



GYLA considers the regulation initiated with regards to the Administration of the President to be unconstitutional

On December 6, the legislative initiative of MPs Guram Macharashvili and Rati Ionatamishvili was submitted to the Parliament of Georgia, according to which the staff of the Administration of the President will be considered as persons employed by the administrative agreement and it will no longer use labor guarantees set for professional public servants. The Bureau made a decision to review the above-mentioned draft law in an accelerated manner, including to review it with two hearings in a day.

We believe that the presented legislative initiative contradicts to the Constitution of Georgia, the judicial practice of the Constitutional Court of Georgia and it does not comply with the principles strengthened by the Law of Georgia on Public Service and violates labor rights of persons employed in the Administration of the President.

According to paragraph 1 of article 29 of the Constitution of Georgia, every citizen of

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Georgia has a right to hold any state position if he/she meets the requirements set by the legislation. According to paragraph 2 of the same article, the conditions of the public service are determined by the law. Paragraph 2 of Article 29 of the Constitution of Georgia covers various legal components for uninterrupted work in the state service, including to guarantee protection from unfair dismissal.

"In the case of a qualified officials, it is necessary that the duties imposed on them will be carried out by the person with the appropriate knowledge, profession, qualification or other relevant characteristics." "They do not direct the political process and the course of the country and do not have the authority. After each election the real possibility of replacing with the new staff is not a requirement of the democratic state and, in general, of the constitution as well as it is not the task of the state and it can restrict the basic right defined by paragraph 2 of the article 29 of the Constitution of Georgia." "Arbitrary replacement of professional staff can not be used as a legitimate aim that can justify the restriction of the right protected by the article 29 of the Constitution of Georgia. Accordingly, the purposeless restriction of the occupation of the position violates paragraph 2 of the article 29 of the Constitution of Georgia."

According to the paragraph "e" of the article 3 of the Law of Georgia on Public Service, qualified public officer is a person, who is appointed for an unspecified term to a full-time position of an officer in public service by the State, the autonomous republic, a municipality, or a legal entity under public law, and who exercises powers under public law as his/her principal professional activity, which guarantees the protection of public interests by him/her, and who receives relevant remuneration and social and legal security guarantees in return.

In contrast, the person employed on the basis of the administrative agreement is a person who provides support to a state-political official for the exercise of his/her powers. Such persons are appointed for the term of office of the official without the competition and the lower guarantees are determined for termination of the agreement.

The institute of a qualified public officer is based on the career principle and the officers with the above mentioned status are protected from political decisions of state political officials. The institute of a qualified public officer is a guarantee of the stability of the public service. Employees of the Administration of the President, except for the parliamentary secretary of the President, head of the administration

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and his deputies, heads of advisory bodies and their deputies and persons employed by the employment agreement, are qualified public officers as they are appointed on the basis of their professional qualifications and their duties is consistent with the performance of permanent public legal duties. Thus, when they are regarded as performing auxiliary functions, it contradicts the rules of the Law of Georgia on Public Service and creates a very dangerous precedent that in future Parliament will make similar decisions regarding persons employed in other public institutions that will violate the principles of impartiality of the public servant and the stability of his service.

We believe that after the entitlement of the newly elected President of Georgia this process may be a direct and purposeful action for dismissal of the personnel of the Administration of the President and for employment of new staff without competition. Presumably, this is confirmed by the fact that the draft law is being reviewed in an accelerated manner.

The draft law represents a dangerous precedent and we, therefore, call on the Parliament not to support the proposed draft law and refrain from making decisions that will harm rights of public servants, their independence and stability of the public service. GYLA also expresses readiness to protect the interests of employees of the Administration of the President in the Constitutional Court in case of adoption of the draft law.