



## GYLA's reply to the Minister of Justice

On August 24, 2018, the Interagency Commission for Free and Fair Elections held its regular session, at which, in addition to the issues on the agenda, the Minister of Justice and Chairperson of the Commission, Ms. Tea Tsulukiani  on the basis of a statement of N(N)LE Georgian Barristers and Lawyers  International Observatory  took an interest in the GYLA [report](#) on the monitoring of staffing of election commissions.[\[1\]](#)

During the session, the Minister of Justice asked the Secretariat of the Commission to print out the results of the GYLA  monitoring and comments, so that she could read them on the spot and discuss „[the document known as the GYLA's study](#)“.

The Minister called upon participants of the electoral process to  from attempting to discredit the CEC or from taking part in such attempts without undisputable evidence  and asked the representative of the GYLA to present a

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method by which the organization had established ties of kinship. She stated that [ ] given document says nothing about the method, without which a serious research document cannot exist. A She also asked questions about the lawfulness of the processing of personal data.

Accordingly, **on the basis of our goodwill**, we would like to **publicly present the goal and methodology of the GYLA as a human rights and observer organization.**[2] We would also like to point out that, **in our view, the Minister of Justice, by her action, has gone beyond the limits of the mandate established by the Election Code**, and has, also, **disregarded an important international standard regarding the significance of the activity of observers for the State. In particular, according to Paragraph 8 of the OSCE Copenhagen Document of 1990, the Participating States should consider the presence of observers as an opportunity** for enhancing the electoral process.

1. Instead of **thoroughly studying and verifying the existing deficiencies and media reports on cases of alleged nepotism** as well as **verifying the information in administrative bodies, the Minister of Justice, guided by superficial and pre-existing views, turned the session of the Commission into an area for settling scores and tried to discredit the observer organization and portray the GYLA [ ] activities as destructive, presumably because, a little earlier, the GYLA, together with other NGOs, had demanded that Tea Tsulukiani should not be nominated as the Minister of Justice in the new government;**

2. Instead of **undertaking the function of an objective arbiter provided for by law**, the Minister of Justice **blamed the organization for implementing a plan of an opposition party** and for **having a selective approach to institutions.**

**The mandate of the Interagency Commission** (the standard of verification and response measures) prescribes that the Commission should contribute to the **creation of a free and fair electoral environment by means of prevention of violation of the Georgian electoral legislation by public servants and responding to violations.** According to the Statute of the Interagency Commission for Free and Fair Elections,[3] in order to achieve the aforementioned goal, the Commission:

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- ensures the coordination of the activities of the Interagency Commission and **contributes to dialogue between the Government of Georgia and all the stakeholders involved in elections.** With this purpose, the Commission **cooperates** with qualified electoral subjects as well as with other political parties/electoral blocs, **local and international organizations, observers,** and other stakeholders;
- ensures the **verification** of information received from electoral subjects and **media reports** about violation of the electoral legislation by public servants;
- discusses issues related to **media reports about violations of the Georgian electoral legislation by public servants,** as well as **information on violations provided to the Commission** by political associations (electoral subjects) or **observer organizations.**

If a violation is confirmed, the Commission is entitled to give a recommendation to any public servant, administrative body, and the CEC and demand that they take relevant measures within a reasonable time frame.

~~**Instead of discussing the problems highlighted in the GYLA [ ] report at the session, studying the issue in detail, and verifying the information in the relevant administrative bodies, the burden of proof was shifted to a non-governmental organization. Accordingly, the Minister of Justice went beyond the mandate established by the Election Code and lost the function of an objective arbiter. By this, she tried to discredit a reliable observer organization.**~~

**We would also like to state that the GYLA is a human rights and observer organization and enjoys an absolute privilege when carrying out its activities.**

According to the statute of the organization, **the organization aims to protect human dignity, rights, and freedoms. Believing in the supremacy of the principles of fair and free elections,** the Association constantly observes **full neutrality in relation to political processes.** For years, the GYLA has proved by its activity **its adherence to the principles of the rule of law and rule-of-law state and its striving for the creation of a fair electoral environment.** In

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keeping with this creed, the organization **recognized by its signature in 2010 the Declaration of Global Principles of Election Observation and Monitoring and the Code of Conduct, which was developed for non-governmental organizations on the initiative of the Global Network of Domestic Election Monitors (GNDEM).**<sup>[4]</sup> The organization  monitors adhere to these principles.

