



#GeorgianElections2017: Newsletter #6 October 2017

About the GYLA's monitoring mission

On June 1 the Georgian Young Lawyers' Association (GYLA) started the pre-election monitoring of the 2017 local self-government elections.

The GYLA is observing the pre-election period through its head office in Tbilisi and regional offices in eight regions of Georgia: Adjara, Guria, Imereti, Shida Kartli, Kvemo Kartli, Kakheti, Mtskheta-Mtianeti, and Samegrelo.

The aim of the monitoring, **which is being carried out in the framework of the USAID-supported project "Promoting More Competitive, Fair and Inclusive Electoral Environment for the 2016-2018 Electoral Cycle in Georgia"**, is to contribute to the introduction of objective, fair, independent and effective investigations, fair trial, and uniform practice and to ensure the promotion of inclusive and competitive electoral environment for women, persons with disabilities, and ethnic minorities. The project also aims to promote transparent electoral processes, in particular, to inform citizens of Georgia and the international community of violations and trends related to the 2017 local self-government elections and to turn their attention to the shortcomings accompanying electoral processes, as well as to identify problems

in the electoral legislation and to advocate relevant legislative changes after the elections are over.

In the case of identifying violations, the organization submits the relevant information or complaints to the Election Administration, the Interagency Commission for Free and Fair Elections, the State Audit Office, and other relevant agencies with the aim of ensuring response provided for by law.

This newsletter deals with the developments and violations that can exert an influence on the electoral environment. The GYLA has requested additional information on alleged violations and other developments, and we will also provide the public with the results of their analysis.

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Risks of legalization of unlawful participation in campaigning events

As we noted in [Newsletter No 5](#), the GYLA doesn't agree with the Central Election Commission's explanation with regard to election campaigning by Andriy Shevchenko and believes that this explanation creates risks of legalization of unlawful participation in campaigning events.

[In response to](#) the GYLA's complaint – by which we demanded relevant response to unlawful campaigning by Ukrainian citizen Andriy Shevchenko¹, which had taken place after the football match that involved Kakha Kaladze, the Georgian Dream's mayoral candidate for Tbilisi, and world football stars – the CEC has stated that it was unable to identify an event conducted by an electoral subject with the aim of participating in and winning elections and that the incident mentioned in the complaint didn't involve election campaigning or participation in campaigning. The CEC's decision explained that the event mentioned in the complaint was a charity football match organized and conducted by the Georgian Football Federation for specific charity purposes, and, as the Georgian Football Federation is not an electoral subject, the said event could not be regarded as part of the election campaign.

We believe that such deliberation is devoid of a legal basis and it narrows the concepts of campaigning event and election campaigning in such a way that, according to such interpretation, **only an event organized and conducted by an electoral subject** can be considered as a campaigning event and **only an appeal in support of or against a concrete candidate made at a campaigning event organized by an electoral subject** can be regarded as election campaigning, whereas the Election Code includes a very broad formulation and considers **any public action facilitating or impeding the election of a candidate** as election campaigning.

According to Paragraph 4 of Article 45 of the Election Code of Georgia, **any individual may conduct and participate in election campaigning (except for individuals prohibited from doing do by the law)**. Accordingly, **a campaigning event can be organized and conducted both by an electoral subject and any other individual**. Therefore, we believe that the failure to consider the said event as a campaigning event on the grounds that it was organized and conducted by the Georgian Football Federation, which is not an electoral subject, contradicts the law.

¹ http://www.ffu.org.ua/eng/teams/teams_main/a_coach/

Incidents of alleged pressure and coercion

Tetrtskaro

The party list of electoral subject Bakradze, Ugulava – European Georgia was abolished in the Tetrtskaro municipality, because all the candidates of the party had filed a statement in the District Election Commission and refused to run in the elections. The mayoral candidate of the party also refused to run in the elections and was removed from registration on the basis of his own statement. As far as we know, the candidates stated that they had refused to run in the elections because they were going to work or study abroad. It is noteworthy that the sudden and collective decision of the European Georgia’s candidates to withdraw their candidacies raises doubts that the candidates didn’t tell the truth.

