



#GYLA

#Elections2018

About GYLA's Observation Mission

Georgian Young Lawyers' Association (GYLA) launched the monitoring of the pre-election period of the presidential election 2018 on August 1. GYLA observes the pre-election period through its head office in Tbilisi and eight regional offices in Adjara, Guria, Samegrelo-Zemo Svaneti, Imereti, Racha-Lechkhumi, Shida and Kvemo Kartli, Samtskhe-Javakheti, Mtskheta-Mtianeti and Kakheti.

The aim of the monitoring is to contribute to fair and transparent electoral processes, to ensure the observance of the election legislation and internationally established democratic standards by members of election administration, election contestants and public officials, as well as to inform citizens of Georgia and international community about any violations and trends related to the pre-election process of the 2018 presidential election, to focus on legislative and practical gaps, to identify problems in the election legislation and advocate any relevant legislative amendments after the elections are over.

During the monitoring, special attention is paid to the establishment of objective, fair, independent and efficient investigation, fair trial and uniform practice, as well as provision of inclusive and competitive electoral environment for women, people with disabilities and ethnic minorities.

GYLA's monitors particularly focus on the issues such as staffing of the election administrations, identification/elimination of any facts of using administrative resources and bribing voters, provision of the environment promoting the free expression of voters' will, financing of political parties, exercising of rights and obligations by election contestants, inclusive electoral environment, working environment for the media etc.

In the event of identification of any violations, the organization submits any relevant information / statement to the election administration, the Interagency Commission for Free and Fair Elections, the State Audit Office and any other relevant agencies for the purpose of ensuring the response in the manner envisaged by the law.

The Newsletter #3, 2018 includes information on the Monitoring of Precinct Election Commissions (PECs) Staffing, Media Environment and Results of the Monitoring of the Case "Kortskheli".

GYLA has requested information about some alleged violations / facts, the results of the analysis of which will be also introduced to the public later.

Monitoring of Precinct Election Commissions (PECs) Staffing

During the reporting period, GYLA conducted¹ the monitoring² of Precinct Election Commissions (PECs) staffing. During the process, the number of issues were analyzed, including the information received by GYLA`s observers, as well as the recommendations of the Central Election Commission (CEC), the results of individual interviews and a public information was requested from District Election Commissions (DECs) by organization representatives.

Observers of GYLA attended the **17** sessions of District Election Commissions (DECs), where the Precinct Election Commission (PEC) members were elected³ on the professional basis. Observers of GYLA have attended the sessions of DECs in **Samgori, Krtsanisi, Gldani, Vake, Didube, Chokhatauri, Ozurgeti, Gori, Borjomi, Zugdidi, Tsalenjikha, Batumi, Kobuleti, Telavi, Marneuli, Dusheti and Kutaisi.**

Besides, observers of GYLA also attended individual interviews with contestants in **5** District Election Commissions (DECs) (**Tskaltubo, Zugdidi, Ozurgeti, Chokhatauri and Marneuli**).

In addition to the attendance and monitoring of meetings, the representatives of organization requested (in written form) the following public information from all District Election Commissions (DECs):

- Protocols of the session on election of Precinct Election Commission (PEC) members;
- Decisions;
- Information about contestants and more.

¹ According to the legislation, precinct commissions are composed of both party and professional members (6 professional and 6 party members).

² Methodology: GYLA has been observing the process of election commissions staffing for years, the aim is to identify existing shortcomings, improve the situation and refine the legislation.

The aim of monitoring the Election Administration (EA) staffing is to study if:

- What are the criteria, when selecting the election commission members;
- Were those people, who are elected on the professional basis, representing different political parties in the Election Administration (EA), in the nearest past;
- Are the individuals, who are elected on the professional basis, independent from party vertical;
- Is there a practice of electing people in commissions with disciplinary and administrative penalties in the past;
- How much the elected individuals follow the principals of ethic and is there a practice of interest conflict/nepotism.