In accordance with internationally recognized standards, **non-partisan monitoring of elections by civil society organizations constitutes defense of human rights, while monitors are human rights defenders and enjoy an absolute privilege.** According to the Law of Georgia on Freedom of Speech and Expression, **information disclosed to a human rights defender in connection with their professional activity, as well as information of professional value which became known to a person under the condition of confidentiality in connection with carrying out his/her professional duties and the disclosure of which may damage a person  professional reputation constitutes a professional secret.**<sup>[5]</sup> According to the same law,  sources of professional secrets shall be protected by an absolute privilege, and nobody shall have the right to require disclosure of the source. <sup>[6]</sup> In its turn, an absolute privilege is defined as a complete and unconditional release of a person from a liability provided for by law. Even at the time of a court dispute regarding restriction of freedom of speech, the respondent cannot be made obliged to disclose the source of confidential information. Disclosure of confidential information without the consent of its owner or, in cases determined by the law, without a grounded decision of the court, is unacceptable.<sup>[7]</sup>

**In addition, election observation does not mean the observation on the polling day only and also involves the monitoring of pre-election and post-election processes,<sup>[8]</sup> including the monitoring of the staffing of the election administration.**

As for our organization  election monitoring, including the methodology of monitoring of staffing of election administrations, first of all, we would like to note that the organization has monitored the staffing of election administrations for years. **The subject matter of the monitoring of staffing of election administrations is to study** the following:

- the criteria by which members of election commissions are selected;
- whether or not the individuals who in the near past represented various parties in the election administration are elected on the professional basis;
- whether or not the individuals elected on the professional basis are independent of the party vertical;
- whether or not individuals who have been subjected to disciplinary and administrative liability are elected to the commission;
- whether or not the elected individuals observe the principles of ethics and whether or not there are cases of conflict of interest/nepotism.

**The goal of the monitoring is precisely to identify the existing deficiencies and to improve the existing situation and legislation.** The GYLA has talked about the challenges at the level of legislation and practice during several elections. In connection with the upcoming presidential elections, the organization has also submitted relevant recommendations to the Parliament of Georgia with the aim of implementation of a fundamental reform of staffing of the election administration.[\[9\]](#)

It should also be noted that, **according to the Declaration of Global Principles of Election Observation and Monitoring and the Code of Conduct, citizen organizations employ a variety of methodologies and techniques during non-partisan election observation and monitoring, depending on the aspect of the election process and/or electoral environment to be evaluated.**[\[10\]](#) In addition, observer organizations are free to seek, receive, and impart information, domestically and across border, via verbal communications and printed or electronic media, including the Internet.[\[11\]](#)

**The GYLA election monitoring methodology was developed precisely in accordance with the Declaration of Global Principles of Election Observation and Monitoring and the Code of Conduct and is in full harmony with the Georgian legal framework.**

**Therefore, the Minister [ ] questioning of the seriousness of the GYLA [ ] report is an attempt to diminish the internationally recognized standards and the activity of the professional and impartial observer organization.**

**We would like to stress that the GYLA hasn [ ] violated the Law on Personal Data Protection when carrying out the monitoring. In particular:**

The information about alleged kinship and friendship ties, as well as about partisan activity, disseminated by the GYLA was mostly obtained from the mass media, and was also double-checked by the monitors. For example, the chairperson of one of the district election commissions [told](#) the media that his spouse had been appointed as a member of a DEC. Thus, the said personal data were made public by data subjects themselves.

