



**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**



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Free, Fair and Equal Electoral-Political 2019-2022 Cycle in Georgia

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INTRODUCTION

In August 2019, The Georgian Young Lawyers' Association (GYLA), with the support of USAID, launched the project "Free, Fair and Equal Electoral-Political 2019-2022 Cycle in Georgia". It covers the territory of Tbilisi, Kakheti, Mtskheta-Mtianeti, Kvemo Kartli, Shida Kartli, Imereti, Samegrelo-Zemo Svaneti, Guria and Adjara.

One of the primary goals of the project is to support improvement of the electoral environment through monitoring and evidence-based advocacy. To this end, GYLA will monitor ongoing political processes and develop recommendations that will be presented to the public and decision-makers.

AMENDMENTS TO THE ELECTION CODE

On September 9, 2019, the Central Election Commission (CEC) of Georgia submitted a legislative proposal on amending the Organic Law of Georgia "On the Election Code of Georgia"¹ to the Parliament of Georgia. On November 27, the Legal Issues Committee of the Parliament considered the proposal and registered it as a legislative initiative.²

The draft bill mainly envisages technical changes, most of which are acceptable, yet the provision relating to voter bribery is notable. According to the current edition of the Election Code, voter bribery "shall be prohibited from the moment of publication of the respective legal act setting the Election Day **until the publication of the final results of elections.**"³ According to the proposed version, vote bribery shall be prohibited only up **until the polling day,**⁴ which creates a possibility, in practice, for voter bribery after the end of the voting day and during the pre-election period of the second round.

In addition, GYLA negatively assesses the formal side of elaborating the draft bill. It was in last summer when the legislative body began developing the amendments to the election law and submitted a draft to a group working on electoral reform. GYLA participated in three meetings where the document was discussed and presented its recommendations to the process participants. The final draft has not yet been initiated, yet the legislative proposal of the CEC has been submitted to the Parliament without the participation of the stakeholders and extensive discussions.

GYLA calls on the legislative body to consider the draft bill within the format of the electoral reform working group with the participation of parties involved in the electoral process.

DEMONSTRATIONS AND COUNTER DEMONSTRATIONS

The public outcry caused by the rejection of the constitutional amendments regarding the proportional electoral system has not actually subsided. The protests launched on November 14 continued through December.

On December 2, members of the Movement "Dare" held a protest rally in Mtskheta, near the office of majoritarian MP Dimitri Khundadze, where a physical confrontation took place between protesters and Khundadze supporters.⁵ The majoritarian MP's office is located in proximity to the Mtskheta City Hall. Giorgi Kapanadze, Mtskheta Mayor, and other City Hall employees were also present on the site.⁶ During the rally, two protesters were injured and seven arrested for administrative

¹ Draft Organic Law of Georgia on Amendments to the Election Code, Website of the Parliament of Georgia, available at: <https://info.parliament.ge/file/1/BillReviewContent/237373>, updated: 15.01.2020.

² Draft Law of Georgia on Amendments to the Election Code of Georgia, Website of the Parliament of Georgia, available at: <https://info.parliament.ge/#law-drafting/19232>, updated: 15.01.2020.

³ Election Code of Georgia, Article 47, Paragraph 1.

⁴ Draft Organic Law of Georgia on Amendments to the Election Code, Website of the Parliament of Georgia, available at: <https://info.parliament.ge/file/1/BillReviewContent/237373>, updated: 15.01.2020.

⁵ "Confrontation in Mtskheta, at Majoritarian Khundadze's Office," 02.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/410891/>, updated: 15.01.2020.

⁶ "They have responded to the noise- Mayor of Mtskheta on his Fight Participant Employees, 02.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/410913/>, updated: 15.01.2020.

offence. The investigation was initiated into violence under Article 126 of the Criminal Code of Georgia.⁷

On the same day, a protest demonstration was held in front of the Georgian Dream office in Tbilisi, where opposition and civil movement representatives protested against the incident in Mtskheta.⁸ The Ruling Party supporters verbally and physically clashed with the rally participants. Six people were injured, but no one was detained by the police.⁹ The following day, according to the Ministry of Internal Affairs (MIA), one person was detained in connection with the protest rally and subsequent incidents in Mtskheta and two more individuals were removed from the territory.¹⁰ The ministry clarified that all three persons were supporters of Dimitri Khundadze.¹¹

On December 3, a protest rally was held near the office of Dimitri Khundadze again.¹² This time, the manifestation was arranged by representatives of the opposition protesting against the incident of the previous day.¹³ Again the rally transformed into a skirmish.¹⁴

In parallel with the rallies held by the opposition and civil society organizations, the Georgian Dream started its own campaign against the United National Movement (UNM) on December 1. The protest manifestations were held in Tbilisi,¹⁵ Kutaisi¹⁶ and Zugdidi.¹⁷ None of these events evolved without confrontation. The police were mainly trying to make a cordon between the opposing sides.¹⁸ However, the police actions were in some cases ineffective and often confronting parties physically clashed with each other.

