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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) has commenced implementation of the project “Free, Fair and Equal Electoral-Political 2019-2022 Cycle in Georgia”, which covers the area of Tbilisi, Kakheti, Mtskheta-Mtianeti, Kvemo Kartli, Shida Kartli, Imereti, Samegrelo-Zemo Svaneti, Guria and Adjara. One of the goals of the project is to support improvement of the electoral environment through monitoring and evidence-based advocacy. To this end, the organization will monitor ongoing political processes and develop recommendations, which will be presented to the public and decision-makers.

Post 2020 election developments

Negotiations between the ruling party and the opposition

Following the announcement of 2020 parliamentary elections results, the opposition rejected parliamentary mandates and committed themselves to the boycott.¹ Their main requirements are as follows: new elections, resignation of CEC Chair and the release of the “political prisoners”.² The disagreement between the opposition and the ruling party lead to a political crisis in the country.³ With the aim to overcome the crisis, through the assistance of facilitator Ambassadors, the parties have launched a negotiation process.⁴ Two rounds of negotiations were held on 12th and 14th of November.⁵ Despite the several rounds of negotiation, the parties failed to reach the agreement.⁶

On December 4, a multilateral meeting was held in the residence of the US Ambassador.⁷ According to the opposition leaders, they introduced a written proposal to the ambassadors. The diplomats agreed to deliver this proposal to the GD party.⁸

On December 7, GD and 9 opposition parties launched a third round of negotiations, facilitated by the ambassadors.⁹ Unlike the first two rounds, Irakli Kobakhidze attended the meeting together with Archil Talakvadze.¹⁰ According to the opposition, they managed to converge their positions; however, the meeting ended without reaching an agreement.¹¹ “I can say that there were certain issues on which the positions were converged, however, there are several key issues, on which our positions failed to converge”. – noted David Bakradze, leader of “European Georgia”.¹² “We discussed all issues and there are some that we managed to agree on. However, there is a difference in positions on key issues between us [...] there are issues that we fail to reach the agreement e.g. extraordinary elections, issues of political prisoners” – stated Giorgi Vashadze, the leader of “Strategy Builder”.¹³ According to Grigol Vashadze, the leader of the “National Movement”, “there is always a way for negotiation and if the

¹ See Latsabidze M., Information Newsletter №14. November, Georgian Young Lawyers' Association, Tbilisi, 2020, pages 6-7, Georgian Young Lawyers' Association web page, Available at: <https://bit.ly/2YBI43j>, Updated on: 05.01.2021.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ “The opposition submitted its demands in written to the Ambassadors”, information portal “Netgazeti”, 04.12.2020, Available at: <https://bit.ly/35aBJ2C>, Updated on: 05.01.2021.

⁸ Ibid.

⁹ “Third round of negotiations is held between the GD and the opposition”, information portal “Netgazeti”, 07.12.2020, Available at: <https://bit.ly/35cOkIY>, Updated on: 05.01.2021.

¹⁰ Ibid.

¹¹ “Another round of negotiations between the government and the opposition will most likely be held today”, information portal “InterPressNews”, 08.12.2020, Available at: <https://bit.ly/3rYDzxx>, Updated on: 05.01.2021.

¹² Ibid.

¹³ Ibid.

negotiation fails the country will appear in a very difficult situation. Release of political prisoners is one of the most important issues for me, however, unfortunately this issue could not become a subject for compromise¹⁴.¹⁵ As for the ruling party, according to Irakli Kobakhidze, the expectations are positive.¹⁵

The MEP, Andrius Kubilius responded to the political events in Georgia and stated that it is necessary for all the major political parties to reach the agreement.¹⁶ Furthermore, Kubilius published an article in which he states that this is a crucial moment in the history of Georgia, for which the price of political instability can be very high.¹⁷ Kubilius underlines the significance of national political consensus on the way to membership of NATO and EU, and that according to him will be possible only through a fully functioning Parliament.¹⁸

The High Representative of the EU for Foreign Affairs and Security Policy, Josep Borrell also responded to the process and expressed his hope that proposal by GD will make the compromise possible.¹⁹ “It is time for Georgian politicians to show leadership and ensure representation in a parliament. We hope that the latest proposal from Georgian Dream will open the door for a compromise and will allow the Parliament to advance on “much needed” electoral and judicial reform and to address socio-economic challenges”, - noted Borrell.²⁰

