

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



The GYLA responds to addition of new election-related article to the Criminal Code

The Parliament of Georgia has initiated a package of amendments to be made to the Criminal Code of Georgia and other related legislative acts. The amendments envisage adding a special election-related article to the Criminal Code and changing the regulations on calling law enforcement officers to an election precinct (the adjacent area) and on their presence there.

Conducting elections and the electoral process in a quiet environment is, unconditionally, one of the main priorities in a democratic society; therefore, the GYLA welcomes any initiative in this regard. However, as the draft law concerns

incrimination of concrete acts, we believe it important to give an appropriate assessment to the need to introduce a special article, as well as to ensure the predictability and clarity of the disposition.

The draft law envisages making the applicable sanctions stricter in the case of battery and intentional infliction of grave injury. In parallel with this, the document adds a special article – regarding violence or threat of violence at election precincts, premises of election commissions or in adjacent areas, or at the time of an event related to pre-election agitation or pre-election campaign – to the Criminal Code. Obviously, when the State policy aims to make sanctions stricter for certain crimes against health, on the one hand, and introduce a special article with the same content, on the other, as part of a single legislative initiative, there arise questions of whether it is really necessary to add a new article to the Criminal Code and why the legitimate goal cannot be achieved by effective enforcement of the existing norms. It should be noted that the explanatory note to the draft law does not contain in-depth deliberation on this subject, and it does not indicate concrete circumstances and problems identified in practice which ultimately made it necessary to introduce the special article. Moreover, the experience of EU member states [1] cited as examples in the explanatory note demonstrates that no identical norms are found in the applicable criminal codes of these countries.

As for the disposition of the norm, it should be noted that the Election Code does not define the premises of election commission or the adjacent area, while the boundaries of an election precinct are subject to interpretation in practice, and such an ambiguous norm creates an increased risk of introduction of non-uniform and selective practice. At the same time, the disposition of the article does not unequivocally show the goal of the changes – conducting elections and the electoral process in a quiet environment. According to the proposed amendments, the main qualifying circumstance is the concrete territory [2], which makes it possible to qualify any violence or threat of violence that takes place in a populated area – regardless of whether it occurs in the pre-election or non-election period and whether it has an ordinary or specific character – under this article, which cannot be regarded as reasonable against the background of other general articles that concern crimes against health.

As for the possibility of mobilization of law enforcement officers in the area adjacent to a polling station – in extraordinary cases, without the consent of the chairperson of

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the commission, and with the aim of upholding the public order – we believe that the aforementioned is going to make considerably more difficult to conduct elections in a free environment. The readiness of law enforcement agencies to ensure timely handling of incidents on the polling day is obviously a welcome fact, although it is necessary to take into account the risks that accompany the presence of police officers in a polling station/adjacent area, particularly when they have extensive powers, such as the right to enter the area adjacent to a polling station on their initiative, including for preventive purposes.

The GYLA has already submitted its legal opinion regarding the legislative package to the Parliament of Georgia and, also, voiced its views during discussions on the draft law in the relevant committees.

[1] We mean the corresponding articles of the criminal codes of Finland and Estonia;

[2] An election precinct, premises of election commission, the adjacent area, or an event related to pre-election agitation/campaign;