It should be noted that the withdrawal of candidacies was not preceded by any explanation except that the candidates were going to continue their studies or to get a job abroad. A representative of the party also said that they had mainly learned of the candidates’ removal from registration not from the candidates themselves but from the Election Administration.

According to the information provided by the European Georgia, the party’s candidates were also convinced, and in some cases intimidated, into withdrawing their candidacies in other municipalities.² It is noteworthy that the media also reported on incidents of alleged pressure and coercion of other parties’ candidates in Tetrtskaro, as well as in the municipalities of Aspindza and Dmanisi.³

Non-governmental organizations have released a joint [statement](#) about the aforementioned incidents, noting that such incidents are unacceptable and, if confirmed, are going to cast a shadow on the calm, equal, fair, and competitive electoral environment. The NGOs also stated that, as the said incidents

presumably contain signs of a criminal offense, it is necessary to provide an immediate response.

Aspindza

According to news reports, on October 7, 2017, civil servants of the Aspindza municipality and representatives of the head of the Municipal Administration of Aspindza were subjected to pressure in the town of Aspindza.⁴ Specifically, civil servants of the Aspindza municipality and representatives of non-entrepreneurial (non-commercial) legal persons and of the head of the Municipal Administration of Aspindza were summoned to the Aspindza headquarters of the Georgian Dream party. As the Georgian Dream explained, this was a regular meeting.⁵

It should be noted that late at night on the same day, unknown persons tore down a banner of Levan Tsadze, an independent mayoral candidate for Aspindza. In addition, according to Zura Shavadze, a participant of the meeting in the party office, the population of the village of Iveria are frightened and they are being threatened that they will face problems related to their property unless they support the mayoral candidate of the Georgian Dream.

With the aim of obtaining additional information about these incidents, representatives of the GYLA have met with the individuals who faced threats. **The organization applied to the Interagency Commission with a request to study the submitted information and to take relevant measures within its competence.**

² We will later provide the public with additional information after we verify the information about the said incidents.

³ <https://gyla.ge/en/post/archevnebi-2017-sainformacio-biuleteni-5#sthash.xF6g5XJ1.dpbs>

⁴ <http://sknews.ge/index.php?newsid=15166>

⁵ Ibid.

Illegitimate session of the Tbilisi City Council

According to news reports of October 10, several hours before the start of the session of the Tbilisi City Council, Giorgi Alibegashvili, Chairperson of the City Council, stated that the session could only be attended by members and employees of the City Council and [representatives of the media](#). According to the statement, this decision was justified by the City Council's obligations to defend the interests of residents of Tbilisi and to ensure the development of the capital city.

The City Council supported the decrees and draft contracts sent by the Tbilisi City Hall and [approved](#) the transfer of land parcels to the Tabori Resort and Tbilisi City companies at a closed session, despite the high public interest in this issue. It should be noted once again that the aforementioned projects prepared by the Tbilisi City Hall are unreasonable and contradict the Law on Cultural Heritage as well as the rules of rational [disposal](#) of property owned by the municipality.

The session of the City Council [was held against the background of confrontation between members of the majority and minority of the Council](#). Interested persons were not allowed to attend the session. Security guards expelled a member of the City Council from the City Council building in violation of the [Rules of Procedure](#) of the Tbilisi City Council, and the police [detained](#) several persons who took part in a protest rally in front of the City Council building. The police, who were mobilized in the area adjacent to the building, prevented citizens, including MPs, from entering the City Council building and attending the session within the limits of the powers granted by the [Rules of Procedure of the Parliament of Georgia](#).

