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**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**

Free, Fair and Equal Electoral-Political 2019-2022 Cycle in Georgia

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INTRODUCTION

In August 2019, The Georgian Young Lawyers' Association (GYLA), with the support of USAID, launched the project “Free, Fair and Equal Electoral-Political 2019-2022 Cycle in Georgia”. It covers the territory of Tbilisi, Kakheti, Mtskheta-Mtianeti, Kvemo Kartli, Shida Kartli, Imereti, Samegrelo-Zemo Svaneti, Guria and Adjara.

One of the primary goals of the project is to support improvement of the electoral environment through monitoring and evidence-based advocacy. To this end, GYLA will monitor ongoing political processes and develop recommendations that will be presented to the public and decision-makers.

ADOPTION OF THE AMENDMENTS TO THE ELECTION CODE IN THE THIRD READING

On July 2, 2020, with 94 votes in favor and one against, the Parliament of Georgia has adopted the Amendments to the Election Code in its third reading.¹ The goal of the legislative reform was to reflect the recommendations of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) in the legislation.² The changes were made in the following directions: new model of party funding, rule of staffing of the election administration, restriction of employees of the budgetary organizations from participation in election agitation, media-campaign and airtime, additional regulations banning misuse of the administrative resources, gender quotas etc.³

The facilitators of the political dialogue congratulated the Parliament of Georgia with the adoption of the amendments, and welcomed the open and inclusive process, which was ongoing for one year.⁴ However, according to them, important flaws remain in the legislation and additional measures are required to be taken against possible voter intimidation, to ensure transparency of election commission members' selection process, to strengthen the dispute resolution process and to develop alternative campaign methods related to the restrictions due to pandemic.⁵

The EU Ambassador to Georgia Carl Hartzell responded to the reform, stating that he welcomes the positive changes to the legislation.⁶ Nevertheless, he claims the country has missed the opportunity of gaining broader political support of the new election legislation.⁷ In addition, he stated that he hopes “to see more ambitious reforms, including in key areas recommended by OSCE/ODIHR such as voter intimidation, dispute resolution and commission compositions”.⁸

GYLA welcomes the measures taken to eliminate the existing flaws, however, the Organization believes that some issues remain, consideration of which are vital for free and fair elections. In particular it is necessary to: (1) increase the distance for placing the agitation materials up to 100 m. and prohibit the presence of any unauthorized persons within the same area (except for the voter); (2) declare the day before the ballot as the “Election Silence Day”; (3) fully compose the election administration based on their professional background; (4) increase by 50%

¹ “Parliament Endorsing Draft Constitutional Changes with III Reading”, official web-page of the Parliament of Georgia, 02.27.2020, available at: <https://bit.ly/3gJsr0u>, updated on: 06.08.2020.

² Ibid.

³ On Changes to Organic Law of Georgia “Election Code of Georgia”, official web-page of the Parliament of Georgia, available at: <https://bit.ly/3gyrcJJ>, updated on: 06.08.2020.

⁴ “Statement on the Passage of OSCE/ODIHR-Based Election Reforms (July 2)”, official web-page of the US Embassy in Georgia, 02.07.2020, available at: <https://bit.ly/3a1dR2B>, updated on: 06.08.2020.

⁵ Ibid.

⁶ “Carl Hartzell: I would have hoped to see more ambitious reforms, including in key areas recommended by OSCE/ODIHR such as voter intimidation, dispute resolution and commission compositions”, information portal “Interpressnews”, 03.07.2020, available at: <https://bit.ly/2EYpLPx>, updated on: 06.08.2020.

⁷ Ibid.

⁸ Ibid.

the representation of the opposite sex in the party list during the election registration.⁹ GYLA recommendations also cover the following issues: appeal the refusal on drawing up the administrative offence reports, arrangement of regulations for electoral disputes and the rules for including the voter in the list of ballot box.¹⁰

AMENDMENTS TO THE CONSTITUTION OF ADJARA

On September 9, 2019, 14 members of the Supreme Council of Autonomous Republic of Adjara (hereinafter: Supreme Council) initiated the draft law on amendments to the Constitution of the Autonomous Republic of Adjara.¹¹ 7 meetings were held in September-October 2019 within the frameworks of universal and public consideration, out of which 5 were held in municipalities, one - with academia and students, and one with political parties and non-governmental organizations.¹² According to the summary protocol, the issue under consideration was to hold the elections of the Supreme Council of Adjara under proportional electoral system from 2020, with no electoral threshold, similar to the Parliament of Georgia.¹³

