

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



The GYLA's response to the Georgian National Communications Commission

The Georgian Young Lawyers' Association is responding to a statement^[1] of the Georgian National Communications Commission (GNCC) regarding the GYLA's report on the monitoring of the pre-election environment. We believe that by criticizing the GYLA, the GNCC is trying to conceal the practice which it has changed without any argumentation and a relevant legislative basis and which puts political subjects in an unequal position in relation to the ruling party and limits opposition forces' access to the media.

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On August 25, 2017, the Georgian Young Lawyers' Association released its first interim report on the monitoring of the pre-election environment before the local self-government elections.[2] Together with other important issues, the report discusses a dispute between the GNCC and the Rustavi 2 Broadcasting Company. The report also contains information about a video clip about the constitutional reform, which was aired by the Public Broadcaster.

Responding to the GYLA's report in writing, on September 5, 2017, the GNCC released a statement in connection with the relevant section of the report,[3] accusing the GYLA of incompetence and/or bias. **We express hope that the GNCC's statement released in response to the critical views expressed in our interim report was not aimed at discrediting our organization and was not directed against dissenting opinion.**

Factual circumstances of the case

In March and April 2017, the Rustavi 2 Broadcasting Company aired two video clips of the political association European Georgia.[4] As argued by the GNCC in its decision, the video clips contained signs of political agitation and were aired during non-preelection period, which was a violation of law.[5] Despite the fact that the GNCC, by the said decision, found Rustavi 2 guilty of violating the law, it failed to apply a measure of administrative liability against it and freed the company from liability.

In our report, we expressed the opinion that the GNCC's decision – by which the GNCC had found that the Rustavi 2 Broadcasting Company had broken the law, but failed to apply a measure of administrative liability against it – was vague. Such a decision raised a question about whether it had been made because other broadcasting companies might also have committed similar violations of law; however, the GNCC failed to provide a relevant response to the aforementioned and, possibly, it tried to show its impartiality when making the decision related to Rustavi 2.[6] In the report, we also assessed a video clip that had been aired by the Public Broadcaster as a social advertisement. The video clip conveyed information about the ongoing constitutional reform in such a way that disposed voters to support a decision made by the authorities. The GNCC had discussed this video clip, but failed to see a problem in it.[7]

We believe that the opinions expressed in the GNCC's statement are unsubstantiated due to the following circumstances:

Familiarizing with the GNCC's statement makes it clear that by responding to the GYLA's report and pointing to a technical shortcoming[8], the GNCC wants to conceal the main problem in the decision taken with regard to the case of Rustavi 2: 1) The GNCC changed the practice it had itself established in the recent years without any substantiation and without a relevant legislative basis; 2) By the said changes and introduction of a new approach, the GNCC practically prohibits (in contradiction with the law) political parties from placing their political advertisements in broadcasters during non-preelection period. This constitutes an act directed against political speech and opinion, which is given particular protection by the right to freedom of expression, and puts political subjects in an unequal and, thus, unfair situation compared with the ruling party by imposing on them a blanket and absolute ban in terms of placement of advertisements in the media during non-preelection period. And this happens at a time when the political force in power can place advertisements, aimed at promoting its ideas and winning the favor of the public, in broadcasters - with the status of a social advertisement and at the expense of the budget - at any time.

Interpretation of the disputed articles

Article 66 of the Law of Georgia on Broadcasting regulates the issue of placement of advertisements during pre-election campaign and, specifically, uses the word “advertisement”, whereas Article 66¹ of the same the law contains a ban on procurement of services and, for this purpose, uses the word “services” rather than the word “advertisement”.

According to Paragraph 1 of Article 66¹ of the Law of Georgia on Broadcasting, “Administrative bodies, political parties, officials, and public servants may not finance broadcasters, and may not procure their services and finance or co-finance, directly or indirectly, the production of and/or broadcasting of broadcasters’ programs, except as provided for by paragraphs 2 and 3 of this article.”

