia, thereby violating the authority of the state symbol, and desires it.²¹⁰

It is necessary to pay attention to the principle of proportionality and to examine the legitimate aim, suitability, necessity and proportionality of this norm of the CCG. After reviewing American case law, we can name the legitimate aims that states have in such a case. Legitimate aims may be the prevention of violation of public peace, the protection of the flag as a symbol of nationality, the normal functioning of the government and its bodies, and the protection of the flag as a symbol of unity.²¹¹ In terms of suitability we can point out that, theoretically, achieving the mentioned legitimate aim is entirely possible; As for the part of necessity and proportionality, it seems that there are less restrictive mechanisms that will make it possible, on the one hand, to protect freedom of expression and, on the other hand, to achieve the legitimate aim that the state has. It is impossible to overthrow the state system and hinder the proper functioning of the state governance structure and its bodies by the actions of a teenager who displays the state flag on torn jeans. There was a similar dispute in U.S. judicial practice where in *Smith v. Goguen*²¹² Massachusetts court sentenced a teenage girl to six months in prison. Under state law, "whoever

²⁰⁸ *Ibid.*

²⁰⁹ *The Sunday Times v United Kingdom* (Series A No. 30), ECHR (1979-80) 2 EHRR 245, 26 April 1979. See European Court of Human Rights, Selected Judgments, Vol. I, Demetrashvili, A., Khetsuriani, J., Aleksidze, L. Ed., Science, 2001, 386-410.

²¹⁰ Lekveishvili, M., Mamulashvili, M., Todua, N., *supra* note 28, 436.

²¹¹ Amicus curiae opinion on №2/15/1423 case of 2019 - Ani Gachechiladze, a citizen of Georgia v. Parliament of Georgia.

²¹² *Smith v. Goguen*, 415 U.S. 566 (1974), the text is available at <https://scholar.google.com/scholar_case?case=14723025391522670978&q=smith+v.+goguen&hl=en&as_sdt=2006&as_vis=1>, [16.08.2021]

publicly mutilates, tramples upon, defaces or treats contemptuously the flag of united states shall be punished by a fine of not less than ten nor more than one hundred dollars or by imprisonment for not more than one year."²¹³ At the trial, the judge invalidated the words "treats contemptuously" due to unpredictability. Eventually, the arrested person was released from custody.

For the purposes of this paper, it is important to focus on the planned amendment, according to which, in addition to state symbols, the burning or damaging European Union symbols shall be subject to specific sanctions, including fines.²¹⁴ The criminalization of this act is based on the desecration of the state-owned EU flag by homophobic groups. The Council of Heraldry said in a statement: "It is extremely worrying the fact of defiling the European flag and treating it with unworthy respect. The European flag represents not only a separate symbol of any organization, the European Union or the Council of Europe, but more broadly symbolizes European identity and unity. The circle of 12 golden stars depicted on the azure field stands for integrity, solidarity and harmony among the peoples of Europe."²¹⁵

It is clear that damaging or burning a state property (in this case a flag) should be punishable with a specific monetary sanction, but complete elimination of the expressive conduct and, fining or prosecuting a person for burning the European Union flag owned by the specific person is completely inadmissible in a state which applies American model of free expression.

Everyone, both majority and minority, can exercise their right to freedom of expression. Fortunately, the number of opponents of European integration does not exceed 10% in Georgia.²¹⁶ They are a minority in the country, but they have the right to take a stand granted and guaranteed by the constitution, even if it is conducted by burning the flag of the European Union. This is the essence of freedom of expression, and this is what *Texas v. Johnson* refers to in the case: "The free speech is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger"²¹⁷. Burning the flag of the European Union will definitely cause unrest, dissatisfaction and anger in the Georgian society, because our goal is and will be European integration, however, our readiness must be confirmed before European partners, by the irreversible development of the country, by compliance with established standards and not by strict and rigid restrictions on freedom of expression. Criminalization of European Union flag burning would be a step backwards and a complete disregard for the American model of freedom of expression, which would devalue the high standard

²¹³ See the text of the normative regulation at <<https://malegislatore.gov/laws/generallaws/partiv/titlei/chapter264/section5>>, [16.08.2021].

²¹⁴ Insults to EU symbols will be punished, Parliament is working on a new draft law, *Commersant*, 2021. The material is available at <<https://commersant.ge/ge/post/evrokavshiris-simbolikis-sheuracxyofa-dasdjadi-gaxdeba-parlamenti-axal-kanonproeqtze-mushaobs>>, [16.08.2021].

