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Free, Fair and Equal Electoral-Political 2022-2025 Cycle in Georgia

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INTRODUCTION

Since August 2022, the Georgian Young Lawyers' Association (GYLA) began implementation of the project “Free, Fair and Equal Electoral Political Cycle during 2022-2025” throughout Georgia. One of the goals of the project is to promote the improvement of the electoral environment through monitoring and evidence-based advocacy. In order to achieve this, the organisation will monitor ongoing policy processes and develop recommendations that will be communicated to the public and presented to decision-makers.

1. STEPS TAKEN TO IMPLEMENT THE 12-POINT PLAN OF THE EUROPEAN COMMISSION

In order to fulfil the 12-point plan of the European Commission, work continued on several issues.

1.1. Amendments in the Election Code

On December 22, the Parliament adopted the amendments to the Election Code in the third reading,¹ according to which Georgia will use electronic technologies in the elections from 2024, which involves digitalization of the procedures for registration and identification of voters arriving at the polling station, counting of votes, and drawing up of a summary report of results. In addition, in those areas where there will be no electronic registering and counting equipment, the ballots showing the votes will be fully digitized and uploaded to the CEC's official web portal.² In addition, the law clarifies, introduces or formulates in a new way certain procedures, such as: deadlines for appeals, limiting circumstances for appointment as a member of the election commission and registration of a person as a local observer, certification of members of the precinct election commission, rules for the participation of voters using wheelchairs in elections, marking when voting through a portable ballot box rule and more.³

Before considering the package of initiatives, GYLA sent an evaluation of the project to the legal committee⁴ and positively assessed a number of changes that increase and specify the criteria for the recounting of precincts by district election commissions, change the deadlines for conducting election disputes and reflect some of the recommendations of the OSCE/ODIR and the Venice Commission, **in addition, the organization pointed out that the project could not fully improve the election environment in the country and could not solve some problems, including the issues of using administrative resources, controlling the will of voters, and resolving election disputes fairly.**⁵

After the first hearing, the Speaker of the Parliament, Shalva Papuashvili, asked the OSCE Office for Democratic Institutions and Human Rights (“OECD/ODIR”) and the European Commission for Democracy to prepare an expedited opinion on the amendments to the Election Code through the Law (Venice Commission).⁶ According to the joint opinion of the Venice Commission and OSCE/ODIR on the project, the electoral changes only partially take into account the recommendations of the European Union regarding the reform, are not based on a comprehensive analysis of the Election Code, and concern only selected issues.⁷

¹ Parliament adopted amendments to the “Electoral Code of Georgia” and the organic laws “On Political Unions of Citizens”, website of the Parliament of Georgia, December 22, 2022, available at: <https://bit.ly/3CKikWW>, updated: 13.01.2023.

² “The Committee on Legal Affairs reviewed the amendments to the “Election Code” and the Law “On Political Unions of Citizens” in the first reading”, the official website of the Parliament of Georgia, October 3, 2022, available at: <http://bit.ly/3Omutq1>, updated: 13.01.2023.

³ GYLA's Opinions Regarding Amendments to the Election Code, Georgian young Lawyers' Association website, October 3, 2022, available at: <http://bit.ly/3Ex8uZP>, updated: 13.01.2023.

⁴ Ibid.

⁵ Ibid.

⁶ “Shalva Papuashvili asks the Venice Commission and OSCE/ODIHR to prepare an opinion on the changes in the election code”, information portal “Civil.ge”, October 31, 2022, <https://civil.ge/ka/archives/511177>, updated: 13.01.2023.

⁷ The European Commission for Democracy through the Law (Venice Commission) and the OSCE Democratic Institutions and Human Rights Bureau (OSCE/ODIR) joint opinion draft, on the draft amendment of the Election Code of the Organic Law of Georgia and the draft amendment of the Organic Law of Georgia on political association of citizens, 10, 27 and 28 Paragraphs.

The recommendations of the civil sector and the Venice Commission were somewhat taken into account by the Parliament in the period between the hearings of the draft law, despite this, a number of proposals remained beyond the response. **According to GYLA improving the electoral environment requires a comprehensive and inclusive reform. The amendments adopted by the Parliament cannot ensure the achievement of this goal and do not properly implement the recommendations, the fulfilment of which is one of the necessary prerequisites for Georgia to receive the candidate status.**

1.2. Other issues related to the implementation of Article 12 of the European Commission

On November 30, the Parliament adopted the draft amendments to the law “On Special Investigation Service” together with the accompanying bills.⁸ According to the amendment, which was prepared by the working group created by the Legal Affairs Committee for the implementation of the 12-point recommendations issued by the European Union.⁹ With the changes, the investigative powers of the Special Investigative Service are expanded.¹⁰