Therefore, the incident involved violations of the requirements of the Georgian legislation due to the following circumstances:

- According to the Self-Government Code of Georgia and the Rules of Procedure of the Tbilisi City Council, sessions of municipal councils and of commissions of municipal councils, as well as sessions of the government, must be public.
- A chairperson of a municipal council is entitled to declare a session of the municipal council closed only on the basis of the municipal council's decision, which prevents the chairperson of the municipal council from making a unilateral decision on closing the session.
- According to the General Administrative Code of Georgia, each collegial public institution is obliged to conduct its sessions openly and publicly, except for cases when it discusses information containing state, personal, or commercial secrets.
- According to the General Administrative Code of Georgia, holding a session (of a municipal council) in breach of the procedure determined by law renders the decisions of the session to be declared void by a court.

Due to all the aforementioned, we believe that the decision of the Chairperson of the City Council on closing the session of October 10 was illegitimate and violated the Self-Government Code of Georgia, the General Administrative Code of Georgia, and the Rules of Procedure of the Tbilisi City Council.

Electoral dispute – introduction of the practice of incorrect interpretation of obstruction of and interference with the functions of the Election Administration and the necessity of correct interpretation of the legislation

- **Interference with the functions and activity of election commission in the pre-election period**

In [Newsletter No. 3](#), we talked about cases of drawing up of administrative offense protocols against representatives of electoral subjects in Telavi and Samtredia and imposition of fines in the amount of GEL 500 for interference with the functions and activity of the Election Administration.

First of all, it should be noted that in the pre-election period the Election Administration and common courts established incorrect practice with regard to Article 91¹ of the Election Code, adopted as a result of amendments of 2017, which provides for administrative liability for interference with the functions and activity of an election commission.

In the aforementioned disputes, it is also important to assess the standard of proof applied by the courts. In particular:

The courts relied on the explanation of representatives of the Election Administration who stated that they had been obstructed in their activity, although none of the case materials include evidence that proves this. The evidence does not confirm that an “internal meeting” was really taking place at the District Election Commission of Telavi or that members of the District Election Commission of Samtredia “were counting people in the lists of supporters”. The courts’ relying on the verbal explanations of representatives of the Election Administration alone establishes a low standard of proof and poses a threat that the Election Administration might assess any communication unacceptable for them as “obstruction” and/or “interference with the functions”. Such subjective assessment of the actions and finding the persons guilty of an offense with low standard brings the transparency and openness of the Election Administration and, by extension, of electoral processes under question, which might hinder relevant persons from observing the electoral process.

- **Necessity of interpreting the law**

The decisions of the district courts of Samtredia and Telavi reveal a failure to separate interference with the functions/activity of an election commission and disturbance of peace from obstruction of the functions/activity of a commission. The existing practice makes an impression that obstruction of a commission’s activity and disturbance of peace automatically constitutes the objective composition of the offense punishable by Article 91¹ of the Election Code, which goes way beyond the composition of this article. Therefore, in order to eliminate such vagueness, it is necessary that courts interpret the aforementioned norm correctly, on the one hand, and/or that the said norm be amended in a way that will make it clearer whether interference with the activity/functions of a commission also includes obstruction and disturbance of

peace, which may also be punishable by a fine of GEL 500 together with expulsion from the building of the Election Administration, on the other hand.

Recommendation: Due to the aforementioned, in view of the shortcomings in the legislative regulation and court practice, it is necessary to interpret Articles 8 and 15 of the Election Code in the following way:

Obstruction

Obstruction of the work of an election commission should be interpreted to mean an action of a person authorized to be present at a polling station which hinders a member of the election commission from performing a function assigned by the Election Code.

Obstruction and disturbance of peace should not be interpreted to mean exercise of their rights and obligations by observers and representatives of the media and electoral subjects, including an instruction to observe the requirements of law, as well as criticism of members of an election commission.

Interference with functions and activity

Interference with the functions and activity of an election commission should be interpreted to mean an action of a person authorized to be present at a polling station by which the latter undertakes the performance of a function that the Election Code assigns to a member of an commission member, for example, performance of the procedure of casting of lots, inking of voters, signing and sealing ballot papers, etc.

Interference with the functions and activity should not be interpreted to mean performance of their duties by observers and representatives of the media and electoral subjects, including an instruction to observe the requirements of law, as well as criticism of members of an election commission.



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