Karl Hartzell, the facilitator ambassador expressed his readiness to hold as many rounds of negotiations as required for the progress and reaching joint platform.²¹ According to him “decision-making will be difficult, which will require leadership and responsibility, perhaps even innovation, in order to reach a desirable outcome”.²²

After the fourth round of negotiations the representatives of the political parties stated that the opposition is united and none of the engaged parties plan to enter the Parliament.²³

On December 9, Irakli Kobakhidze held a briefing, where he introduced several initiatives elaborated by the ruling party:²⁴

- Parties not presented in the Parliament shall not obtain the state funding and other relevant privileges;
- Election registration shall be abolished for those political parties whose leader does not meet constitutional requirements for active suffrage;
- Following the first meeting of the Parliament, the Majority shall initiate creation of the temporary investigative commission in order to examine 2020 parliamentary elections.

Fifth round of negotiations scheduled on 10th of December between the government and the opposition, with the assistance of the Ambassadors, was cancelled.²⁵

Germany and France made a joint statement and called on Georgia to continue on the path of democratic reform.²⁶ According to them, Georgia has shown readiness to seize the opportunity of renewed parliamentary pluralism

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ “Andrius Kubilius – all major political parties should reach the joint agreement”, information portal “InterPressNews”, 07.12.2020, Available at: <https://bit.ly/2K6Fi2E>, Updated on: 05.01.2021.

¹⁷ Georgian strategic unity is key to move forward with ambition of Euro-Atlantic integration By Andrius Kubilius, MEP, Chair of the European Parliament’s Delegation to the Euronest Parliamentary Assembly, 07.12.2020, Available at: <https://bit.ly/3okKgHU>, Updated on: 05.01.2021.

¹⁸ Ibid.

¹⁹ “It is time for Georgian political forces to show leadership and enable parliamentary representation - Borell“, information portal “Netgazeti”, 08.12.2020, Available at: <https://bit.ly/3pS1Rr3>, Updated on: 05.01.2021.

²⁰ Ibid.

²¹ Karl Hartzel – Everybody will have to make difficult decision – I am ready for as much rounds of negotiations as required”, information portal “InterPressNews”, 08.12.2020, Available at: <https://bit.ly/2L41kn8>, Updated on: 05.01.2021.

²² Ibid.

²³ “The opposition remains united” – comments after the fourth round of meetings”, information portal “Netgazeti”, 08.12.2020, Available at: <https://bit.ly/35dMuRU>, Updated on: 05.01.2021.

²⁴ “Legal and political problems of GD initiatives“, information portal “Netgazeti”, 09.12.2020, Available at: <https://bit.ly/3nGXopP>, Updated on: 05.01.2021.

²⁵ “V round of negotiations will not be held today”, information portal “Netgazeti”, 10.12.2020, Available at: <https://bit.ly/3oiVIns>, Updated on: 05.01.2021.

²⁶ „Joint statement of France and Germany on Georgia (December 12, 2020)“, Embassy of France to Georgia, official web page, 12.12.2020, Available at: <https://bit.ly/3ogwupC>, Updated on: 05.01.2021.

offered by this reform and the strong voter turnout during the first round of elections - amid the pandemic – is encouraging and remarkable, however according to OSCE/ODIHR and local organizations, there were certain flaws in the election process.²⁷ They also discussed electoral and judicial system changes and underlined significance of further reforms.²⁸ According to the statement, the parliament is a right platform for such debates, as a parliamentary process would strengthen the outcome and the process alike - and ultimately the trust in public institutions in Georgia.²⁹ Additionally, they highlighted their support for diplomats, who are involved in the process of negotiations between the government and the opposition.³⁰

Nika Gvaramia, the founder and the director of the opposition channel “Mtavari Arkhi” harshly criticized the Ambassadors of the US and the EU for their opinions.³¹ In respond to the statements, Kelly Degnan noted: “Everyone has the right to an opinion, but there are facts as well”.³² “The fact is that Georgia does not have a better friend than America. [...] And that’s true, whether I’m the Ambassador or someone else. It is true whichever party is in power in Georgia and whichever party is in power in the White House; And this is not going to change. Our commitment to Georgia’s success is not going to change”.³³