Observers of GYLA obtain information from various sources while monitoring the staffing of election commission, sources include information requested from election commission, examining web pages of election administration, also, monitoring of information spread by mass media. Frequently citizens, members of political parties and candidates inform observers of GYLA on violations. After receiving information, GYLA observers directly check each case with the applicants and individuals who might have important information for the case. Information on revealed tendencies/violations and appropriate legal respond is transferred into the analytical database of GYLA by GYLA observers (GYLA`s election analytical base includes information on pre-election, election day and post-election trends and violations that are revealed, as well as quantitative and qualitative information on conducted election disputes and procedures for summarizing the results throughout Georgia).

³ On September 11, 2018, sessions of District Election Commission (DEC) were held in order to elect Precinct Election Commission (PEC) members. A contest for electing Precinct Election Commission (PEC members) was announced on August 29, 2018, by administrative body and the documents were received from August 30 to September 6, 2018.

Almost every District Election Commission (DEC) used a 10-day term for processing the information. Correspondingly, the present document shows the results of direct monitoring of the election process of Precinct Election Commission (PEC) members, and after receiving and studying information from District Election Commissions (DECs), we will provide the public with detailed information about the results of the contest.

Recommendations of the Central Election Commission (CEC)

On September 3, 2018, the Central Election Commission (CEC) addressed the District Election Commissions (DECs) and call on the fulfilling specific recommendations in the process of electing Precinct Election Commission (PEC) members. These recommendations are:⁴



- Good professional and electoral experience;
- Qualified and impartial working experience in the election administration;
- Participation in educational programs, including „Electoral Development School”, „Courses of Election Administrator” etc.
- The absence of disciplinary measures, imposed repeatedly during the last two years, while working in the election commission.

GYLA positively evaluates the CEC guideline recommendations.

Individual interviews with contestants

On August 1, 2018, the Central Election Commission (CEC) defined⁵ the rules, conditions and terms of the qualifying contest for Precinct Election Commission (PEC) members, appointed for the 2018 presidential election. Unlike the rule approved during the local self-government elections in 2017, the District Election Commission (DEC) is no longer authorized to invite⁶ the Precinct Election Commission (PEC) contestant to participate in the interview. By our estimates, this does not ensure the transparency of the process and the conduct of the selection procedures of the members of commission on the background of argumentative discussion. Consequently, due to the importance of the process and the high public interest, in order to ensure substantiated and objective decisions, taken regarding the every single individual participating in the selection of Precinct Election Commission (PEC) members, before the contest announcement, GYLA had called on the Central Election Commission:

⁴ <http://cesko.ge/geo/list/show/114503-tseskos-rekomendatsiebi-saubno-saarchevno-komisiis-tsevrta-archevis-protsestan-dakavshirebit>

⁵ Decree # 112/2017 of the Central election Commission of Georgia. 22.08.2017.

⁶ Decree #112/2017 of the Central Election Commission of Georgia. 22.08.2017.

- To renew the record about interviewing the applicants of election commission;
- To ensure the conduct of the competition through interviewing the candidates;
- To ensure transparency of the process and the dissemination of information about the contest;
- To ensure preference for those candidates, who have not been imposed to disciplinary or administrative liability in the past Elections.

Although the legislation does not oblige interviewing the Precinct Election Commission (PEC) applicants, the above-noted would be reasonable, and that by its side, would allow District Election Commissions (DECs), as collegial administrative bodies, to determine the compliance of contestants' personal qualities, skills with the requirements, set by the contest, which is the objective of the competition.