We believe that the word “services” in the disposition of Paragraph 1 of Article 66¹ of the Law of Georgia on Broadcasting does not imply the placement of advertisements in broadcasters by political parties. If we assumed that the disposition of this paragraph bans the placement of political advertisements, it would follow that political parties are entirely prohibited from placing advertisements during non-preelection period. According to the applicable legislation, political parties are entitled to place advertisements in broadcasters during election period.

Practice of the previous years

The approach of the GNCC

The letter no. 03/189817, which the GNCC sent to the GYLA on June 14, 2017, says that the GNCC had not identified any cases of placement of political advertisements in broadcasters during non-preelection period before the start of administrative proceedings in the case of Rustavi 2. However, as we have learned, the GNCC was aware of cases of placement of political advertisements by political parties for years, although it failed to respond to these cases. As made clear by the article entitled [“Non-election period and political advertisements”](#), which was published on the website of the online publication **Media Checker** on January 13, 2016, the GNCC

knew that in November and December 2015, i.e. during non-preelection period, Rustavi 2 was broadcasting political advertisements, **although the GNCC did not regard the broadcasting of these advertisements as a violation.**

The article on the website of **Media Checker** cites the comments of Khatia Kurashvili, Head of the GNCC's Public Relations Department, who states that "the said advertisement doesn't violate the law, as it is not pre-election period now."^[9] Moreover, on February 15, 2016, the Head of the GNCC sent an official reply^[10] about the same issue to Salome Tsetskhladze, a journalist of **Media Checker**, explaining that "The procedures of placement of political (pre-election) advertisements are regulated by the Election Code of Georgia, the Law of Georgia on Broadcasting, and Ordinance No. 9 on Participation of the Media in the Electoral Process and Approval of the Procedure of Their Use of the Georgian National Communications Commission. The aforementioned procedures only concern the pre-election period. Accordingly, the aforementioned norms do not extend to political advertisements placed during non-preelection period" (see Annex No. 2: Reply of the Head of the Georgian National Communications Commission to Salome Tsetskhladze).

Moreover, the Head of the GNCC believes that he cannot apply the norms of the Election Code by analogy in this concrete case, which concerns the placement of advertisements of the United National Movement in Rustavi 2 in November and December 2015, i.e. during non-preelection period, because this would contradict the law. He believes that "such advertisements should be subject to certain regulation, which requires making changes to legislative acts."

Therefore, a) the Georgian National Communications Commission knew about at least one concrete case of placement of political advertisement during non-preelection period; b) the GNCC didn't regard the placement of political advertisement during non-preelection period as a violation of law; c) on the contrary, the GNCC believed that it could not respond to concrete cases, because this issue needed to be regulated, which required making changes to legislative acts.

The approach of the State Audit Office

It should be noted that Article 66¹ was added to the Law of Georgia on Broadcasting

after the passage of amendments no. 833 on July 12, 2013. It should also be taken into account that Paragraph 1 of the aforementioned article, which has now become disputed, remained unchanged for years. It is also a fact that political advertisements were aired by broadcasters in the previous years. This information is also confirmed by materials provided to the GYLA by the State Audit Office (see Annex No. 1: Information Provided to the GYLA by the State Audit Office). Moreover, according to Order No. 2915/21 of the Auditor General of the State Audit Office of May 5, 2016, political parties are obliged to submit information on the procurement of political advertisements to the State Audit Office and they must fill out a form specially approved for this purpose.^[11] This shows that **the State Audit Office does not consider that procurement of a broadcaster's airtime by a political party during non-preelection period contradicts the law.**

Conclusion

In view of the aforementioned, it is surprising that our position according to which “the legislation does not include regulation regarding airing political advertisement during non-preelection period” has been criticized by the GNCC. As it has turned out, only a year ago the GNCC fully agreed with our position; moreover, the GNCC talked about the necessity of making legislative changes in this regard.^[12] And the State Audit Office also agreed with this position.

