

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



## Statement by GYLA on the Request for Information Regarding "Choose Europe" by the Anti-Corruption Bureau

The Georgian Young Lawyers' association ("GYLA") responds to the request of the Anti-corruption Bureau ("Bureau") "Choose Europe"<sup>[1]</sup> and the information related to the activities of the bank accounts of its founders (including the costs of the conducted events, information related to the production and distribution of video clips). For this purpose, on September 6, 2024, the Bureau applied to Tbilisi City Court with a petition. GYLA studied the petition submitted by the Bureau to the court and the order of the Tbilisi City Court dated September 6, 2024 (Case No. 3/6672-24) on the granting of the petition. Based on the studied documents, the following problematic

circumstances are identified:

## 1. Mandate of the Anti-Corruption Bureau

In accordance with international standards, during election processes, "non-party campaign participants" (third parties) play an important role alongside political actors. [2] Third parties may campaign for or against a political party or candidate without coordinating with any political entity. [3] To this end, third parties have the right to collect donations and express their views within the bounds of freedom of expression. While their activities should not be unconditionally restricted, this does not imply that third parties involved in the election campaign are exempt from certain regulations or restrictions. [4] Nevertheless, these restrictions must be reasonable, proportionate and justified accordingly. [5] State bodies should conduct this process in an impartial and objective manner. At the same time, they should refrain from implementing excessive and arbitrary control. [6]

The mandate of the Anti-corruption Bureau includes the monitoring of the financial activities of political associations of citizens (political parties), election candidates and individuals with declared electoral goals, and other appropriate measures related to this field. [7] For this purpose, the Bureau is authorized to request any information from any individual (except for state secrets provided by the legislation of Georgia). [8] The Bureau has the authority to petition the court for access to non-public information. The appeal to the Anti-Corruption Bureau must be substantiated. The bureau must indicate the basis and purpose for requesting the information, as well as specifying the period and scope of the information sought. [9]

Accordingly, the Bureau's mandate includes monitoring the financial activities of three types of entities: political associations of citizens, electoral entities, and individuals with declared electoral goals. The declared electoral goal is a factual situation in which a person's intention to attain power through electoral participation is clearly evident. This declaration must be made publicly and aimed at shaping public opinion. [10]

The Bureau has the authority to request information from any individual, including through the court, as part of its monitoring of these subjects.

**In this case, the Bureau's petition does not specify which of the monitored subjects it is requesting information from concerning the organization "Choose Europe" and related individuals. Additionally, the petition lacks any documents confirming that monitoring has commenced for any of the listed**

entities. Instead, the Bureau describes the activities of "Choose Europe" as "pre-election political actions aimed at discouraging support for a particular political party." Accordingly, the applicable legal regulations regarding donations will apply to its activities. According to the Bureau's justification, the organization is carrying out a campaign to refrain from supporting a specific electoral entity.<sup>[11]</sup> The Bureau does not clarify which legal provision grants it the authority to request information in a manner that avoids conducting monitoring against entities specified by specific laws, nor does it specify which provision extends its mandate to the regulations established by Article 25, Paragraph 4 of the Organic Law.

### 1. Volume of the Requested Information

The Anti-Corruption Bureau appeared before the court to request information not only about the accounts and transactions of the movement/organization but also those of its individual founders. It should be noted that information about the founders is requested for the period before the foundation of the movement/organization, namely for the period from January 1 to July 26, 2024. **Neither the Bureau nor the court provides justification for the need or relevance of requesting information about the transactions of individuals. Additionally, the distinction between the civil movement as a legal entity and its founders is not clearly defined. The Anti-Corruption Bureau monitors both the organization and its founders. Therefore, it is essential for the Bureau to justify, and for the court to verify, not only the purpose of the information request but also the necessity and scope of the information, and its alignment with the stated purpose. In this case, neither the Bureau nor the court provided such justification or verification.**

### 1. Freedom of Expression and Civic Activities

The authority for financial monitoring aimed at ensuring transparency of income should not be used as a tool to restrict the activities of civil movements (civil activism) or to restrict freedom of expression.<sup>[12]</sup> Freedom of expression is a fundamental right in a democratic society, allowing for public debate that strengthens government accountability and responsibility in the broadest sense.<sup>[13]</sup> It is one of the "conditions that ensure the free expression of public opinion in the election of the legislature."<sup>[14]</sup> For this reason, it is crucial during the pre-election period to ensure that the free

