



**INTERFERENCE WITH THE JOURNALISTS' PROFESSIONAL DUTIES
AND MONITORING OF FREEDOM OF EXPRESSION CHAPTER
OF ACTION PLAN OF THE GOVERNMENT OF GEORGIA ON
THE PROTECTION OF HUMAN RIGHTS**



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INTRODUCTION

Interference with Journalists' professional duties is punishable under the article 154 of the Criminal Code of Georgia, namely:

"1. Unlawful interference with the journalists' professional activities, i.e. coercing a journalist into disseminating or not disseminating information, - shall be punished by a fine or community service from 120 to 140 or with corrective labour for up to two years.

2. The same act committed using threat of violence or official position, - shall be punished by a fine or imprisonment for up to two years, with or without the deprivation of the right to hold an official position or to carry out a particular activity for up to three years or without this."

As the results of the monitoring of the Government's Action Plan of the Protection of Human Rights conducted by MDF reveals, law enforcement and investigation bodies do not assign respective qualification and do not efficiently investigate the cases with evident hindering of journalistic activities.

This report overviews the 2016 incidents of interference with journalists' professional duties, including Parliamentary elections day violations revealed via media coverage. It also consists of the monitoring findings of the implementation of Freedom of Expression Chapter of Action Plan of the Government of Georgia on the Protection of Human Rights. Council of Europe and OSCE standards aimed at protection journalists' safety are presented as well followed by concluding recommendations.

Among actions identified in the freedom of expression chapter of the Action Plan of the Government of Georgia on the Protection of Human Rights for 2014-2015, is review of the notion of "interference" with professional activities of Journalists. Despite legislative gaps revealed in practice which is related to the narrow definition of the notion of interference in the professional activities of journalists, the legislative amendments in this regard have not been initiated yet.

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INTERFERENCE WITH JOURNALISTIC DUTIES DURING 2016 PARLIAMENTARY ELECTIONS DAY

There were 3 instances of interference with Journalists professional duties during elections day on 8-9 October:

1. TV IBERIA, GDS, RUSTAVI. On October 8, unidentified individuals physically abused and damaged cameras of journalists and cameramen of TV Iberia and GDS, while taking away microphone of Rustavi 2 journalist. In addition, as the footage aired in the media shows, the offenders were abusing the majoritarian candidate of United National Movement with homophobic language.

According to the regional edition, Kutaisi Today: "The first Deputy Governor of Imereti, Giorgi Chighvaria, was heading the given task together with the Head of Organizational and HR Management Department of City Assembly, Levan Gogelashvili. Kakha Abzianidze, Gocha Avaliani, Giorgi Svanidze and Gia Jincharadze were spearheading the youngsters' conflict."

Ministry of Internal Affairs started an investigation on this fact with the 187th article of the Criminal Code of Georgia (Damaging or destroying another person's property which has resulted in substantial damage).

2. IMEDI. On October 8, during the confrontation at the 48th electoral precinct in Marneuli, the crew of TV Company Imedi was hindered in performing their professional duties: through stone-throwing, cameraman's camera was broken. As Nana Lezhava, the head of news service at Imedi TV Company told to MDF, because of the broken camera, the crew was reporting to the TV Company about ongoing events via social network.

3. NETGAZETI. The incident took place on October 9 at about 01:30 pm at the Pasteur Str. near the office of online media outlet "Netgazeti". According to the editorial board, about 20 young men were gathered near the office, fighting with each other on political ground. The reporter of "Netgazeti" was recording this confrontation by telephone, when young men demanded him to stop recording. After the phone battery drained, young men verbally abused the journalist and accompanied journalist to the "Netgazeti office with such abuses. The reporter managed to enter the office. According to "Netgazeti", the police started questioning with the purpose of responding to the verbal abuse.

2016 DATA

This chapter represents the statistics (13) of interferences with journalists' professional duties, including violations during elections day, blackmailing with private life footage as well as facts of publishing secret recordings and assaulting journalists. As the data reveals, not all cases are qualified as the interference with journalists' professional duties by law enforcement officers. The results of the launched investigations are not known to the public as well.