In accordance with the legislation, the draft is submitted to the Supreme Council, which publishes it for the universal and public consideration.¹⁴ In order to consider the constitutional drafts, the Organizational Commission of the universal and public consideration holds the meetings in all municipalities of the Autonomous Republic in accordance with the principle of maximum awareness and involvement of the population.¹⁵ Following the 2019 universal and public considerations, during the consideration of the above-mentioned draft, the Supreme Council added transitional provision to it. On July 1, 2020, 15 members of the Council voted in the first reading for holding Autonomous level elections in a mixed system (18 proportionate and 3 majoritarian).¹⁶ The opposition boycotted the sitting and did not attend.¹⁷ According to them, only proportionate system was presented for the public consideration, accordingly the procedures established by law were violated by adopting the mixed system.¹⁸ The Supreme Council finally adopted the amendments in this form, in the third reading, on July 5, 2020,¹⁹ and the Parliament of Georgia – on July 17, 2020.²⁰

By law, the Supreme Court is not restricted to make changes to the draft law after the universal and public consideration. The main idea is that it shall not go beyond the considered topics substantially. Adding the topics that were not included in the original version would be considered as the substantial modification (e.g. changes to the rules for electing the Chairman of the Supreme Council in addition to the election system). Therefore, GYLA considers that the procedures were not violated.

GYLA welcomes adoption of the model close to the proportionate in the Autonomous Republic of Adjara. However, at the same time the organization is concerned that the 2020 Elections will not be held through proportionate system.

⁹ Newsletter №9, page 8, Georgian Young Lawyers' Organization.

¹⁰ Ibid.

¹¹ Summary protocol of universal and public consideration of draft constitutional laws of Autonomous Republic of Adjara “on Amendments to the Constitution of Autonomous Republic of Adjara” and “on Amendments to the Constitution of Autonomous Republic of Adjara” about the amendments to the constitutional law of Autonomous Republic of Adjara, available at: <https://bit.ly/2Cyi2qx>, updated on: 06.08.2020.

¹² Ibid.

¹³ Ibid.

¹⁴ Paragraph 3, of the Article 28 of the Constitution of the Autonomous Republic of Adjara.

¹⁵ Paragraph 4 of the Article 109 of the Rules of Procedure of the Supreme Council of the Autonomous Republic of Adjara

¹⁶ “Amendments to the Constitution of Adjara was adopted with 15 votes, the opposition was no present at the sitting” information portal, “Batumelebi Netgazeti”, 01.07.2020, available at: <https://bit.ly/3axLBot>, updated on: 06.08.2020.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ “The Supreme Council of Adjara adopted the Law on Constitutional Amendments”, information portal, “Batumelebi Netgazeti”, 05.07.2020, available at: <https://bit.ly/2F84SS3>, updated on: 06.08.2020.

²⁰ “The Extraordinary Plenary Session convened as of June 29 has been accomplished”, official web-page of the Parliament of Georgia, 17.07.2020, available at: <https://bit.ly/34JWLpy>, updated on: 06.08.2020.

ADOPTION OF THE AMENDMENTS TO THE LAW ON ELECTRONIC COMMUNICATIONS IN THE THIRD READING

On July 17, 2020, the Parliament of Georgia adopted the Law on Electronic Communications with 88 votes, unanimously,²¹ in the third reading.²² According to the changes, the Commission will be authorized to appoint a special manager who will be authorized to enforce the Commission's decision, if the fines imposed on the authorized/licensed person cannot ensure the enforcement of the Commission's decision.²³

Several problematic issues are outlined in relation to the changes:²⁴

1. Most of the broadcasters operating in Georgia are authorized and licensed persons in the field of electronic communications and the mentioned provision will apply directly to them. The changes will allow the Commission to appoint a special manager within them and make managerial decisions;
2. The decision made by the Commission will not be suspended by its appeal;
3. The draft law was considered in accelerated manner, no mandatory assessment was made regarding the impact of regulation, on the grounds that the immediate consideration of the draft law was necessary to ensure state and public safety. However, the substantiation part is ambiguous about what constitutes state and public safety.