Karl Harzell also responded the criticism with the following statement: “this (facilitation) is a very difficult role to play. [...] Political leaders are to make the decision. We cannot do anything else. I will remain committed to this role until I see that the parties consider this role as beneficial. As soon as I see that this role hinders progress or does nothing to facilitate it, my mandate will end instantly”, - said Hartzell.³⁴

On December 15, the leader of the party “National Movement” – Grigol Vashadze left the party and named an attack on ambassadors as one of the reasons.³⁵

First Plenary Session of X Term Parliament and abolishment of party lists

Decree on the first session of the newly elected Parliament was issued by the President of Georgia, Salome Zurabishvili.³⁶ According to the Decree, the first session was scheduled at 12:00 December 11.³⁷

The Parliament has hosted the first Plenary Session of the Newly Elected X Term Parliament.³⁸ The Temporary Mandate Commission submitted the first sitting the information on creation of factions, registration of members of the Majority and members of the Minority.³⁹ Members of the opposition did not attend the meeting to demonstrate their boycott.

The Embassy of the US in Georgia and the delegation of the EU in Georgia made a joint statement.⁴⁰ “Over the past six weeks, Georgia’s political leaders have engaged in an intense political dialogue. While important issues remain unresolved, the parties succeeded in reaching a preliminary understanding on comprehensive electoral reforms that, once adopted, will significantly improve future Georgian elections“, - says the statement.⁴¹ According

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ “Criticism or attack at Ambassadors – the only space for negotiations, information portal „Radio Tavisupleba“, 16.12.2020, Available at: <https://bit.ly/2MD7fjx>, Updated on: 05.01.2021.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Decree N08/12/01 of the President of Georgia, dated December 8, 2020 on scheduling the first session of the newly elected Parliament, Available at: <https://bit.ly/3bccdhu>, Updated on: 05.01.2021.

³⁷ Ibid.

³⁸ „First Plenary Session of X Term Parliament”, official web page of the Parliament of Georgia, 11.12.2020, Available at: <https://bit.ly/36o8A4L>, Updated on: 05.01.2021.

³⁹ Ibid.

⁴⁰ “Statement of the Embassy of the US to Georgia and representation of the EU“, US Embassy in Georgia, official web page,, 11.12.2020, Available at: <https://bit.ly/38eeu9V>, Updated on: 05.01.2021.

⁴¹ Ibid.

to them, this kind of open, respectful debate is essential as Georgia moves toward a more pluralistic political landscape representing more diverse views and interests.⁴² The facilitators call on parties to carefully consider all the possibilities and express their readiness to lend their continued support to this effort.⁴³

The Ambassador of the US to Georgia, Kelly Degnan made a statement for the media: “We would have liked to see all duly elected members of parliament attend today’s opening, so that they could fight for the change they want to see from within the parliament, rather than in the streets.”⁴⁴ According to the Ambassador, the leaders of the opposition parties did very good work, and they did it together despite there being deep differences, and that’s what we would like to see happen within parliament.⁴⁵

In a meantime the opposition parties⁴⁶ signed following memorandums:⁴⁷

1. Refusal on the parliamentary mandates – once the Parliament recognizes the powers of all MPs, the opposition parties will appeal the Central Election Commission to annul lists;
2. Demand of opposition parties on extraordinary elections, release of political prisoners and electoral reform;
3. Symbolic statement – memorandum from those MPs who refuse the mandates of the Parliament of current term.

On December 14 the CEC annulled the lists of several opposition parties and blocks, based on a party appeal. The registration has been abolished to the following parties: election bloc “United National Movement – United Opposition “Force is in Unity”,⁴⁸ “Bakradze, Ugulava, Bokeria – European Georgia – Movement for Freedom”,⁴⁹ election bloc “Giorgi Vashadze – Strategy Agmashenebeli”,⁵⁰ Shalva Natelashvili – Labour Party of Georgia,⁵¹ “Lelo – Mamuka Khazaradze”.⁵²

Furthermore, the CEC published the decree of Tamar Zhvania,⁵³ according to which 12 parties⁵⁴ will receive the

⁴² Ibid.