dissemination of constitutionally protected information is not obstructed, whether directly or indirectly. In this context, the free exercise of freedom of expression by civil societies and movements is particularly important as an instrumental right. The right to free elections encompasses not only the right to vote but also the effective realization of other so-called instrumental human rights within the electoral environment. This environment must ensure the robust protection of these rights, including freedom of expression. According to the Venice Commission, the freedom of expression includes the right to express any political opinion.<sup>[15]</sup> All state agencies have an obligation to respect freedom of expression. **Accordingly, in the disputed case, the court was obligated to consider the matter within the context of freedom of expression. However, based on the reviewed documents, neither the Anti-Corruption Bureau nor the court addressed why this exception did not apply to the activities of "Choose Europe" and its related individuals. The court was required to evaluate the case with regard to freedom of expression and determine whether "Choose Europe" operated within the scope of this right. However, the court did not justify the extent to which the civil organization's activities fell within the protected sphere of freedom of expression. An insurance mechanism against potential risks and arbitrariness by the Anti-Corruption Bureau is the legislator's requirement for a mandatory court appeal. Consequently, regardless of whether the Anti-Corruption Bureau provided the necessary justification, the court was still required to evaluate whether "Choose Europe" and its related individuals fell within the monitoring framework, considering the exceptional protection afforded by freedom of expression and the free exercise of civil activity.**

## Summary

With the legislative changes implemented in 2024, the Anti-Corruption Bureau was granted the authority to request information from any individual to monitor the financial activities of political parties, electoral entities, or individuals with declared electoral goals. In order to eliminate the risks of arbitrary decisions by the Bureau, the legislation includes a judicial control mechanism. Based on the reviewed documents, it is evident that the Anti-Corruption Bureau submitted a request for information without substantiating whether the monitoring process had commenced or specifying which entity was being monitored under the law. If monitoring has been initiated against the "Choose Europe" movement/organization, it is not clear whether the Anti-

Corruption Bureau's mandate covers this type of activity. Additionally, the necessity of the volume of information requested and its alignment with the intended purpose are not justified. **When the institutional independence of the Anti-Corruption Bureau is not ensured, the unsubstantiated decisions made by the Bureau raise concerns about the potential arbitrary use of its mandate. Such decisions risk diminishing public confidence in the institution. In these circumstances, it is crucial for the court to act as a balancing force and guarantor of rights protection, ensuring a fair and impartial consideration of the case. However, in this instance, the court of first instance failed to fulfill its responsibilities. The court's order does not address any of the key questions pertinent to the case.**[\[16\]](#)

**GYLA urges the Anti-Corruption Bureau and the court to adhere to legal requirements and principles, to conduct their activities with proper justification, and to carefully evaluate the risks of disproportionately restricting individuals' fundamental rights during the monitoring process.**

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[\[1\]](#) The civil movement "Choose Europe" is a registered Non-entrepreneurial Non-commercial Legal Entity (NNLE) whose goal is to mobilize pro-Western voters, its activities include citizens throughout the country and representatives of the Georgian diaspora living abroad. see "President Salome Zourabichvili attended the presentation of the new civil movement "Choose Europe", information portal [აქტიურობა](#) July 11, 2024, available at: <https://civil.ge/ka/archives/615971>, updated: 13.09.2024; "Choose Europe" was registered as a Non-entrepreneurial Non-commercial Legal Entity (NNLE) on July 26, 2024. see website of the public registry, available at: <https://enreg.reestri.gov.ge>.

[\[2\]](#) European Commission for Democracy through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Guidelines on Political Party Regulation Second Edition, 2020, para. 255.

[\[3\]](#) Ibid, 218.

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[4] Ibid, 255.

[5] Ibid, 218; ECtHR, Bowman v. United Kingdom, no. 24839/94, 19 February 1998, 30-47.

[6] European Commission for Democracy through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Guidelines on Political Party Regulation Second Edition, 2020, para. 266, 269.

[7] [Article 20](#) subsection "h" of the first paragraph of the Law of Georgia "On the fight against corruption".

[8] [Article 34](#) Paragraph 2<sup>1</sup> of the Organic Law of Georgia "On Political Unions of Citizens".

[9] [Article 34](#) Paragraph 4 of the Organic Law of Georgia "On Political Unions of Citizens".

[10] „Article 7<sup>1</sup> of the Organic Law of Georgia "On Political Unions of Citizens".

[11] Ibid, Article 25, paragraph 4.

[12] „Organic Law of Georgia "On Political Unions of Citizens", Article 26<sup>1</sup>, Paragraph 6.

[13] Amicus Curiae Brief for the Constitutional Court of Georgia on the Question of the Defamation of the Deceased, The Venice Commission, CDL-AD (2014)040, 12-13 December, 2014, 19.

[14] European Court of Human Rights, Guide on Article 10 of the European Convention on Human Rights, 2023, § 715.

[15] Ibid, 21.

[16] The order of the Tbilisi City Court is currently being appealed to the Court of Appeal.