On December 6, the opposition arranged a protest rally in Kutaisi, resulting in a physical confrontation between supporters of the Georgian Dream and protesters.¹⁹ No one was arrested.

On December 9, the movement “Save the Life” was founded. Members of the organization claimed that the purpose of the movement was to protest against assemblies arranged by opposition parties.²⁰

On December 10, they set up tents on Rustaveli Avenue.²¹

On December 11, a physical clash occurred in front of the Parliament of Georgia – unknown people attacked Malkhaz Machalikashvili and individuals present in the opposition party tent.²² Machalikashvili blamed the activists who placed an anti-opposition “tent” in front of the parliament for the provocation. MIA arrested two people for administrative offence and

⁷ “Investigation into the Incident at Khundadze’s office Launched under Violence, 02.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/411048/>, updated: 15.01.2020.

⁸ “Civic Activists Protest at Georgian Dream’s Office,” 02.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/411049/>, updated: 15.01.2020.

⁹ “Protest Rally at Georgian Dream Office Over,” 02.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/411078/>, updated: 15.01.2020.

¹⁰ “MIA: We Arrested Khundadze Supporter in Mtskheta,” 03.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/411338/>, updated: 15.01.2020.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ “Udumashvili says he was thrown a bottle at Mtskheta City Hall,” 03.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/411306/>, updated: 15.01.2020.

¹⁵ “Protests in Vera Garden against Rustaveli Protest, 01.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/410661/>, updated: 15.01.2020.

¹⁶ “Georgian Dream Activists Clash with Opposition Leaders in Kutaisi,” 03.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/411303/>, updated: 15.01.2020.

¹⁷ “Zugdidi Joins De-Misha rally - Eggs Thrown at UNM Office,” 03.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/411387/>, updated: 15.01.2020.

¹⁸ Video footage: “Georgian Dream supporters are consulting and then attack “Shame” activists. Police intervene only at the last moment,” 03.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/411112/>, updated: 15.01.2020.

¹⁹ “Participants of the rally in Kutaisi were physically confronted,” 06.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/412150/>, updated: 15.01.2020.

²⁰ “Members of the Organization against the Opposition set up a Tent on Rustaveli,” 10.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/412886/>, updated: 15.01.2020.

²¹ Id.

²² “MIA Investigation on Confrontation in front of Parliament under Violence” 11.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/413051/>, updated: 15.01.2020.

launched an investigation under Article 126 of the Criminal Code of Georgia, which envisages violence.²³

On December 12, opposition and civil society representatives held another protest rally outside the Parliament of Georgia.²⁴ On that day, the Parliament was hearing the proposed list of the candidates for appointment of the Supreme Court justices and the termination of authority of Nikanor Melia, as a Member of the Parliament (MP). According to the protesters, they had an intent to block the entrances of the building and prevent the MPs from attending the session.²⁵ Protesters moved to the roadway, which resulted in law enforcers arresting several protesters for the resistance to the police.²⁶

The above processes substantially damage the political/electoral environment, threaten the stability and further deepen the existing polarization between political forces. GYLA believes that political parties should be more accountable towards the society and refrain from confrontations. The government should take specific steps to ease the situation and hold constructive discussions concerning the matter. Law enforcement agencies should act in strict compliance with the law and refrain from applying a selective approach based on the political affiliation of protest organizers and participants. GYLA reiterates that the Law of Georgia “On Assemblies and Manifestations” guarantees the right of individuals to exercise the constitutionally recognized rights to assemble publicly and unarmed, both indoors and outdoors, without prior authorization.²⁷ State institutions, officials and citizens shall not be entitled to interfere with organizing or holding the demonstration or manifestations in accordance with the rules established by this Law, or with expressing their views publicly.²⁸ Moreover, the state is obliged not to allow other people interfere with a protest rally.

GYLA considers that the government failed to do so again and law enforcement agencies were once again unable to defend the right of protesters to express their views openly and publicly.

GEORGIAN DREAM EVENT

On December 6, the Chairperson of the Georgian Dream Youth Organization announced a large-scale event to be held on December 14, with the aim to celebrate the week of Georgia’s presidency of the Committee of Ministers of the Council of Europe.²⁹ The Georgian Dream started gathering supporters in the regions. In the light of ongoing protest rallies, a large-scale event organized by the ruling party seemed like a demonstration of force.

On December 13, Civil Society Organizations (CSOs) released a statement claiming that the ruling party was gathering citizens in almost all municipalities of Georgia to attend the event. The process was coordinated mainly by the party offices.³⁰ According to the CSOs, “in several municipalities, in addition to party coordinators, mayor representatives and municipal assemblies’ employees were actively involved in the mobilization of citizens in villages.”³¹ “Municipal assembly members met with the local citizens, visited public schools, kindergartens and urged their employees, together with those representing LEPL and N(N)LP staff to attend the government-planned event. In some cases, people were ordered, and in some others were requested to attend the gathering. Besides, self-government public officials in some municipalities were given a task to produce a list of 10 or 20 individuals who would attend the event, indicating their names, surnames and personal identification numbers.”³²

²³ Id.