It should be noted that prior to the qualifying session of Precinct Election Commission (DEC) members, District Election Commissions (DECs) discussed the issue noted and refused to hold interviews, also, the members from the „National Movement,” who initiated the issue, were explained that Georgian legislation does not envisage interviewing and that candidates were selected⁷ in their absence. There were also cases, when District Election Commissions (DECs) refused to create appropriate conditions, and did not allocate the space for interviews, initiated by the party commission members.⁸

On September 3, the Central Election Commission (CEC) recommended the District Election Commission (DEC) officials to support those members of commissions willing to invite the contestants for individual interview, by our observation, as a result, these interviews were held.⁹

Observers of GYLA attended the interviews with candidates for Precinct Election Commission (PEC) membership in Tskaltubo, Zugdidi, Ozurgeti, Chokhatauri and Marneuli. The initiators of the interview were the members of the same election commissions, who have been appointed by the „National Movement”, other members of the commission also were present at the interview.

As a result of the interviewing process, it is possible to say that the interview:

- In the District Election Commission (DEC) were organized by the district members of the “United National Movement;”
- As it turned out, initially much more candidates agreed on interview, but only few of them appeared;¹⁰
- Contestants were questioned on their electoral experience and knowledge of voting day procedures;
- In Marneuli, a member of the United National Movement (UNM) asked unmatched questions that was resisted by other members of the district, while an independent district member in Zugdidi tried to interfere with the interview process twice, the complained was filled¹¹ on the incident noted.

⁷ Vake, Saburtalo and Isani DEC Chairpersons` respond to the commission members appointed by the „United National Movement:” Vake – # 45 02.09.2018; Isani-#o18/18 02.09.2018; Saburtalo - #28. 30.08.2018

⁸ Response of Vake DEC Chairperson - #45 02.09.2018, response of Chugureti DEC Chairpoerson - #07/03-44

⁹ <http://cesko.ge/geo/list/show/114503-tseskos-rekomendatsiebi-saubno-saarchevno-komisiis-tsevrta-archevis-protsestan-dakavshirebit>

¹⁰ Tskaltubo – 20 applicants agreed on interview – only 8 of them appeared, Chokhatauri – 149 applicant agreed on interview – only 7 of them appeared, Marneuli – 80 applicants agreed on interview – only 10 of them appeared.

¹¹ An independent member of the DEC broke into the room where interview was going on and tried to hinder the process. The interview has been conducted by members of the commission appointed by the National Movement and European Georgia.

Implementation of the District Election Commission member`s authority



As it became known for observers of GYLA, DEC members of the United National Movement (UNM) applied to the District Election Commission (DEC) with the statement and requested¹² information about the contestants work experience in the form of copies. According to the statement of the opposition commission members, the information requested was important for carrying out their activity; more specifically, it would help to choose the candidate to support during the Precinct Election Commission (PEC) staffing.

The officials of District Election Commission (DEC) explained to the opposition commission members that as district members, they were able to get familiar with the information about the working experience of contestants. Besides, they had the right to request a copy of any document related to election, as prescribed by Georgian legislation, however, since the information about working experiences of contestants included the personal data, according to Article 44 of the General Administrative Code of Georgia, they

could not be issued¹³ without applicants` consent.

We believe that according to the subparagraph g of Article 5 of the Law of Georgia on Personal Data Protection, DEC members had the right to receive information about the contestants, including copies. The denial on transmitting the information to DEC members as a copy is ungrounded, since processing the information about the contestants was necessary for DEC members, to fulfill the duties imposed by the legislation, in other words, while making decision about electing the PEC members.

¹² Telavi, Ozurgeti

¹³ Respond of Telavi DEC Chairperson to DEC member of the United National Movement. 02.09.2018.

The District Election Commission (DEC) sessions

While assessing the sessions, the general trends have been revealed, which were mostly expressed by the members of the opposition parties in the sign of protest. In particular, DEC members appointed by the „United National Movement” and „European Georgia” did not participate in the ballot.¹⁴ In Kutaisi, a member of the commission appointed by the Alliance of Patriots, refused to participate in the ballot likewise the „United National Movement” and „European Georgia” commission members, thus they did not leave the session hall. In Ozurgeti, a DEC member of the „Alliance of Patriots” voted for the contestants elected only at one polling station, in all other cases, no notes have been given to any contestants by the member noted.