#	Cases	Media Outlet	Involved party	Typology of Violation	Response
1	Wiretapped recording of a phone conversation between Paata Burchuladze, leader of election bloc State for People, and Nika Gvaramia, head of Rustavi 2 TV, was leaked on the Internet <i>14 September</i>	TV Rustavi 2	Unknown person	Publishing secret recording	The prosecutor's office launched an investigation under article 159 (1.2) of the Criminal Code of Georgia (Violation of secrecy of personal correspondence, phone conversation and other kinds of correspondence).
2	Sex Tape Fabrication against Tabula Journalists <i>12 April</i>	TV Tabula	Unknown person	Blackmailing with video fabrication	The prosecutor's office launched an investigation under article 157 of the Criminal Code of Georgia (Disclosure of personal or family secret, of information on private life or of personal secret).
3	Blackmailing of anchor TV Pirveli with secret recording of her private life. <i>14 March</i>	TV Pirveli	Unknown person	Blackmailing with secret videos of private life.	The prosecutor's office launched an investigation under article 157 of the Criminal Code of Georgia (Disclosure of personal or family secret, of information on private life or of personal secret).
4	Physical abuse and damage of cameras of Iberia and GDS TV and interference with journalistic duties of Rustavi 2 near election precinct in Kutaisi. <i>8 October</i>	TV Iberia, GDS, Rustavi 2	Party activists, According to online portal Kutaisi Today, representatives of local government.	Interference with journalists' professional duties, damage of property.	The prosecutor's office launched an investigation under article 187 (1) (Damage or destruction of others property).
5	Damage of TV Imedi's camera during incident in Marneuli. <i>8 October</i>	TV Imedi	Party activists	Interference with journalists' professional duties, damage of property.	The Ministry of Internal Affairs launched an investigation regarding incident in Marneuli (Article 162 of the Criminal Code).

6	Interference with recording of Netgazeti journalist and offense in Tbilisi. <i>9 October</i>	Online portal Netgazeti	Unknown persons	Interference with journalists' professional duties	According to Netgazeti, police questioned journalist regarding verbal offense.
7	During the interview with MP from opposition party, at the Tbilisi International airport unknown man verbally insulted Rustavi 2 crew and then physically insulted the cameraman. <i>19 June</i>	TV Pirveli	Unknown person	Interference with journalists' professional duties	Investigation was launched under the Article 125 of the Criminal Code (battery).
8	Verbal and physical abuse of Tabula TV journalists at Restaurant Chashnagari at Kote Apkhazi Street in Tbilisi due to editorial policy of the media outlet (criticism of the Georgian Orthodox Church). <i>12 January</i>	TV Tabula	Unknown persons	Persecution for professional pursuits.	The Ministry of Internal Affairs has launched investigation under Article 125 of the Criminal Code of. However, later the case prequalified and the investigation continued under Article 156 (persecution). According to this article, the persecution for speech, opinion, conscience, religious denomination, faith or creed or political, public, professional, religious or scientific pursuits – shall be punishable by fine or restriction of freedom for up to two years in length or by imprisonment similar in length. The investigation of this particular case has been finalized and is currently under consideration in court.
9	The chief editor of Media.ge david Mchedlidze prevented from recording the video by policemen in an abandoned building at Gagarini Street in Rustavi. <i>18 August</i>	Internet porta; Media.Ge	Policemen	Interference with professional duties of journalist.	The prosecutor's office launched an investigation under the Article 154 (Interference with professional duties of journalists) and Article 333 (exceeding of official power).