At the extraordinary session held on December 22, the Parliament failed to elect a new Public Defender.¹¹ At the session, 19 candidates for ombudsmanship were voted for. A consensus could not be reached between the parties on the issue.¹² None of them collected the necessary 90 votes.¹³

In the last autumn session, the Parliament did not elect non-judge members of the Supreme Council of Justice, the protracted process was postponed again. 32 applications have been submitted for the competition announced for the election of 5 members of the Parliament.¹⁴

2. STAFFING OF CEC

The Parliament of Georgia failed to elect the chairman and 2 members of the Central Election Commission (CEC) at the extraordinary session held on December 22.¹⁵ In order to elect the chairman and members of the CEC for a 5-year term, 2/3 - 100 votes of the full composition of deputies were required. And in that case - if they receive the votes of 76 deputies, they will occupy the position only for a period of 6 months.¹⁶ The President of Georgia announced the competition for the selection of the CEC chairman and two members on July 13.¹⁷ A total of 5 candidates expressed their desire to be the chairman of the CEC, and 10 candidates for membership.¹⁸ The competition commission presented to the president 3 out of 5 candidates for the post of chairman, among them was the acting chairman of the CEC, Giorgi Kalandarishvili, who participated in the competition for the third time, however, Salome Zourabichvili did not choose his candidacy.¹⁹

Taking into account that the Parliament of Georgia could not elect the chairman and two members of the CEC at the extraordinary session of December 22, the President sent new candidates for these positions to the legislative body in accordance with the regulations of the Parliament.²⁰

⁸ “Parliament approved amendments to the Law on Special Investigation Service”, information portal “civil.ge”, December 2, 2022, available at: <https://civil.ge/ka/archives/517386>, updated: 13.01.2023.

⁹ Ibid.

¹⁰ Ibid.

¹¹ “Parliament failed to elect a new public defender”, information portal “civil.ge”, December 22, 2022, available at: <https://civil.ge/ka/archives/519715>, updated: 13.01.2023.

¹² Ibid.

¹³ Ibid.

¹⁴ Candidates for non-judge membership of the Supreme Council of Justice of Georgia, official website of the Parliament of Georgia, 20.10.2022, available at: <https://bit.ly/3XBZj1c>, updated: 08.01.2023.

¹⁵ “Parliament failed to elect the chairman and members of the CEC”, information portal “civil.ge”, December 22, 2022, available at: <https://civil.ge/ka/archives/519709>, updated: 13.01.2023.

¹⁶ Article 205 of the Rules of Procedure of the Parliament of Georgia.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ “The President presented to the Parliament new candidates for the chairmanship and membership of the CEC”, information portal “civil.ge”, December 28, 2022, available at: <https://civil.ge/ka/archives/520238>, updated: 13.01.2023.

Salome Zourabichvili had to present candidates to the Parliament for two vacant posts of CEC membership. However, considering that according to the regulations, she had to select candidates from the already held competition, this was not possible, because a total of 3 candidates participated in the previous re-competition, and two of them were not supported by the Parliament of Georgia.²¹ The President re-announced the competition for 1 vacant position of the CEC membership.²²

3. HEALTH CONDITION OF MIKHEIL SAAKASHVILI

On December 1, the lawyers of the imprisoned former president, Mikheil Saakashvili, applied to the city court in accordance with the law, with a motion to release him from his sentence due to the deterioration of his health condition or, as an alternative, to postpone his sentence.²³ According to the December 6 conclusion of the expert group created by the Public Defender to monitor the ex-president's health condition, Saakashvili's health condition "has sharply deteriorated and is assessed as severe" and "to prevent the expected irreversible deterioration, it is necessary to take timely and fundamental measures".²⁴

On December 13, the Minister of Justice, Rati Bregadze, said that Saakashvili is involved in simulations and interference with the activities of doctors.²⁵ On December 14, the special penitentiary service made public the video footage of Mikheil Saakashvili taken at different times in the "Vivamed" clinic.²⁶

On December 14, Mikheil Saakashvili started a hunger strike,²⁷ the ex-president made the decision to go on hunger strike after the special penitentiary service and the "Vivamed" clinic announced that due to technical reasons, it was not possible to include him in the trial.²⁸ Saakashvili stopped his hunger strike on the same day, he made this decision based on the request of the members of the European Parliament.²⁹

On December 15, the Ministry of Foreign Affairs of Ukraine expressed concern about Saakashvili.³⁰ On December 19, Volodymyr Zelensky called on the Georgian authorities to transfer Saakashvili abroad.³¹ On December 15, the US ambassador to Georgia, Kelly Degan, said that the authorities have a responsibility to ensure that the ex-president's rights are respected, that he receives the medical and psychological care he needs and has access to a fair trial.³² On the same day, the EU ambassador in Georgia called on the authorities to respect Saakashvili's rights.³³ The spokesperson of the US State Department, Ned Price, answered the question about Saakashvili's health at the briefing held on December 20 and focused on the government's responsibility for his treatment.³⁴

²¹ Ibid.