According to the members of the opposition parties, the DEC was planning to staff the PEC with supporters of the Georgian Dream, candidates were politicized¹⁵, all of them were selected in advance and they had no desire to participate¹⁶ in this „Farce.”

The DEC officials responded the allegations of the members of the opposition political parties and explained that, after the completion of contestants’ registration, they studied the data of candidates and that the selection of new members would be based on competence and experience.

During the monitoring of the session it has been exposed that:

- There were no competition in a number of polling stations, since there were only six applicants for 6 vacant seats in the DEC;
- At 17 sessions of the PEC members selection, where GYLA attended only 2 cases, in Didube and Dusheti, the DEC Chairperson was providing the commission members with the information on electoral experience of candidates: whether the contestant had a certificate of Election Administration (EA) or had the candidate taken electoral school courses or not;
- According to the information provided by observers of GYLA, commission members had a so-called work-list, which had been marked. In this regard, commission members stated that, they had several days prior to get to know with applications submitted by the contestants. They marked the advisable contestant in the work-list, since to remember all desirable candidates would be impossible. According to GYLA observers, candidates’ experience gained in the 2016-2017 elections, was indicated right across their full names in the list.
- The basis for granting the contestants with advantage were not perceivable for GYLA observers.

GYLA continues monitoring of PECs staffing and will provide the public with detailed information on the process.

¹⁴ In Krtsanisi, Telavi, Marneuli, Gldani, Didube, Ozurgeti, Samgori, Chokhatauri, Tsalenjikha and Zugdidi districts. In Vake, Dusheti, Gori and Kobuleti, DEC sessions have been left only by UNM appointed members.

¹⁵ Krtsanisi, Gldani

¹⁶ Gldani

GYLA calls on the National Communications Commission not to exceed the scope of its authority



The National Communications Commission [responded](#) to [GYLA`s statement](#), which assessed the letters sent to the broadcasters concerning the removal of political advertising.

As the administrative body declares, „If the broadcaster is found guilty in violating the legislation, the commission will discuss the issue on the grounds of rules established by legislation and will take a decision.” However, it is worth to be noted that in letters sent to the broadcasters on September 25 of the current year, the Commission has already discussed the concrete clips and although it does not

consider the letter noted as a legal act, certain directives were sent to the broadcasters. Namely:

The letter was not on the general requirements of the legislation, but about the content of political advertising. Such approaches create threats of restricting freedom of expression. Besides, we believe that the Commission goes beyond its competence in assessing these issues and contradicts the Georgian legislation for the following circumstances:

The Commission is not authorized to examine the content of political advertising.

We would like to note once again that according to Article 63 of the Law on Broadcasting, „Broadcaster is not accountable for the content of pre-election and social advertisements. Responsibility for the content of pre-election and social advertisements lies with the relevant advertising consumer, according to rules established by legislation.” Correspondingly, the Commission cannot evaluate the content of the political advertisement (including in terms of unethicity and inappropriateness), since the subjects of its regulation are not responsible for the content.

In case of violation paragraph 4 of Article 56 of the Law of Georgia on Broadcasting, the Commission have no authority to study the issue.

As we have already defined, if this norm is violated, a person is entitled to address the self-regulatory body or court (and not only the self-regulatory authority as set out in the Commission`s [response](#)), and the Commission is not authorized to examine the placement of dignity and fundamental rights infringement program or advertisement, which contains indecency.



The „Law of Georgia on Broadcasting” directly entails addressing the Broadcasting self-regulatory body on this issue. The same law prescribes the prohibition on applying to the Commission or court by interested party, if Article 56 is violated.

On November 10, 2009, the case ”Georgian citizens Giorgi Khipiani and Avtandil Ungiadze against the Parliament of Georgia” became the ground for the Constitutional Court, to recognize the norm of banning the person from the right to apply to the court, if paragraph 4 of Article 56 of the Law of

Georgia on broadcasting is breached by broadcaster, as unconstitutional.