10	<p>Journalists from Livepress, Ipress and TV Radio Company Odishi were prevented from performing their professional duties during local by-elections when several leaders of opposition United National Movement party were beaten outside a polling station in the village of Kortskheli of Zugdidi municipality.</p> <p style="text-align: right;"><i>22 May</i></p>	<p>Online portald Livepress ღღა Ipress, TV Odishi</p>	Party activists	Interference with professional duties of Journalists	Investigation of the Kortskheli incident has been launched under Article 125 (Battery) and 239 (hooliganism) of the Criminal Code of Georgia.
11	<p>Journalists of Liberali and Netgazeti were prevented from carrying out their professional duties at Tbilisi State University during students protest rally. Liberali journalist Sopho Gogishvili was physically insulted while camera of the photographer Basti (Mamuka Mgaloblishvili) was broken. Phone of Netgazeti Journalist Giorgi Diasamidze was seized.</p> <p style="text-align: right;"><i>14 March</i></p>	<p>Online portals Liberali and Netgazeti</p>	Participants of students protest rally	Interference with professional duties of journalists, damage of property	Ministry of Internal Affairs launched an investigation under the Article 187, paragraph 1. (damage of the property).
12	<p>Kekheti Information Center journalist was prevented from recording in the Akhmeta Municipality building by Head of the Property Management and Infrastructure Service, Lukhum Shetekauri .</p> <p style="text-align: right;"><i>28 March</i></p>	<p>Kekheti Information Center</p>	Head of the Property Management and Infrastructure Service of Akhmeta Municipality	Interference with professional duties of journalist	Ministry of Internal Affairs launched investigation under the Article 154 (2).
13	<p>The Kakheti Information Center reported that its journalist, Gela Mtvilishvili was assaulted physically and verbally by Tsnori Governor Tamaz Mateshvili during the road construction works in Tsnori overnight on <i>September 23</i></p>	<p>Kekheti Information Center</p>	Tsnori Governor	Interference with professional duties of journalist	<p>On September 24 Tamaz Mateshvili apologized for the incident and resigned.</p> <p>According to journalist police launched investigation under the Article 154 (2) of the Criminal Code.</p>

MONITORING THE IMPLEMENTATION OF FREEDOM OF EXPRESSION CHAPTER OF ACTION PLAN OF THE GOVERNMENT OF GEORGIA ON THE PROTECTION OF HUMAN RIGHTS FOR 2015

EXECUTIVE SUMMARY: In freedom of expression part of the Action Plan of the Government of Georgia on the Protection of Human Rights, the authorities carried out comprehensively only those activities, which were related to adoption of legislative amendments on digital broadcasting. Like in 2014, insufficient statistics on interference in journalists' professional activities and lack of reaction on the part of law enforcement agencies still remained a problem in 2015. The report, however, does not reflect the cases related to media outlets critical towards the government, intimidation of journalists on the part of officials, as well as the facts of surveillance and blackmailing. The Ministry of Justice failed to complete its work on the freedom of information draft law within the timeframe specified in the Action Plan.

INTRODUCTION. The present chapter provides the results of monitoring the implementation of Freedom of Expression Chapter of Action Plan of the Government of Georgia on the Protection of Human Rights for 2015.

Implementation of the National Strategy for the Protection of Human Rights in Georgia 2014-2020¹ and the Action Plan on the Protection of Human Rights 2014-2015² is coordinated by the Interagency Coordinating Council³ chaired by the Prime Minister of Georgia. The Council coordinates the implementation and monitoring of the Action Plan and is accountable to the Government of Georgia and the Prime Minister. The Council is required to submit an annual report on the implementation of the Action Plan to the Government of Georgia no later than March 15 and to the Parliament of Georgia no later than March 31 once a year.

The Council submitted the 2014-2015 report to the Parliament through violation of the timeframe, on June 16⁴.

The Media Development Foundation (MDF) reflected the results of monitoring the implementation of the 2014 Action Plan in its report "Media Freedom 2015"⁵. Like the previous report, monitoring the implementation of the Freedom of Expression Chapter of the Action Plan for 2015 consists of three objectives:

¹ Parliament of Georgia, 30 April, 2014. National Human Rights Strategy of Georgia 2014-2020

<http://yourhumanrights.ge/about-us/national-human-rights-strategy-of-georgia/>

² Government of Georgia, Decree No 445 (9 July 2014); Action Plan on the Protection of Human Rights 2014-2015, <http://yourhumanrights.ge/temp/>

³ Government of Georgia, Decree No 445 (9 July 2014); <http://yourhumanrights.ge>

⁴ A letter No 21617 of the Georgian Government's Office to the Parliament of Georgia;

⁵ Media Development Foundation (2016). Media Freedom 2015, chapter 7, <http://mediameter.ge/ge/research/mediis-tavisupleba-2015>

- 9.1. Limitation and prevention of interference in the professional activities of journalists;
- 9.2. Identification and elimination of current legislative ambiguities in relation to freedom of expression;
- 9.3. Provision of access to information.

The aim of monitoring is to assess the implementation of activities envisaged by the Freedom of Expression Action Plan for 2015 and to compare it to the findings of similar monitoring conducted in 2014. The main purpose of such comparison is to show whether the shortcomings revealed during implementation of the previous action plan have been eliminated and how efficient this government mechanism is.