²¹⁵ Council of Heraldry: Defiling the European flag is extremely worrying, *Radio Liberty*, 2021. The material is available at <<https://www.radiotavisupleba.ge/a/31345939.html>>, [16.08.2021].

²¹⁶ The number of supporters of EU integration has increased to 83% of the population, *Business Media Georgia*, 2019. The material is available at <<https://bm.ge/ka/article/evrokavshirshi-integraciis-momxreta-raodenoba-mosaxleobis-83-mde-gaizarda/28990>>.

²¹⁷ *Ibid.*

that is a valuable achievement for Georgia.

2. *Ani Gachechiladze, a citizen of Georgia v. Parliament of Georgia*

Possible progressive decision by the court

Given that the Constitutional Court has not yet rendered a decision on the case under consideration, the arguments presented for the trial will be evaluated for the purposes of the paper and a discussion will be made about what type of decision is desirable for the Second Panel of the Constitutional Court to make.

The definition of "flag" is specified in the corresponding organic law²¹⁸: "The national flag of Georgia is a rectangular white fabric with a large, red, right-angled cross in the centre touching all four sides of the flag; The squares created by the vertical and horizontal arms of the cross feature four Bolnisi-Katskhuri crosses of the same colour."

The explanation presented by the representative of the Parliament allows the judge to maneuver. It is difficult to determine the essence of the flag by the criteria presented by the respondent. In their view, if an image is scaled down and meets the criteria of organic law, it is perceived as a state flag. The representative of the Parliament points out that: "If [flag] has a quadrangular shape in a printed version, and not rectangular, then it cannot be considered to be a flag."²¹⁹ I wonder what happens when, for example, the cross on the right side of the flag is placed slightly on the right from a specified place, do we consider it as a flag?

After this type of explanation, during the repeated questioning by the judges, the respondent party clarified its position and explained that the definition of the flag given in the Organic Law has its purposes and, for the purposes of Article 343 of CCG, application of the norm should not be limited to this definition while deciding the case submitted. In order to qualify an action under Article 343 of the CCG, it is not mandatory the flag that has been desecrated, to be displayed on a white piece of material and to have exactly same the parameters specified in the Annex to the Organic Law.²²⁰ In one case, the reference to compliance with the requirements of Organic Law and, in the other case, the disregard of these standards casts doubt on the readiness of the respondent in the context of the subject matter.

²¹⁸ №2711-II Organic Law of 2018 on State Symbols of Georgia. Available at <<https://www.matsne.gov.ge/ka/document/view/4368486?publication=0>>, [16.08.2021].

²¹⁹ Ibid.

²²⁰ Ibid.

The respondent pays great attention to the perception component and believes that a subjective-objective evaluative approach should be used in each particular case. The judges asked the following question: whether the flag depicted on the napkin used as intended by the organizer of one of the large-scale events during the planned activity in a space surrounded by large numbers of people and a flag depicted on a mask can be attributed to the sphere punishable under Article 343 of the CCG. The respondent explained that in the part of the napkin if it meets the publicity component and poses an imminent danger to public order, it should be considered punishable if it fits into the above-mentioned parameters and has a rectangular shape. In the same case, if the napkin had the shape of a square or a rhombus, the image would not be considered to be a flag and therefore the person would not fall within the scope of Article 343 of the CCG. In the case of mask, the defendant refrained from stating a similar approach and position.

With regard to the legitimate aim, it should be said that the respondent appealed to patriotism and, therefore, to the preservation of the unity of the country. Respondent stated: "If we address this issue broadly, where does the provision of territorial integrity begin? "It starts with the fact that a person must be based on patriotism and patriotic spirit in the first place, and this spirit is first and foremost manifested in respect for the national symbol and what are the national symbols, if not the coat of arms and the flag."²²¹ Additionally, during the explanation, the respondent clarified that the legitimate aim of this article is to promote the upbringing of patriotic people who will subsequently protect the integrity and unity of the state. If the norm is declared unconstitutional, in respondent's opinion, it will hinder the upbringing of patriots and endanger the protection of territorial integrity."²²² As a result of the reasoning developed, it seems that the named norm of law obliges the citizens of Georgia to be patriots. The argument stated by them greatly diminishes their position, because forced patriotism does not fit the Georgian standard of freedom of expression, which, in turn, is based on the American model. This type of holding was made in one case²²³ in the United States where a court found that the obligation to salute the flag violated freedom of expression for schoolchildren who did not wish to do so.

