

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA Calls on the State Audit Service to Abolish the Illegal Act Immediately

On August 6, 2012, new order of the State Audit Service's General Auditor was published, establishing a number of responsibilities for electoral subjects, broadcasters and newspapers. Specifically, under the Order electoral subjects have to pay costs of placement of paid political advertising on TV or in newspapers in advance, within a week. Further, electoral subjects, broadcasters and newspaper should provide records of payment envisaged by para.1 of this Order to the State Audit Service within no later than 24 hours after payment has been made.

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The Order adopted by the State Audit Service falls beyond the legal framework as regulation of procedures for agreements made by electoral subjects for placement of political ads on TV and in newspapers; type of payment made and amount paid does not fall under the purview of the agency. It is the right of parties to settle these issues and it does not fall under the scope of government's regulation. The order cites several irrelevant Articles as legal grounds. According to these Articles, the agency is authorized to regulate procedures pertinent to transparency of information about party finances. Determining rules for conducting business relations and making payments is well beyond the authority to determine rules of transparency and falls outside legal frameworks. Further, these regulations contradict law and provide for unjustifiable prohibitions that apply to electoral subjects. In individual cases, they may also act as artificial barriers for electoral subjects. It is particularly noteworthy that the State Audit Agency did not provide any concrete grounds for the necessity of adopting the new regulations or a concrete goal that they serve to achieve.

It is further noteworthy that the new regulations impose a twofold obligation on media in terms of keeping the government informed about placement of pre-election ads. Under the Georgian legislation control of activities of media during pre-election period falls under the purview of the Georgian National Communications Commission (GNCC). Specifically, under para.15 of Article 51 of the Georgian Election Code, the GNCC determines participation of media in election process and rules for its utilization; it ensures monitoring of broadcasters' compliance with applicable norms and acts on violations of these norms. The same act obligates media organizations to make public information as well as to inform the GNCC about airtime allocated during a specific period of time by giving exact dates, frequency, length of airtime allocated on a daily basis and corresponding schedule, TV ad rates, service provided. The information is published only by newspapers funded from the State and local budgets.

It must also be highlighted that public administrative proceedings are ongoing at the GNCC for passing a resolution on "adoption of rules for participation of media in pre-election process and its utilization". Under para.3 of Article 9 of the draft resolution, for violation of stipulations of the August 6, 2012 Order of the State Audit Service N137/37, a broadcaster will be held liable pursuant to the law of Georgia on Broadcasting. The law of Georgia on Broadcasting envisages warning, fine, and suspension of licence as types of sanction.

We believe that monitoring of media in relation to pre-election issues by two different

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public agencies at the same time is unjustifiable. Additional responsibilities before the State Audit Service will be a heavy burden for media organizations. Media in its turn participates in pre-election processes with high intensity and controlling activities of media must be the sole responsibility of the GNCC.

We call on the State Audit Service to immediately abolish the illegal act adopted on August 6, 2012. All election subjects, broadcasters and newspapers that are affected by the foregoing prohibitions have the right to apply to court for deeming the act as null and void. GYLA stands ready to represent interested persons before in court.