METHODOLOGY. The monitoring was based on the analysis of documents, which, among others, involved:

1. Report on the implementation of the Government Action Plan on the Protection of Human Rights 2014-2015⁶;
2. Georgian Public Defender's Report on the Situation of Protection of Human Rights and Freedoms in Georgia 2015⁷;
3. Public information requested from relevant entities;
4. Incidents revealed as a result of media monitoring⁸.

Assessment was made on the basis of the following three indicators:

1. Public Defender's report;
2. Statistics generated by investigative authorities;
3. Media reports on separate incidents.

The first two indicators are already mentioned in the Action Plan. Selection of media reports on interference in professional activities of journalists as the third indicator was prompted by the fact that according to part 1 of article 101 of the Criminal Procedure Code of Georgia, "the grounds for initiating an investigation shall be the information provided to an investigator or a prosecutor, or information revealed during criminal proceedings, or information published in the mass media."

⁶ <http://info.parliament.ge/file/1/BillReviewContent/123277?>

⁷ <http://www.ombudsman.ge/uploads/other/3/3512.pdf>

⁸ <http://mediameter.ge/ge/media-cases>

1. LIMITATION AND PREVENTION OF INTERFERENCE IN THE PROFESSIONAL ACTIVITIES OF JOURNALISTS

The Government Action Plan on the Protection of Human Rights 2014-2015 specifies three activities to limit and prevent the facts of interference in the professional activities of journalists:

9.1.1. Swift and effective investigations by the investigative authorities into interference in the professional activities of journalists;

9.1.2. Appropriate qualification of crimes by the Prosecutor's Office in case of interference in the professional activities of journalists;

9.1.3. Generation of statistics by investigative authorities reflecting the number of registered crimes on interference in the professional activities of journalists as well as the number of such crimes solved.

The report, first of all, discusses the third activity related to generation of special statistics or comprehensive registration of incidents, without assessment of which it would be difficult to analyze the first and second activities. Below, the implementation of the first and second activities will also be discussed.

1.1. Generation of Special Statistics

Generation of special statistics by investigative authorities on the facts of interference in the professional activities of journalists envisages collection of data on the number of registered crimes as well as the number of such crimes solved.

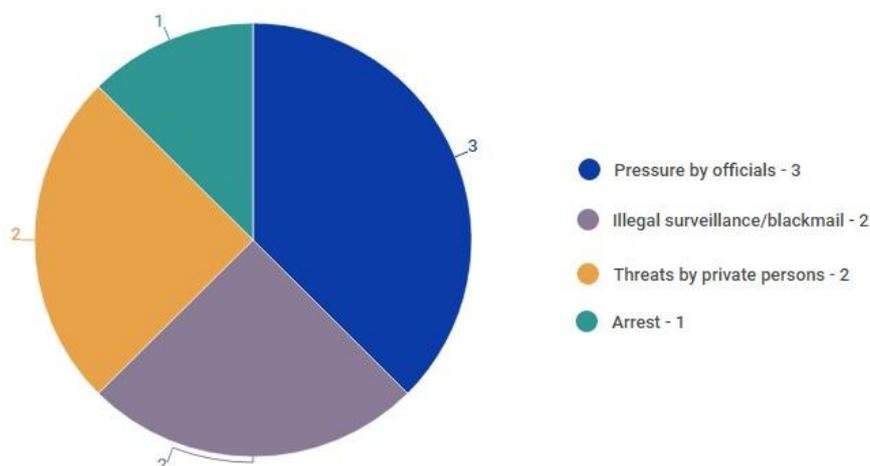
As seen in table 1, the government's report provides only one fact of interference in journalists' professional activities, involving interference in IPN journalist's professional activities on the part of an opposition party activist that was followed by reaction on the part of law enforcement agencies. Eight incidents covered by media outlets with three of them reflected in the Public Defender's report, have not been included in the statistics of the Government Action Plan, although a report of the Public Defender is specified as one of the performance indicators of the government's activities.

