

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



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GYLA appeals against the norms of the Election Code to the Constitutional Court

Georgian Young Lawyers' Association filed a constitutional complaint at the Constitutional Court, where the plaintiff is GYLA itself. GYLA considers first paragraph of the Article 77 of the "Election Code" as unconstitutional, as well as paragraph 2 and 3 of Article 7 of Decree No 8/2012 ("On Approving Regulations about Filing and Adjudication of Applications/complaints at Election Administrations") of the CEC (Central Election Commission of Georgia) with respect to first paragraph (right to fair trial) of Article 31 of the Constitution of Georgia.

On one hand, the appealed norms define authorized persons, who can adjudicate application/complaint related to the Election Law and make the decision and on the other hand, they determine the possibility to appeal the mentioned decision to a higher administrative authority and afterwards to the court.

Although the norms in dispute define the authority to adjudicate the election application/complaint, however they do not provide for the possibility to appeal in case of refusal to draw up a protocol of the offence. **It is precisely that normative content of the norms in dispute that GYLA considers unconstitutional, which, as an election monitoring organization, does not allow it to appeal against the refusal to draw up the protocol on administrative offences related to the offense provided for by the "Election Code" to the court.**

Georgian Young Lawyers' Association is united non-governmental organization based on Article 22 of the Constitution of Georgia. One of its strategic goals is to support improvement of the electoral process by observing the election process. Accordingly, it is GYLA's legitimate interest to observe the electoral process within the framework of the right of association and to apply to the relevant election commission with application/complaint with regard to drafting the protocol of administrative offense.

GYLA believes that even if the authorized person refuses to draw up a protocol of the

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offense, there should be a possibility to appeal against the decision to the court, accordingly, to examine legitimacy of discretionary authority. The necessity of this possibility arises from the following circumstance, if discretionary authority will not be verified an authorized person may use his/her own power to the detriment of the voters' right. In particular, there might be sufficient factual circumstances for drawing up a protocol, however, given the fact that the decision will not be reviewed by the court, the authorized person may not, at his/her discretion, draw up protocol of the offense, which will impede possibility of free expression of the will of the voters in the election process. In such a scenario, neither GYLA will meet its own interest- to conduct effective monitoring of the electoral process and nor the voter will make use of the electoral space, where s/he can freely express his/her own will.