²⁴ “Protest Rally at Parliament” [Video footage], 12.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/413398/>, updated: 15.01.2020.

²⁵ Id.

²⁶ “Several protesters detained outside the Parliament,” 12.12.2019, News Portal NetGazeti, available at: <https://netgazeti.ge/news/413401/>, updated on 15.01.2020.

²⁷ Law of Georgia on Assemblies and Manifestations, Article 2, Paragraph 1.

²⁸ Law of Georgia on Assemblies and Manifestations, Article 12.

²⁹ “On December 14, the Georgian Dream will hold an event,” 06.12.2019. News Portal NetGazeti, available at: <https://netgazeti.ge/news/412104/>, updated on 15.01.2020.

³⁰ “People are Mobilized for the Georgian Dream Planned Event on December 14 amid Pressure on Public Officials,” 13.12.2019, the official website of the International Society for Fair Elections and Democracy, available at: <http://www.isfed.ge/geo/gantskhadebebi/14-dekembers-qartuli-otsnebis-mier-dagegmili-aqtsiistvis-moqalaqeta-mobilizeba-munitsipalitetebis-sadjaro-mokheleebze-zetsolis-fonze-mimdinareobs>, updated on 15.01.2020.

³¹ Id.

³² Id.

In addition, the Public Defender noted that people working in public institutions in the regions were allegedly subjected to direct or indirect pressure and coercion in order to take part in the planned event in Tbilisi on December 14, 2019.³³ The citizens claimed that if refusing to do so, senior officials threatened them with making difficulties at their workplaces.³⁴

Throughout December, GYLA held meetings with representatives of political parties in Tbilisi and the regions. At the meetings, local representatives of parties provided GYLA with information on the cases of pressure against people working in public institutions, who were forced to attend the December 14 event.

GYLA believes that the above-mentioned actions require further investigation, as they may contain the elements of a criminal offence, and calls on law enforcement agencies to take appropriate actions to prevent and effectively respond to such incidents.

TERMINATION OF AUTHORITY OF MP - NIKANOR MELIA

On December 2, Tbilisi City Court convicted Nikanor Melia, a Member of Parliament of Georgia, for abuse of power reflected in the fraudulent bankruptcy of Cartu Bank.³⁵ He was sentenced to a fine of GEL 25,000 and restricted to take public office for a three-year term, which was reduced by the amnesty to two years and three months.³⁶ On the basis of the aforementioned judgement, the Parliament of Georgia terminated the MP's authority.³⁷

On December 23, 2019, Nikanor Melia filed a constitutional lawsuit with the Constitutional Court against the Parliament of Georgia appealing its December 12, 2019 decision, on the early termination of his authority.³⁸ Nikanor Melia will be represented by the Georgian Young Lawyers' Association along with his lawyer in the Constitutional Court of Georgia. The lawsuit seeks to have the decision declared unconstitutional and the authority of the MP restored.

In substantiation of the termination of Nikanor Melia's authority, the Parliament referred to a provision of the Constitution, which stipulates that "the powers of a Member of the Parliament shall be terminated early if he/she has been convicted by a court judgment that **has entered into legal force**."³⁹ GYLA believes that the legislative body misinterpreted the Constitution. In the circumstances where there is a possibility of overturning existing judgment by Tbilisi Court of Appeals or the Supreme Court of Georgia and acquitting Nikanor Melia, the parliament should not have considered, for constitutional purposes, the conviction delivered by the first instance court **legally valid**.

³³ "The Ombudsman Mentions Alleged Pressure in the Regions ahead of the December 14 Event." 13.12.2019, News Portal "Netgazeti", available at: <https://netgazeti.ge/news/414063/>, updated: 15.01.2020.

³⁴ Id.

³⁵ "Fine and two years and three months prohibition of office - Melia's verdict on the Cartu Bank case," 02.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/410699/>, updated: 15.01.2020.

³⁶ Id.

³⁷ "Melia MP's Mandate Terminated," 12.12.2019, News Portal Netgazeti, available at: <https://netgazeti.ge/news/413651/>, updated: 15.01.2020.

³⁸ "Early termination of Nika Melia's MP Power appealed to the Constitutional Court of Georgia," 24.12.2019, The official website of the Georgian Young Lawyers' Association, available at: <https://gyla.ge/ge/post/nika-meliasatvis-parlamentis-tsevriss-uflebamosilebis-vadaze-adre-shetsyveta-sakonstitucio-sasamartloshi-gasachivrda#sthash.TK2xXq7T.dpbs>, updated: 15.01.2020.

³⁹ Constitution of Georgia, Article 39 (5) (d).