Table 1. Facts of interference in professional activities of journalists in 2015, by three indicators

#	Facts Reported in Media	2014-2015 Report of the Government on the Implementation of Human Rights Action Plan	Public Defender's Report 2015
1	The fact of interference in professional activities and physical insult against IPN photo reporter. <i>4 March 2015</i>	The fact of interference in professional activities and physical insult against IPN photo reporter. <i>4 March 2015</i>	The fact of interference in professional activities and physical insult against IPN photo reporter. <i>4 March 2015</i>
2	Eka Mishveladze, the author and host of talk show Pirveli Studio on GPB, made a statement about illegal surveillance and infringement of her privacy rights. <i>8 September 2015</i>		Eka Mishveladze, the author and host of talk show Pirveli Studio on GPB, made a statement about illegal surveillance and infringement of her privacy rights. <i>8 September 2015</i>
3	Nika Gvaramia, director general of Rustavi 2 TV, said that he was blackmailed and threatened by the government with releasing illegal recordings. <i>21 October 2015</i>		Nika Gvaramia, director general of Rustavi 2 TV, said that he was blackmailed by the government through releasing illegal recordings. <i>21 October 2015</i>
4	Adjarian Public Broadcaster stated that an employee of the Ministry of Agriculture of Adjara insulted correspondent Lasha Veliadze both verbally and physically. <i>1 September 2015</i>		Adjarian Public Broadcaster stated that an employee of the Ministry of Agriculture of Adjara insulted correspondent Lasha Veliadze both verbally and physically. <i>1 September 2015</i>
5	Rustavi 2 TV journalist, Eka Kvesitadze was threatened by so called "thief-in-law", Mindia Goradze. <i>24 February 2015</i>		
6	Journalists of Azerbaijani-language website renessans.ge were threatened. <i>23 June 2015</i>		
7	Maestro journalist Irakli Vachiberadze was threatened. <i>15 September 2015</i>		
8	Alexander Giorgadze, photographer of Tabula web portal, was arrested during a protest rally against Panorama Tbilisi project and charged with petty hooliganism and disobedience to police orders. <i>19 July 2015</i>		
9	An employee of a budgetary organization in Lanchkhuti interfered in the professional activities of a correspondent from Rustavi 2 TV and insulted the latter verbally. <i>21 October 2015</i>		

The cases indicated in the table, which were left beyond the government's report, reflect the following wrongdoings:

Chart 1. Typology of Incidents



It should be noted that the shortcomings revealed in 2014 were not eliminated in the 2015 report; law enforcement agencies do not register high profile cases and these cases are mostly related to media outlets critical towards the government and facts of alleged pressure by officials.

Even though the Action Plan on the Protection of Human Rights does not limit the interference in the professional activities of journalists to only those facts that may be qualified as such offenses pursuant to only one article, namely, Article 154 of the Criminal Code, like the 2014 report, the 2015 interim report also cites criminal proceedings instituted on the basis of this Article alone. By this approach, law enforcement agencies and the Interagency Coordinating Council opt for a narrow interpretation of the notion of “interference in the professional activity of journalists” and apply only the name sake Article 154 of the Criminal Code to offenses of this category⁹.

1.2. Swift and effective investigations, appropriate qualification of crimes

Apart from generating statistics, Chapter IX of the Action Plan envisages: 1) Swift and effective investigations by the investigative authorities into interference in the professional activities of journalists; and 2) Appropriate qualification of crimes.

The information provided in the interim report of the Action Plan makes it impossible to comprehensively evaluate the implementation of the abovementioned activities as the report

⁹ 1. Illegal interference in professional activities of journalists, i.e. coercion into spreading or not spreading information, shall be punishable by fine or socially useful work from one hundred and twenty hours to one hundred and forty hours, or by correctional labor for up to two years. 2. The same action committed under the threat of violence or by using one's official position, shall be punishable by fine or imprisonment for up to two years with or without deprivation of the right to occupy a position or pursue a particular activity for up to three years.

lacks information about essential circumstances of the case, the time of incident and the time span within which relevant agencies reacted to them. The absence of these data makes it impossible to assess timeliness and efficiency of investigations as well as appropriateness of qualification of crimes. The closed nature of law enforcement agencies further complicates the situation, making it difficult to obtain information from these agencies as they misinterpret relevance of General Administrative Code to criminal cases.

It can be noted on the basis of the report that in one case the interference in professional activities of a journalist triggered certain reaction.