According to Subparagraph F of Article 5 of the Law of Georgia on Personal Data Protection, data processing is permissible without the subject [ ] (the person whom this data concerns) consent:

- if the data subject himself/herself has made his/her data public or available;[\[12\]](#)
- when data processing is necessary to protect a significant public interest under the law.[\[13\]](#)

It should be noted that in its report the GYLA observed the requirements of Paragraph 3 of Article 6 of the Law on Personal Data Protection which says that [ ] data are processed under paragraph 2 of this article, it shall be prohibited to make the data publicly available and to disclose the data to a third party without the consent of the data subject. A In particular, **the GYLA [ ] report cites statistics and municipalities and talks about 11 cases of appointment of temporary members of DECs, allegedly on the basis of kinship ties and party membership, but it doesn [ ] identify the personal data (names and surnames) of concrete individuals.**

As for the **public interest, there is a high public interest in connection with the process of selection of officials of the election administration.** The public also has a high interest in connection with the circumstances that might exert an influence **on the objectivity and impartiality of the election administration. Accordingly, the interest of protection of personal data cannot become an impediment for an observer organization in identifying and providing to the public timely and objective information about the party background or family ties of candidates for the positions of commission members which**

**might exert an influence on the impartiality of commission members and, in combination with other factors, reflect negatively on fair and equal electoral environment.**

**Based on all the aforementioned, we express hope that the activity of the Minister of Justice in the Interagency Commission will be guided by the limits of the mandate granted by law and that she will respect the mandate of the professional observer organization.**

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[1] Here, the reference is made to the GYLA [1] monitoring report that identified problems in the staffing of election administrations which have posed a challenge for years. In particular, it is impossible to create objective pre-conditions for selecting qualified, independent, and highly ethical individuals in the election administration, and there are cases of alleged nepotism.

[2] Our methodology.

[3] <https://www.matsne.gov.ge/ka/document/view/4230849>

[4] DECLARATION OF GLOBAL PRINCIPLES FOR NON-PARTISAN ELECTION OBSERVATION AND MONITORING BY CITIZEN ORGANIZATIONS and CODE OF CONDUCT FOR NON-PARTISAN CITIZEN ELECTION OBSERVERS AND MONITORS.

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)018-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)018-e)

[5] Subparagraph N of Article 1 of the Law of Georgia on Freedom of Speech and Expression.

[6] Paragraph 1 of Article 11 of the Law of Georgia on Freedom of Speech and Expression.

[7] Paragraph 2 of Article 11 of the Law of Georgia on Freedom of Speech and Expression.

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[8] The Venice Commission, CODE OF GOOD PRACTICE IN ELECTORAL MATTERS: GUIDELINES AND EXPLANATORY REPORT (Paragraph 88), [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e)

[9] <https://gyla.ge/en/post/rekomendaciebi-saarchevno-garemos-gaumjobesebisatvis#sthash.8ycm6dcz.dpbs>

[10] DECLARATION OF GLOBAL PRINCIPLES FOR NON-PARTISAN ELECTION OBSERVATION AND MONITORING BY CITIZEN ORGANIZATIONS and CODE OF CONDUCT FOR NON-PARTISAN CITIZEN ELECTION OBSERVERS AND MONITORS. Paragraph 13,

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)018-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)018-e)

[11] DECLARATION OF GLOBAL PRINCIPLES FOR NON-PARTISAN ELECTION OBSERVATION AND MONITORING BY CITIZEN ORGANIZATIONS and CODE OF CONDUCT FOR NON-PARTISAN CITIZEN ELECTION OBSERVERS AND MONITORS. Paragraph 18 (f),

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)018-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)018-e)

[12] Subparagraph D of Article 6 of the Law of Georgia on Personal Data Protection.

[13] Subparagraph G of Article 5 of the Law of Georgia on Personal Data Protection.