In the constitutional dispute, the defendants repeatedly referred to the imminent danger test, which is part of the American standard. In order to avoid confusion, we should clarify the following: The plaintiff requested that Article 343 of CCG to be declared unconstitutional due to the violation of freedom of expression and that the action taken by the person to be assessed under an imminent danger test, while the respondent stated that Article 343 of CCG already contained an imminent danger test and its invalidation as an unconstitutional was inadmissible. No matter what kind of justification we sought to find for reality, it will remain as it is. Neither the commentaries nor the systemic interpretation of Article 343 of CCG indicates that the norm, in itself, implies an imminent danger test.

²²¹ The audio recording is available at <<https://www.youtube.com/watch?v=vTJGIPOm5Gs&list=PLM7w6fY uzeWjrjiaPd2r2hhLkXJxeeZ&index=1>>,[16.08.2021]

²²² Ibid.

²²³ West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

Not reviewing the content of the term "desecration" itself should be considered to be a big mistake during the hearing, but, based on the reasoning, it can be said that representatives of the Parliament would consider any action, be it burning, walking over, squeezing, wiping hand with it, etc., as a desecration. Such an interpretation would have a kind of "chilling" effect, meaning that such norms actually have a much broader effect on the restriction of a right than is directly enshrined in the wording of the rules. This is due to the fact that, because the unpredictable norm, people do not know exactly in which case they will violate the requirements of the law, therefore, they may refrain from actions that the legislature did not intend to restrict.²²⁴

During the hearing, the judge asked the defendant to evaluate the actions of the following type: "assumably an anarchist who verbally insults state symbols and another anarchist who expresses his opinion by burning a flag."²²⁵ The respondent party found that the person who states his opinion, based on the fact that the opinion is absolutely protected, acted within the framework of free expression, while the person who expressed the same opinion by burning the flag was found guilty under the CCG. This type of interpretation, made by the representatives of the Parliament, clearly points to the big problem that the norm of CCG under consideration has with freedom of expression. Different treatment of two different persons for the same idea goes beyond all established frameworks of law and, of course, including the American standard.

Based on the issues discussed, the 2nd Panel of the Constitutional Court of Georgia should be obliged to rely on the existing progressive approaches adopted by the US case law and should declare Article 343 of CCG unconstitutional.

Conclusion

After the analysis of Article 343 of CCG and the discussion of the case - Ani Gachechiladze v. Parliament of Georgia - it is clear that Article 343 of CCG is vague; The essence of the flag and its understanding are unclear; The meaning of the term "desecration", which has a "chilling" effect on society, is interpreted in a broad manner; The legitimate aims voiced by the representative of Parliament are irrelevant and unjustifiably interfere with freedom of expression.

The analysis showed that the leading European countries have a relatively low standard of freedom of expression, while a review of US cases has confirmed how valuable free speech and expressive conduct are to that country.

Based on the reasoning developed, we can unequivocally say that Article 343 of CCG grossly interferes in the field of freedom of expression. Imposing criminal liability for this type of action is unjustified. It must be subjected to an imminent danger test and assessed within the high standard acknowledged in Georgia.

The planned amendments regarding imposition of liability for burning the EU flag should not be left out of consideration. This regulation is unequivocally unconstitutional and, like Article 343 of CCG, constitutes gross interference with freedom of expression. Its implementation in practice would be a big mistake for Georgia, which has set a higher standard than all European

²²⁴ №2/2/516.542 decision of the Constitutional Court of Georgia of 2013. The text is available at <<https://matsne.gov.ge/ka/document/view/1925761?publication=0>>. [16.08.2021]

²²⁵ Ibid.

countries to restrict freedom of expression that is often referred to as the backbone of democracy. This is a great achievement for the Georgian state and its decline, for political purposes, is completely inadmissible and unjustified.

Judges of the Supreme Court, lower courts and the Constitutional Court should have more courage and are obliged to understand the fact that, under the legislation of our country, the protected freedom of expression sets a very high standard, they are obliged to understand an idea that stands behind expressive conduct, burning flag or coat of arms or other actions and make the only and correct decision: In case of common courts, they should apply to the Constitutional Court to check the constitutionality of the norm, and the Constitutional Court, which currently has a chance to set a precedent, should declare Article 343 of the CCG unconstitutional due to its conflict with the current version of Article 17 of the Constitution of Georgia .

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