2. IDENTIFICATION AND ELIMINATION OF CURRENT LEGISLATIVE AMBIGUITIES, IN RELATION TO FREEDOM OF EXPRESSION

To achieve this objective, the Action Plan considers the following activities: identification of existing legislative gaps and ambiguities relating to the freedom of expression; review of the notion of “interference” in the professional activities of journalists, if necessary; preparation of recommendations and drafts needed for amending legislative regulations in relation to switchover to digital broadcasting, if necessary.

The most significant legislative amendments made in this direction were related to switchover from analogue to digital terrestrial broadcasting that was completed in 2015. The Parliament made amendments to the Laws on Broadcasting and on Electronic Communications and on 18 May 2015, with its decree N214, the Government of Georgia approved the rule of providing socially vulnerable population with devices (set top boxes) necessary for the digital terrestrial broadcasting switchover. Legislative amendments related to the revision of the notion of “interference in the professional activity of journalists” were not initiated.

3. PROVISION OF ACCESS TO INFORMATION

The process of drafting legislative amendments to ensure the access to information was not finalized in 2015 either. Despite it, the activity mentioned in the government’s report has a status “fulfilled” that does not provide a real picture. The process was launched in 2014. Open Society Georgia Foundation, in cooperation with the Analytical Department of Justice Ministry and with the involvement of non-governmental organizations and experts, began its work on the freedom of information draft law in January 2014 and on 21 August 2014, submitted the initial version of the draft law to the Justice Ministry. According to the Action Plan, the Justice Ministry was supposed to finalize the draft law in 2015. According to the report, the draft law is expected to be submitted to the Parliament in 2016.

COE AND OSCE STANDARDS ON SAFETY AND SECURITY OF JOURNALISTS

This chapter presents some recommendations of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors¹⁰; also some guidelines from OSCE Safety of Journalists Guidebook¹¹.

COE STANDARDS RELATED TO SAFETY OF JOURNALISTS AND OTHER MEDIA ACTORS

Prevention

- The legislative framework, including criminal law provisions dealing with the protection of the physical and moral integrity of the person, should be implemented in an effective manner, including through administrative mechanisms and by recognising the particular roles of journalists and other media actors in a democratic society (2).
- This legislative framework should be subject to independent, substantive review to ensure that safeguards for the exercise of the right to freedom of expression are robust and effective in practice and that the legislation is backed up by effective enforcement machinery. After an initial expeditious review, further reviews should be carried out at regular periodic intervals. The reviews of laws should assess the compliance of authoritative European and international human rights standards (3).

Protection

- Legislation criminalising violence against journalists should be backed up by law enforcement machinery and redress mechanisms for victims (and their families) that are effective in practice (8).
- Member States should take into account the specific nature and democratic value of the role played by journalists and other media actors in particular contexts, such as during election periods. . In these context in particular, it is important for law enforcement authorities to respect the role of journalists and other media actors covering demonstrations and other events (14).

OSCE SAFETY OF JOURNALISTS GUIDELINES

A framework for journalists' safety in law and administration

- Responsible state authorities must robust and transparent guarantees of the independence of the judiciary, to ensure that those responsible for attacks on journalists are brought to justice.

Threats and acts of violence against journalists

- State authorities have an obligation to investigate reports of threats promptly and thoroughly.

¹⁰ Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, *Adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies* https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9

¹¹ OSCE Safety of Journalists Guidebook, 2012. <https://www.osce.org/fom/85777?download=true>

RECOMMENDATIONS

- Law enforcement agencies that are responsible for the implementation of the Action Plan on Human Rights should develop clear criteria regarding qualification of incidents of interference in professional activities of journalists and to this end, develop clear criteria;
- The parliament should review the existing version of the Article 154 of the Criminal Code and broaden the definition of the interference with journalists' professional duties.
- Data should not be generated only on incidents related to Article 154 of the Criminal Code and should cover other criminal offences committed against journalists;
- Investigative authorities should register and react to incidents reported by media concerning interference in professional activities of journalists;
- Cases on the restriction of freedom of expression cited in Public Defender's report should also be taken into account when registering incidents;
- A report of the government should contain data on registered crimes involving interference in professional activities of journalists and on such solved cases;
- A report drawn up by the government should contain more information about factual circumstances of case as well as rationale behind the termination of investigation in order to make it possible to evaluate the qualification of case and speed and efficiency of investigation;
- The Ministry of Justice should speed up the submission of the draft law on freedom of information to the parliament in order to eliminate shortcomings in obtaining information from public entities