



## Court confirms journalists are not released from duty to obey the law when investigating

In today's Chamber judgment<sup>1</sup> in the case of [Amaghlobeli and Others v. Georgia](#) (application no. 41192/11) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 10 (freedom of expression) of the European Convention on Human Rights**

The case concerned the scope of journalistic freedom to engage in news-gathering activities in the customs-control zone of a border checkpoint. Two of the applicants had entered such a zone, had interviewed travellers and taken photographs, and had refused to leave when requested to do so by customs officials.

The applicants complained that the imposition of a fine for engaging in those activities in a restricted State-controlled zone had constituted an interference with their rights under Article 10 of the Convention.

The Court considered the circumstances of the case against two considerations inherent in its case-law under Article 10 of the Convention: the value of the news-gathering activities and the concept of "responsible" journalism. Notwithstanding the vital role played by the media in a democratic society, journalists could not, in principle, be released from their duty to obey ordinary criminal law on the sole basis that they were journalists.

The Court observed that the domestic courts had duly considered the applicants' right to freedom of expression, had acknowledged their status as journalists and had given solid reasons for their decisions. As a result, the Court found that the domestic courts had examined the issue with care and in line with the Court's case-law and that there had been no violation of Article 10.

### Principal facts

Two of the applicants, Mzia Amaghlobeli and Eter Turadze, are Georgian nationals who were born in 1975 and 1972 respectively and live in Batumi (Géorgie). The third applicant is a legal entity established under Georgian law, the Batumelebi publishing house. The first two applicants are journalists and at the time of the events worked, respectively, as the managing director of Batumelebi and the editor-in-chief of a weekly newspaper published by it.

In 2009 Batumelebi's office in Batumi received some reports from local people of arbitrary customs-clearance practices being conducted by Georgian border police officers at the checkpoint in Sarpi, on the border with Turkey. The two journalist applicants decided to investigate, so on 15 August 2009 they crossed the State border into Turkey and then turned back. After passport control at the Sarpi checkpoint, they entered the restricted customs-control zone, where new arrivals were filling in customs declarations and duties were being levied on imported goods. They interviewed travellers and took photographs. They were then asked several times by customs officials to leave the restricted zone. However, they refused to do so, referring to the freedom they had as journalists to carry out their job as they saw fit.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

As a result, they were each fined 1,000 Georgian laris (GEL) for disobeying the customs officers' orders, and were escorted out of the restricted zone. Neither their recording equipment nor recorded interviews were confiscated. The following week the Batumelebi newspaper featured an article on the customs procedures and the interviews recorded.

In early November 2009, the two journalists lodged a court action requesting annulment of the sanction. They claimed that it had had no legal basis, that their conduct in the customs-control zone had been in no way disruptive, and that they had merely been exercising their profession as journalists.

In early February 2010 the Tbilisi City Court dismissed the court action as ill-founded, finding that the two journalists had disrupted customs procedures and had breached the Customs Code by entering the zone without prior permission and refusing to leave when requested to do so. It reiterated that that was why they had been fined, not for exercising their profession as journalists, and stated that journalists had to abide by the same rules as the general public.

One month later the two journalists lodged an appeal, contesting the findings of the City Court. They argued that they had not caused any real disturbance in the customs-control zone, and they reiterated their complaint about the fine interfering with journalistic freedom. The Tbilisi Court of Appeal upheld the lower court's judgment, finding that, since the journalists had entered the checkpoint from the Turkish side as ordinary travellers, they had been subject to the same customs rules as everyone else. They had had no right to enter the restricted customs-control zone without anything to declare and without permission from the customs office; being journalists did not absolve them from having to abide by the law.

On 29 December 2010 a further appeal lodged by the two journalists was rejected by the Supreme Court of Georgia.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the European Convention on Human Rights, all three applicants complained that being fined for engaging in news-gathering activities in the customs-control zone of a border checkpoint had constituted an interference with their rights. They argued that the amount of the fine had been high enough to be a deterrent to investigative journalism.