⁴³ Ibid.

⁴⁴ “Ambassador Kelly Degnan’s Remarks to Media at the First Session of 10th Parliament”, US Embassy in Georgia, official web page,, 11.12.2020, Available at: <https://bit.ly/3b9UdEn>, Updated on: 05.01.2021.

⁴⁵ Ibid.

⁴⁶ Memorandum was signed by the parties and blocs who has overcome the threshold: - “United National Movement – Strength is in Unity”, “European Georgia”, “Labour Party of Georgia”, “Strategy Agmashenebeli”, “Lelo”. “Citizens” of Aleko Elisashvili and Girchi did not attend the event, however, according to them they remain in boycott mode.

⁴⁷ “Opposition Memorandum: who does (not) refuse the mandates today”, information portal “Netgazeti”, 11.12.2020, Available at: <https://bit.ly/38YrYFW>, Updated on: 05.01.2021.

⁴⁸ Ordinance №264/2020 of the Chair of the Central Election Commission of Georgia dated December 14, 2020 on abolition of the election registration of candidates nominated by election bloc “United National Movement - United Opposition “Strength is in Unity” registered for the October 31, 2020 parliamentary elections.

⁴⁹ Ordinance №265/2020 of the Chair of the Central Election Commission of Georgia dated December 14, 2020 on abolition of the election registration of candidates nominated by election subject “Bakradze, Ugulava, Bokeria – European Georgia – Movement for Freedom” registered for the October 31, 2020 parliamentary elections.

⁵⁰ Ordinance №266/2020 of the Chair of the Central Election Commission of Georgia dated December 14, 2020 on abolition of the election registration of candidates nominated by election bloc “Giorgi Vashadze – Strategy Agmashenebeli” registered for the October 31, 2020 parliamentary elections.

⁵¹ Ordinance №267/2020 of the Chair of the Central Election Commission of Georgia dated December 14, 2020 on abolition of the election registration of candidates nominated by election subject “Shalva Natelashvili – Labour Party of Georgia” registered for the October 31, 2020 parliamentary elections.

⁵² Ordinance №268/2020 of the Chair of the Central Election Commission of Georgia dated December 14, 2020 on abolition of the election registration of candidates nominated by election subject “Lelo – Mamuka Khazaradze” registered for the October 31, 2020 parliamentary elections.

⁵³ Ordinance №263/2020 of the Chair of the Central Election Commission of Georgia on definition of party funding dated December 11, 2020, official web page of the CEC, Available at: <https://bit.ly/3rWNNyK>, Updated on: 05.01.2021.

⁵⁴ The parties are as follows: “Georgian Dream – Democratic Georgia”, “United National Movement”, “Movement State for People”, “Progress and Freedom”, “Republic Party of Georgia”, “European Democrats”, “Giorgi Vashadze – Strategy Agmashenebeli”, “Law and Justice”, “European Georgia – Movement for Freedom”, “Lelo for Georgia”, “Alliance of Patriots of Georgia”, “Labour Party of Georgia”.

state budget funding.⁵⁵ More than 12 million GEL will be spent on parties' annual funding.⁵⁶

The GD initiative on abolition of party registration and depriving parties of state funding

On December 21, the Bureau of the Parliament registered legislative initiatives, *inter alia*, on the amendment to the Election Code and to the Law on Political Associations of Citizens.⁵⁷ The legal initiatives are as follows:

1. Abolition of party election registration

The first initiative is related to the abolishment of election registration of the political party in case party leader does not meet any of the constitutional requirements for active suffrage.⁵⁸ In particular, according to the draft law, if a political party leader participates in pre-election campaign while he/she does not meet any of the requirements defined by the Constitution for active suffrage, the registration of this party shall be abolished by CEC.⁵⁹ CEC decision can be appealed in the court.⁶⁰

