

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Legal Opinion of NGOs on Proposed Legislative Changes Related to Election Environment

On December 26, several NGOs focusing on issues pertinent to elections, expressed their legal opinion about the proposed legislative changes in the Election Code, the Criminal Code and the Law of Georgia on Political Unions of Citizens. Corresponding press-conference was held at Tbilisi Marriot, where Georgian Young Lawyers' Association, Transparency International - Georgia, International Society for Fair Elections and Democracy, Coalition for Free Choice and the Open Society - Georgia

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Foundation released a petition. Any individual or an organization who shares position of the NGOs could sign the petition.

In the petition the NGOs openly expressed their opinion, stating that “unreasonable prohibitions” contained by the legislative initiative limit freedom of expression of private and non-governmental organizations and ordinary citizens.

Representatives of the NGOs explained to media and public meaning of the stipulations contained by proposed changes, as they can be difficult for ordinary citizens to understand due to the professional terminology used.

In the petition the NGOs call on the parliament of Georgia to ensure adoption of legislation that complies with international human rights standards and to prevent putting into effect the norms that are unbalanced and biased. The threat is real if the parliament adopts proposed changes. According to NGOs, putting the proposed changes into effect may pose a threat to voters, limit freedom of expression and disproportionately tighten prohibitions on private sector.

At the press-conference the NGOs focused on the parliamentary initiative to change formulation of Article 1641 of the Criminal Code of Georgia – Vote Buying. According to the proposed formulation, a legal entity that commits the noted crime will be liquidated. To put it in simple terms, the noted stipulation is applicable to cases when a business company provides one sack of flour to a voter, asking the latter to support a political party in return. Clearly, we agree with the opinion that vote buying is unacceptable; however, we believe that such actions should be subject to proportionate and reasonable punishments”, – noted Nana Khatiskatsi, Transparency International – Georgia.

The press-conference also focused on amendments that envisage criminal punishment for voters together with political parties, if they accept money, other property or service from a political party. “For example, if a party finances medical service for a voter, the latter will be sentenced to up to three years of imprisonment” – clarified Nana Khatiskatsi.

The proposed changes allow criminal prosecution of not only direct by indirect vote buying as well, which poses a threat of linking vote buying committed by an individual

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to a political party. If a person, an alleged provocateur, who is not acting on behalf of the party, asks a voter to vote for the party in return for money or an object, the crime can be considered as an indirect crime committed by a party in an indirect manner, which may result in its liquidation. Another important restriction envisaged by the new draft law affects legal persons, their representatives and “other persons” as it prohibits them from calling on voters to support or to refrain from supporting a political force. However, at the same time, the existing election legislation does not prohibit pre-election agitation even for civil servants when they are discharging their official functions.

“It is important that the existing legislation does not limit civil servants’ freedom of expression. Persons employed at administrative agencies - legal entities of public law, are not prohibited from calling on voters to support or refrain from supporting a political force, even when they are discharging their official functions. Therefore, we believe that the restriction offered by the draft law is completely disproportionate. Furthermore, the purpose of intrusion in the freedom of expression of legal persons, their representatives or “other persons” is unclear. We believe that a municipality Gamgebeli can have bigger influence on voters by means of an open agitation than an employee of a theatre or a business company, for instance” – stated Tamar Chugoshvili, Georgian Young Lawyers’ Association. “According to representatives of NGOs, civil servants should be subject to a more restrictive legislative environment as opposed to a legislative environment identical to the one for private sector. However, proposed draft laws tighten restrictive norms for private sector instead of providing relevant prohibitions and sanctions for the state sector” – it is noted in the statement of the NGOs.

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Currently the parliament of Georgia is considering proposed legislative initiatives that aim at changing the election environment by imposing restrictions on business companies, their employees, NGOs and political parties. Amendments aim at regulating the noted groups and do not envisage imposition of sanctions of similar nature and severity on officials, civil servants in general and other employees at the state sector who, by using administrative resources or other means, pursue activities

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in support of a political party.