GYLA negatively assesses adoption of the mentioned draft law and considers that these changes may be used against critical media. There is a risk of restricting the freedom of expression with these regulations in the pre-election period.

RESIGNATION OF BATUMI MAYOR

On July 16, 2020, Batumi Mayor Lasha Komakhidze has resigned.²⁵ In addition, the Vice-Mayor Jaba Tugushi has also resigned.²⁶ Lasha Komakhidze was directly elected in 2017 and his term of office was to expire in October 2021.²⁷ The date of resignation is important, as, if Lasha Komakhidze has resigned before July 15 2020, mayoral elections would have been held in October of current year²⁸ and now it is extended to year and a half. According to law, if powers of a Mayor are terminated after July 15, the extraordinary elections shall be held in the nearest May,²⁹ but if the following year is the year of regular elections, as is 2021, the extraordinary elections will not be held.³⁰ This means that the voting will be held in October year after, and the appointed person will perform the duties of the Mayor. This position now is being held by Archil Chikovani, who was the Head of Adjara Government Administration.³¹

²¹ Representatives of the oppositional parties were not present at the voting.

²² "The Extraordinary Plenary Session convened as of June 29 has been accomplished", official web-page of the Parliament of Georgia, 17.07.2020, available at: <https://bit.ly/34JWLpy>, updated on: 06.08.2020.

²³ The Law of Georgia on amendments to the law on "Electronic Communications", official web-page of the Parliament of Georgia, available at: official web-page of the Parliament of Georgia, 17.07.2020, available at: <https://bit.ly/3gxfZ4E>, updated on: 06.08.2020.

²⁴ "The draft proposed by the Georgian National Communications Commission contains the threat of restriction of freedom of expression", the official web-page of Georgian Young Lawyers' Association, 08.07.2020, available at: <https://bit.ly/2DzsHSf>, updated on: 06.08.2020.

²⁵ „Batumi Mayor Lasha Komakhidze has resigned“, information portal, “Batumelebi Netgazeti”, 16.07.2020, available at: <https://bit.ly/2OvIFzZ>, updated on: 06.08.2020.

²⁶ Ibid.

²⁷ „Batumi Mayor Lasha Komakhidze has resigned“, information portal, “Batumelebi Netgazeti”, 16.07.2020, available at: <https://bit.ly/2OvIFzZ>, updated on: 06.08.2020.

²⁸ Paragraph 2 of the Article 1692 of the Election Code of Georgia.

²⁹ Ibid.

³⁰ Ibid.

³¹ “Batumi Mayor was replaced by Archil Chikovani, who's best man is Tornike Rijvadze”, information portal „REGinfo.ge“, 16.07.2020, available at: <https://bit.ly/2ZxDzby>, updated on: 06.08.2020.

Based on GYLA Assessment, manipulation with the terms by the Mayor and ruling majority is a disrespect of the voters. By this decision the residents of Batumi are being deprived the opportunity to define themselves the Mayor of the city and to make the political decisions.

DENIAL OF CEC ON REGISTRTRION TO THE REPUBLICAN PARTY OF GEORGIA

On July 17, 2020, with the Decree of Tamar Zhvania, the Chairperson of the Central Election Commission of Georgia, the Republican Party of Georgia was denied the registration as an electoral subject to participate in 2020 parliamentary elections.³² As the ground for denial of registration, the Decree indicates the submission of the application by the party in violation of terms defined by the law.³³

In accordance with the temporary rule on registration to participate in the 2020 parliamentary elections, a party must apply to the CEC Chairperson with an appropriate statement signed by its head from January 1 until July 15.³⁴ The application submitted in violation of the mentioned terms may become grounds for denial of registration.³⁵ This rule applies to parties, which does not have the representative in the Parliament.³⁶

According to the members of Republican Party of Georgia, they have not violated the requirements of legislation and have submitted the application to the Post office within the terms defined for registration as an election subject - July 14.³⁷ The application was received by CEC on the following day, July 15.³⁸ According to the party representatives, the legislation does not necessarily impose an obligation to submit the application in physical form, and the timely submission to the Post office does not contradict the requirements established by law.³⁹ The Decree of the Chairperson of CEC was appealed by the Party representatives up to the Tbilisi City Court Administrative Chamber.⁴⁰ Based on ruling of the Court, the administrative claim was upheld and Republican Party of Georgia will participate in 2020 Parliamentary elections as an independent subject.⁴¹

GYLA welcomes the decision made by the Court and this kind of interpretation of the law.