The application was lodged with the European Court of Human Rights on 29 June 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra O'Leary (Ireland), *President*,  
Stéphanie Mourou-Vikström (Monaco),  
Lətif Hüseynov (Azerbaijan),  
Jovan Ilievski (North Macedonia),  
Lado Chanturia (Georgia),  
Ivana Jelić (Montenegro),  
Mattias Guyomar (France),

and also Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

### Article 10

The Court observed that the Batumelebi publishing house – the third applicant – could not validly claim to be either a direct or indirect victim of an alleged breach of the other applicants’ rights under Article 10 and therefore rejected that part of the application.

The Court considered the circumstances of the case against two considerations inherent in its case-law under Article 10 of the Convention: the value of the news-gathering activities and the concept of “responsible” journalism. A restriction on a journalist’s research and investigative activities called for close scrutiny because of the risk to their vital role as “public watchdogs” and to their ability to provide accurate and reliable information. Nevertheless, the concept of responsible journalism meant that journalists had to behave lawfully, including when acting publicly with the authorities when carrying out journalistic work.

The Court considered that the applicants’ argument that the effects of the domestic law were not foreseeable had been examined by the domestic courts, which had all ruled that the Customs Code and Order no. 1766 of the Minister of Finance clearly prohibited their acts, and did not contain any arbitrary reasoning. The Court had no doubt that the interference complained of had the legitimate aim of preventing disorder in the State-controlled customs zone.

The Court stated that paragraph 2 of Article 10 did not guarantee wholly unrestricted freedom of expression, even with respect to media coverage of matters of serious public concern. In particular, and notwithstanding the vital role played by the media in a democratic society, journalists could not, in principle, be released from their duty to obey the ordinary criminal law on the sole basis that they were journalists. The Court observed that the domestic courts had duly considered the applicants’ right to freedom of expression, had acknowledged their status as journalists and had given solid reasons for their decisions.

Regarding the applicants’ work, the Court had little doubt that the news-gathering activities had been capable of contributing meaningfully to public debate on a matter of public interest. However, it considered that the journalists could have waited for and interviewed the travellers at the exit of the zone or requested prior permission to access the State-controlled zone. If they had deemed it important to witness the customs-clearance procedures incognito, without soliciting prior authorisation, they had still remained under a legal obligation to vacate the restricted zone as soon as they had been requested to do so by the officers in charge. Moreover, at no point in the domestic proceedings had the applicants shown that only first-hand and direct knowledge of the customs procedures, based on their personal experience and presence in the restricted zone, could have the value and reliability to the extent necessary for their journalistic activities.

Under the concept of “responsible journalism”, the Court felt that the applicants had to be aware of and accept the legal consequences of unlawful conduct. Journalists could not, in principle, be released from their duty to obey the law solely on the basis that Article 10 of the Convention afforded them protection. Assuming that the applicants had had no other option but to make, in their capacity as journalists, a choice between the general duty to abide by ordinary administrative law, from which they were obviously not absolved, and their professional duties, and that they had made that choice to the detriment of the duties of a law-abiding citizen, then the very least that was expected of them was to be aware of and accept the legal consequences of the unlawful conduct, including the risk of being subject to legal sanctions.

The Court also considered it significant that the domestic authorities had not objected to the applicants making full use of the interviews recorded during their time in the customs-control zone and publishing the article on their journalistic investigation. Moreover, the amount of the fine – approximately 320 Euros (EUR) – had not been excessive.

The Court concluded that the domestic courts had examined the issue with care and in line with the Court's case-law, and that the reasons given to justify their decisions were adequate. It saw no strong reason to substitute its own assessment for that of the domestic courts and concluded that there had been no violation of Article 10 of the Convention.

*The judgment is available only in English.*

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#### **Press contacts**

During the current public-health crisis, journalists can continue to contact the Press Unit via [echrpess@echr.coe.int](mailto:echrpess@echr.coe.int).

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.