The constitutional Court **ruled** by the Resolution Part that: „The terms of paragraph 2 of Article 14 of Law of Georgia on Broadcasting „Except the norms prescribed by Articles 52, 54, 56 of the law ...” should be recognized as unconstitutional in the part, which refers to words of paragraph 4 of Article 56 „Placing the dignity and fundamental rights infringement program or advertisement, which contains indecency, ” in respect of the first paragraph of Article 42 of the Constitution of Georgia.”

According to the first paragraph of Article 42, „Everyone has the right to appeal the Court to protect their rights and freedoms.” **The right of appealing the Commission is not guaranteed by Article 42 (1) of the constitution, neither the applicants disputed on the case, nor the Constitutional Court discussed the issue. Consequently, the prohibition for the National Communications Commission not to discuss the issue of dignity right violation, by placing such a program or advertisement, which contains obscenity, is still in force today.**

On the grounds of all above noted, we call on the National Communications Commission not to exceed the limits of its authority, to fully get to know with the decisions of the Constitutional Court regarding the norms of the „Law of Georgia on Broadcasting” and act as prescribed by law.

The verdict passed by Zugdidi District Court on the incident that took place in the village Kortskheli



GYLA [observed](#) mid-term elections in Grdabani, Kaspi, Tskaltubo, Ozurgeti, Khobi, Zugdid and Gldani districts on May 22, 2016. GYLA has also [monitored](#) the [process of investigation](#) of the crimes committed in the village Kortskheli and the proceedings in Zugdidi.

A group of athletes, supporters and representatives of electoral subjects were mobilized at Zugdidi`s polling stations N53 and N54 from the morning of May 22, 2016. There was a verbal dispute among gathered people, which by its side, turned into physical violence against the leaders

and supporters of the „National Movement” that was carried out by Georgian Dream supporters (athletes). The incident was quite large-scaled and the law enforcers mobilized in the place, could not prevent violence and also did not manage to detain the offenders. During the incident, facts of violation of journalistic activity and the right to assembly were also observed. Later, the Prosecutor’s Office launched criminal prosecution on six sportsmen, who participated in the incident. On August 7, 2018, individuals, who took part in the incident, were found guilty by Zugdidi District Court. The Court changed the qualification of the case and instead of Article 239 (hooliganism) of the Criminal Code of Georgia into Article 125 (beating) of Criminal Code of Georgia. In the form of a punishment, G.G. was sentenced to pay 3000 GEL, G.G. was charged by 4000 GEL, N.Ts. by 5000 GEL, K.T. by 6000 GEL, and V.G. by 7000 GEL.

The process of investigation and judicial consideration of the case related to Kortskheli incident, has been delayed. Besides, the results of investigation and trial of the case did not answer many questions. The Court verdict raises even more questions, namely:

- The Court itself points out that, apart from the six convicts, there are questions regarding the crime committed by other individuals, however, the Court notes that it is not authorized to carry out criminal prosecution. Therefore, the question whether other participants involved in the incident also committed offences or not, is still in force;
- Enactment of the committed action under Article 239 of the Criminal Code of Georgia was adequate, and the fact that the Court changed the qualification, leaves the questions on impartiality or qualification of the Prosecution. In addition, the notion of hooliganism is defined incorrectly by the Court;
- The course of investigation did not reveal the person, who had mobilized athletes at the polling station. In addition, the element of grouping or complicity is not properly investigated and examined in the Court;
- The investigation did not detect the motive of the offence, in particular, it could have been the crime, commented on the political discriminatory motives, which should have become (by that time edition) grounds for aggravation of sentence, in compliance with the part 31 of Article 53 of the Criminal Code of Georgia;
- The facts of „Interference with journalist`s professional activity”, committed during the incident, as well as the fact of violation of the right to assembly, are not investigated.

Thereby, the public has already had the questions regarding the investigation, however the Court verdict once again emphasized the fact that the incident had not been fully investigated.

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