TERMINATION OF POWERS OF KHELVACHAURI MUNICIPAL ASSEMBLY MEMBER

On July 30 2020, at the sitting of Khelvachauri Municipality, with the decision of the Municipal Assembly, the powers of Vaja Tavdgiridze, member of the United National Movement, was terminated ahead of time due to non-participation in the works of the Municipal Assembly.⁴² Dismissal of Vaja Tavdgiridze deserves especial consideration, as the faction of UNM was also dissolved due to termination of powers of the member of the Municipal Assembly.⁴³

³² “The Election Administration of Georgia, the Chairperson of the Central Election Commission of Georgia №29/2020 on denial registration for the parliamentary elections 2020 to the political union of citizens “Republican Party of Georgia” and its representatives”, web-page of the Central Election Commission, 17.07.2020, available at: <https://bit.ly/30ENbSb>, updated on: 09.08.2020.

³³ Ibid.

³⁴ Sub-paragraph “b” of paragraph 1 of the Article 195 of the Election Code of Georgia.

³⁵ Ibid., paragraph 10.

³⁶ Ibid.

³⁷ “The Republican Party has been denied registration for the elections by CEC”, Netgazeti, 19.07.2020, available at: <https://bit.ly/2X-JwNhp> , updated on: 09.08.2020.

³⁸ Ibid.

³⁹ “Court upheld the claim of Republican Party, we will register for the elections – Samnidze”, information portal „on.ge“, 20.07.2020, available at: <https://bit.ly/3fHCCCI>, updated on: 09.08.2020.

⁴⁰ Ibid.

⁴¹ “Court upheld the claim of Republican Party against CEC - Samnidze”, 20.07.2020, available at: <https://bit.ly/3ac1wso>, updated on: 09.08.2020.

⁴² The Ordinance of Municipal Assembly of Khelvachauri Municipality, 2020, July, Batumi.

⁴³ “Member of the United National Movement, with severe diagnosis was expelled by the Majority from Khelvachauri Municipal Assembly”, information portal, “Batumelebi Netgazeti”, 30.07.2020, available at: <https://bit.ly/2XAnFeV>, updated on: 09.08.2020.

On July 27 2020, the issue of termination of powers of the Member of Municipal Assembly ahead of time was considered by the Commission on Legal and Procedural Issues of Khelvachauri Municipal Assembly,⁴⁴ which, despite the submitted medical certificate, considered non-participation of Vaja Tavdgiridze in work of the assembly as unjustified.⁴⁵

According to law, the powers of the member of Municipal Assembly shall be terminated ahead of time, if he/she has not participated, without a valid reason, in the work of the assembly for 6 consecutive months.⁴⁶ In such case the relevant commission of the Municipal Assembly shall find out the reason of absence.⁴⁷ According to the Resolution of Khelvachauri Municipal Assembly the identical ground and procedure to the mentioned law is defined for termination of powers of the member of Sakrebulo ahead of time by specifying that the Commission of Legal and Procedural Rights of the assembly is authorized to find out the reason of nonattendance and prepare the conclusion, whether or not this reason is justified.⁴⁸

The decision of the assembly to terminate the powers of Vaja Tavdgiridze is based on coarse approach. The medical certificate, submitted by the member, indicates the diagnosis of the disease, procedures of the treatment and condition of the patient⁴⁹ that, based on GYLA assessment, can be considered as the good reason for not participating in works of the assembly.⁵⁰ There is a minor mistake in the date of the certificate (instead of 2020 it says 2030). On the other hand the authenticity of the documents causes no doubts. Given the severe diagnosis of the member of Sakrebulo, it is unclear why did Sakrebulo consider this condition as „unjustified“.

According to GYLA, this kind of decision made by Sakrebulo, is a step against the fair political competition that will weaken the representation of the opposition in Sakrebulo during pre-election period, furthermore it will strain the pre-election environment and increase polarization.