We also find it difficult to understand why the GNCC replied to us that “...the GNCC had not identified cases of placement of political advertisements during non-preelection period before the start of the administrative proceedings”^[13] in the case of Rustavi 2. It remains a fact that no amendments had been made to Paragraph 1 of Article 66¹ prior to the start of the administrative proceedings against Rustavi 2. In spite of this fact, the GNCC changed its position and made a completely different decision in the case of Rustavi 2. The agency interpreted the norm of the law contrary to the interpretation made before, finding that placement of advertisements during non-preelection period – which it hadn't previously considered as a violation – was a violation of law.

All the aforementioned clearly show that the GNCC has been inconsistent in its actions and interpretations. We should mention the radical change in its position with regard to the case of Rustavi 2, which further reinforces our

opinion that “Possibly, the commission tried to show its impartiality when making the decision related to Rustavi 2.”

We also disagree with the GNCC’s view with regard to the disputed video clip broadcast by the Public Broadcaster. The Public Broadcaster aired a video clip – which informed citizens about the ongoing constitutional reform – as a social advertisement. In our opinion, the information was conveyed in such a way that disposed voters to support the authorities’ decision about the constitutional amendments, which no longer constituted a social advertisement.

In view of the all the aforementioned, we get the impression that the GNCC has been inconsistent not only in responding to concrete cases and formulating its position but also in the process of reading the GYLA’s report, because if the GNCC members had read concrete sentences in their context, it is doubtful that they would have questioned the organization’s views which were reinforced by relevant facts.

The GYLA expresses its readiness to collaborate with the Georgian National Communications Commission with the aim of improving the electoral and media environment.

[1] <http://www.gncc.ge/ge/news/press-releases/komunikaciebis-erovnuli-komisiis-gancxadeba-saqartvelos-axalgazrda-iuristta-asociaciis-angarishtan-dakavshirebit.page>

[2] <https://gyla.ge/en/post/tsinasaarchevno-garemos-monitoringis-pirveli-shualeduri-angarishi#sthash.6pKsk6MO.dpbs>

[3] <https://www.gncc.ge/ge/news/press-releases/komunikaciebis-erovnuli-komisiis-gancxadeba-saqartvelos-axalgazrda-iuristta-asociaciis-angarishtan-dakavshirebit.page>

[4] <http://rustavi2.ge/ka/news/76319>

The first video clip is a social advertisement dedicated to World Down Syndrome Day, which features well-known leaders of the political association Movement for Freedom – European Georgia. The advertisement deals with the rights of citizens with Down

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syndrome and with the principles of equality, although the leaders of the political association make political hints, and also make political appeals. In the second video clip, leaders of the political party inform voters about their party and its vision.

[5] <http://www.gncc.ge/ge/legal-acts/commission/solutions/2017-392-18.page>

[6] <https://gyla.ge/en/post/tsinasaarchevno-garemos-monitoringis-pirveli-shualeduri-angarishi#sthash.Ad2xnjRa.dpbs>

[7] Decision of the GNCC No. 464/12 of July 13, 2017.

[8] Instead of Article 66¹ of the Law of Georgia on Broadcasting, the report indicates Article 66, although the relevant footnote explains the content of Article 66¹. Instead of Paragraph 2 of Article 63, the report indicates Paragraph 3 of Article 63.

[9] <http://mediachecker.ge/mediacritics/detail/140/>

[10] The Georgian National Communications Commission. 15/02/2016 No. 04/516-16

[11] Paragraph 3, Article 10 of Order No. 2915/21 of the Auditor General of May 5, 2016.

[12] It is noteworthy that as early as in 2015, Transparency International Georgia also talked about the problematic nature of this issue. The organization believed it necessary to make legislative changes with regard to placement of political advertisements in broadcasters during non-preelection period.

<http://www.transparency.ge/ge/blog/ikrzaleba-tu-ara-arasaarchevno-periodshi-politikuri-reklamis-gantavseba>

[13] The Georgian National Communications Commission. 14/06/2017 No. 03/189817