²² Ibid.

²³ "Mikheil Saakashvili's lawyers appealed to the court to release him from his sentence", information portal "civil.ge", December 1, 2022, available at: <https://civil.ge/ka/archives/517185>, updated: 13.01.2023.

²⁴ "Consilium: Saakashvili's condition is serious, it is necessary to take timely and fundamental measures", information portal "civil.ge", December 6, 2022, available at: <https://civil.ge/ka/archives/517815>, updated: 13.01.2023.

²⁵ "Minister of Justice: Saakashvili 'interfered' with the activities of doctors and the court", information portal "civil.ge", December 13, 2022, available at: <https://civil.ge/ka/archives/518660>, updated: 13.01.2023.

²⁶ "The Special Penitentiary Service released a video of Saakashvili", news portal "civil.ge", December 14, 2022, available at: <https://civil.ge/ka/archives/518771>, updated: 13.01.2023.

²⁷ "Saakashvili went on hunger strike after being denied access to the court hearing", news portal "civil.ge", December 14, 2022, available at: <https://civil.ge/ka/archives/518694>, updated: 13.01.2023.

²⁸ Ibid.

²⁹ "Saakashvili has stopped his hunger strike", information portal "civil.ge", December 14, 2022, available at: <https://civil.ge/ka/archives/518754>, updated: 13.01.2023.

³⁰ "The Ministry of Foreign Affairs of Ukraine expresses concern about Saakashvili", information portal "civil.ge", December 15, 2022, available at: <https://civil.ge/ka/archives/518979>, updated: 13.01.2023.

³¹ "Volodymyr Zelensky calls on the authorities to transfer Saakashvili abroad", information portal "civil.ge", December 20, 2022, available at: <https://civil.ge/ka/archives/519434>, updated: 13.01.2023.

³² "The US ambassador speaks about the protection of Saakashvili's rights", information portal "civil.ge", December 15, 2022, available at: <https://civil.ge/ka/archives/518850>, updated: 13.01.2023.

³³ "EU ambassador calls on authorities to respect Saakashvili's rights", information portal "civil.ge", December 15, 2022, available at: <https://civil.ge/ka/archives/518878>, updated: 13.01.2023.

³⁴ "US State Department: Government responsible for Saakashvili's treatment", information portal civil.ge, December 21, 2022, available at: <https://civil.ge/ka/archives/519549>, updated: 13.01.2023.

On December 19, President Zourabichvili identified Mikheil Saakashvili’s imprisonment as one of the main reasons for polarisation.³⁵

On December 28, the Minister of Justice met with the representatives of the European Union Representation, EU member states and US embassies in Georgia and discussed with them the situation of the imprisoned former President of Georgia.³⁶

On December 30, the Speaker of the Parliament announced that he would no longer allow MPs to visit Mikheil Saakashvili in the penitentiary without a special permit.³⁷ According to Papuashvili, he made this decision on the tightening of security measures based on the December 27 appeal of the Minister of Justice, Rati Bregadze.³⁸

On December 28, the President of Georgia, Salome Zourabichvili, held a briefing at the presidential residence in Atoneli in response to the rally against the pardon of the imprisoned ex-president of Georgia, Mikheil Saakashvili, whose participants gathered near her administration building, and spoke about threats, pressure and blackmail attempts against him in recent days.³⁹

The President noted that the rally with her administration was accompanied by various types of targeted messages that have been circulating in recent days, in order to put pressure on the President.⁴⁰ According to her, people are threatening her in various ways today so that she does not pardon President Saakashvili.⁴¹ According to Zourabichvili, pressure and bullying towards the President’s Institute is unacceptable.⁴²

4. THE CASE OF NIKA GVARAMIA

On December 7, the Office of the Public Defender of Georgia stated that in the criminal case of Nika Gvaramia, director of the TV company “Mtavari Channel”, “political motivation is confirmed” and Article 18 of the European Convention on Human Rights is violated, which implies the restriction of rights for political reasons.⁴³

According to the ombudsman’s statement, the interest in the implementation of justice in the case is enhanced by the existing political motive, which, according to the Public Defender’s explanation, is confirmed by the statements of politicians, the media environment in the country, the evaluations of local and international partners, as well as the implementation of justice with essential flaws and the use of imprisonment only for Nika Gvaramia in a similar case.⁴⁴

On November 2, the Tbilisi Court of Appeal rejected the appeal of Nika Gvaramia, one of the founders and directors of the TV company “Mtavari Channel” and left him in prison.⁴⁵

³⁵ “The President talks about Ukraine’s war, occupation, EU membership and Saakashvili”, information portal “civil.ge”, December 19, 2022, available at: <https://civil.ge/ka/archives/519164>, updated: 13.01.2023.