GIORGI RURUA CASE

On July 30 2020, Tbilisi City Court found Giorgi Rurua, one of the founders and shareholders of “Mtavari Arkhi” guilty and sentenced him to a 4 years’ imprisonment.⁵¹ Rurua was detained during protests on Rustaveli Avenue and was charged for illegal possession and carrying of a firearm.⁵²

On July 31 2020, 20 opposition parties have released the statement regarding the mentioned fact.⁵³ According to them, the judgement is the “political decision” of Bidzina Ivanishvili and the decision of the Court is the example of “obedience” of judiciary towards the orders of the Government.⁵⁴

The mentioned fact was followed by the wide response from international community. Member of European Parliament Anna Fotyga called on Salome Zurbishvili to pardon Giorgi Rurua. She considers the release of media owner as a part of March 8 agreement⁵⁵ MEP and the former Prime-Minister of Lithuania, Andrius Kubilius have

⁴⁴ Conclusion of the Khelvachauri Municipality Commission on Legal and Procedural Issues, 27.07.

⁴⁵ Ibid.

⁴⁶ Sub-paragraph “e” of paragraph 1 of the Article 43 of the Local Self-Government Code.

⁴⁷ Paragraph 5 of the Article 43 of the Local Self-Government Code.

⁴⁸ “Ordinance of Khelvachauri Municipal Assembly #7 on approval of Khelvachauri Municipal Assembly Rules of Procedure”, 19.02.2019, official web page of Legislative Herald of Georgia, <https://bit.ly/2XA4S3w>, updated on: 09.08.2020.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ “The court sentenced Giorgi Rurua to 4 years in prison”, information portal „Netgazeti“, 30.07.2020, available at: <https://bit.ly/3kce-QSt>, updated on: 09.08.2020.

⁵² Ibid.

⁵³ “20 opposition parties have issued a joint statement regarding the sentence of Giorgi Rurua”, information portal „Interpressnews“, 31.07.2020, available at: <https://bit.ly/2XBU1uN>, updated on: 09.08.2020.

⁵⁴ Ibid.

⁵⁵ “MEP Anna Fotyga calls on Georgian President to pardon Giorgi Rurua”, information portal „Netgazeti“, 30.07.2020, available at:

stated that “politicization of justice continues in Georgia”.⁵⁶ Kelly Degan, the Ambassador of the United States in Georgia, hopes that the judge on the case was able to independently make decision, without political interference.⁵⁷ Jim Risch, Chair of the Foreign Affair Committee of the Senate of US, stated that he “remains concerned” on “sentencing of Giorgi Rurua on spurious charges” and considers that the President of Georgia should pardon Giorgi Rurua.⁵⁸ “A legal system should never be used to fulfill political aims”, - he added.⁵⁹ On July 31 2020, the President Salome Zurabishvili stated on the briefing held in Presidential Palace that she will not pardon Giorgi Rurua.⁶⁰

GYLA monitored Giorgi Rurua case proceedings in Tbilisi City Court.⁶¹ According to monitoring, the opinion, evidence and arguments of the prosecution were weak. The moment of detention of Giorgi Rurua as well as personal search, the protocol drawn up after the search, vehicle search, bringing new charges⁶² on refusal to give the sample were problematic. GYLA continues to observe the mentioned case.

<https://bit.ly/3kk4SOM>, updated on: 09.08.2020.

⁵⁶ “Politicization of justice continues in Georgia – Kubilius on Rurua case”, information portal „Netgazeti“, 31.07.2020, available at: <https://bit.ly/3gy1s93>, updated on: 09.08.2020.

⁵⁷ “I hope the judge on the case had been able to independently make his decision – Degan no Rurua case”, Information portal „Netgazeti“, 31.07.2020, available at: <https://bit.ly/3iqGCcj>, updated on: 09.08.2020.

⁵⁸ “Senator Risch: Salome Zurabishvili should pardon Giorgi Rurua”, Information portal „Netgazeti“, 31.07.2020, available at: <https://bit.ly/3fucieF>, updated on: 09.08.2020.

⁵⁹ Ibid.

⁶⁰ “U.S. Senator Suggests Georgian President to Pardon Rurua, Zurabishvili Declines”, Information portal „civil.ge“, 31.07.2020, available at: <https://bit.ly/3gA0ate>, updated on: 09.08.2020.

⁶¹ GYLA monitor attended 23 proceedings of the main hearing;

⁶² Under Article 381 of the Criminal Code of Georgia “Failure to execute or interference with the execution of a final judgement or other court decision”.