³⁶ “The Minister of Justice discussed the issue of Mikheil Saakashvili with diplomats”, information portal “civil.ge”, December 28, 2022, available at: <https://civil.ge/ka/archives/520460>, updated: 13.01.2023.

³⁷ “Shalva Papuashvili suspended the issuance of permits for MPs to visit Saakashvili”, information portal “civil.ge”, December 30, 2022, available at: <https://civil.ge/ka/archives/520625>, updated: 13.01.2023.

³⁸ Ibid.

³⁹ “President talks about threats, blackmail and pressure attempts against him”, information portal “civil.ge”, December 28, 2022, available at: <https://civil.ge/ka/archives/520398>, updated: 13.01.2023.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ According to the ombudsman’s assessment, “political motivation is confirmed” in the case of Nika Gvaramia, information portal “civil.ge”, December 7, 2022, available at: <https://civil.ge/ka/archives/517999>, updated 16.01.2023.

⁴⁴ Ibid.

⁴⁵ “The Court of Appeals kept Nika Gvaramia in custody”, Civil.ge information portal, November 2, 2022, available: <https://civil.ge/ka/archives/513436>, updated: 17.01.2023.

5. EUROPEAN UNION-GEORGIAN RELATIONS

On December 13, the European Parliament discussed the report of the MEP Sven Mikser,⁴⁶ which was about the implementation of the EU-Georgia association agreement.⁴⁷

Mikser emphasized that the 12 recommendations given by the European Commission to Georgia for candidate status should be perceived as assistance, and the Georgian government should use this assistance in the best way.⁴⁸ He spoke about the need for systematic implementation of complex reforms, which “will be successful only if the political opposition and civil society are involved in the process”.⁴⁹

On December 14, the European Parliament adopted a resolution on the implementation of the EU-Georgia Association Agreement.⁵⁰ The text of the resolution touched on such issues as: territorial integrity and security, the issue of the State Inspector Service and Public Defender, respect for human rights and fundamental freedoms, issues of freedom of the press and the rule of law, political dialogue and elections.⁵¹

5.1. Statements of the President and Prime Minister of Georgia regarding European integration

The President of Georgia, Salome Zourabichvili, spoke about the ongoing war in Ukraine, EU membership, occupation, polarization and the former president, Mikheil Saakashvili, at the New Year’s reception held for representatives of the diplomatic corps in the Atoneli presidential palace on December 17.⁵²

President Zurabishvili emphasized that giving Georgia a European perspective closes the debates and arguments that have been going on constantly regarding the geographical issue, that geography should dictate the borders of the European Union.⁵³ Salome Zourabichvili also spoke about the implementation of the 12 recommendations given to Georgia in order to obtain candidate status and called on the government to listen to the choices of the Georgian people.⁵⁴

On December 26, during his speech at the annual meeting of the heads of diplomatic missions of Georgia abroad, the Prime Minister of Georgia spoke about relations with the European Union. According to Gharibashvili, Ukraine was granted candidate status because of the ongoing war, and Moldova was assessed as a state equal to the war.⁵⁵ According to the Prime Minister, Georgia was far ahead of Moldova and Ukraine in terms of reforms.⁵⁶ According to him, the expectation that Georgia would receive the status of a candidate country for EU membership was not fulfilled.⁵⁷

⁴⁶ Member of the European Parliament, member of the “Progressive Alliance of Socialists and Democrats”.

⁴⁷ “The European Parliament discussed the implementation of the EU-Georgia Association Agreement”, information portal “Civil.ge”, December 14, 2022, available at: <https://civil.ge/ka/archives/518687>, updated: 17.01.2023.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ “The European Parliament adopted a resolution on the implementation of the Georgia-EU Association Agreement”, information portal “Civil.ge”, December 14, 2022, available at: <https://civil.ge/ka/archives/518785>, updated: 17.01.2023

⁵¹ Ibid.

⁵² “The President talks about the war in Ukraine, occupation, EU membership and Saakashvili”, information portal “Civil.ge”.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ “News on Prime Minister talks about EU membership, war in Ukraine and Black Sea power cable”, information portal “Civil.ge”, 26 December 2022, available at: <https://civil.ge/ka/archives/519968>, updated: 17.01.2023

⁵⁶ Ibid.

⁵⁷ Ibid.