2. Depriving parties of the state funding

According to the second amendment, the parties may not enjoy the state financing if they refuse to accept at least half of the mandates.⁶¹ Furthermore, the party will be deprived of the financing if at least half of its nominated members are absent at all the plenary sessions without a justified reason.⁶² The same approach applies to the blocs.⁶³

On December 23, MPs voted for the latter initiative with the first reading.⁶⁴ MPs also discussed the draft law on Election Code and the draft Rules of Procedure.⁶⁵ At the plenary session, Irakli Kobakhidze initiated to send the draft laws on party financing as well as the abolishment of registration to the Venice Commission or OSCE/ODIHR.⁶⁶ He proposed to hold the second reading of these bills after receiving an opinion from these institutions.⁶⁷

Representatives of the parliamentary opposition did not attend the parliamentary sessions to demonstrate their boycott. Hence, they did not participate in voting.⁶⁸

The Ambassador of the EU to Georgia, Karl Hartzell commented on the draft-laws and noted that draft laws on abolishing registration of the parties and party financing causes concerns.⁶⁹ „In general, abolishing registration, which is directed towards the largest opposition party, always raises questions. Especially, when the draft law is accompanied by certain intentions” – he said.⁷⁰ As for the party funding, according to him this issue requires extensive discussion, as according to certain logic, if the party fails to participate in the parliament activities, it

⁵⁵ Annex to the Ordinance №263/2020 of the Chair of Central Election Commission of Georgia dated December 11, 2020, Available at: <https://bit.ly/2Xey5k0>, Updated on: 05.01.2021.

⁵⁶ Ibid.

⁵⁷ “The Bureau registered the new legislative initiatives”, official web page of the Parliament of Georgia, 21.12.2020, Available at: <https://bit.ly/2YtJFZh>, Updated on: 05.01.2021.

⁵⁸ Organic Law of Georgia on changes to the Organic Law of Georgia “Election Code of Georgia”, Available at: <https://bit.ly/3pMBUcq>, Updated on: 05.01.2021.

⁵⁹ Ibid, para. 1 Article 1.

⁶⁰ Ibid, para. 3 Article 1.

⁶¹ Organic Law of Georgia on changes to the Organic Law of Georgia “on Political Associations of Citizens”, para. 1 Article 1, Available at: <https://bit.ly/35dQlOS>, Updated on: 05.01.2021.

⁶² Ibid.

⁶³ Ibid, para. 2, Article 1.

⁶⁴ “MPs voted for the Draft Organic Law on Political Unions of Citizens with the I reading”, official web page of the Parliament of Georgia, 23.12.2020, Available at: <https://bit.ly/3pAoErE>, Updated on: 05.01.2021.

⁶⁵ Ibid.

⁶⁶ “Irakli Kobakhidze introduces the initiative to send the draft laws on parties’ funding rules and abolishment of registration to the Venice Commission and OSCE/ODIHR”, information portal “InterPressNews”, 23.12.2020, Available at: <https://bit.ly/392nePI>, Updated on: 05.01.2021.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ “The parties applied to suspend the mandates, which I consider as a closing door on agreement – Karl Hartzell”, information portal TV “Rustavi 2”, 19.12.2020, Available at: <https://bit.ly/2JNOPLK>, Updated on: 05.01.2021.

⁷⁰ Ibid.

should not receive the funding, however, according to the Ambassador, we should think of an importance of the political party for the democracy.⁷¹ According to him, the parties are distancing from each other with these actions, rather than coming close, and this is when the time is running out. He expressed readiness to help and called on parties to the negotiations table.⁷²

Ambassador of the US to Georgia, Kelly Degnan commented on the GD initiated draft laws in the interview with the TV “Formula” and said that she does not agree with a law, which implies oppression of the opposition.⁷³ Degnan expressed hope that the draft law will be reviewed before being voted for.⁷⁴

Marketa Gregorova, the MEP, Vice-Chair of the Delegation to the Euronest Parliamentary Assembly and a member of Group of the Greens and assessed as the step backwards in the democracy.⁷⁵

(1) GYLA has submitted the Parliament a conclusion on the amendment to the Law on Political Associations of Citizens.⁷⁶ According to the organization, the state funding of political parties aims to not only promote party’s parliamentary activities but also to support their capacity and existence in general.⁷⁷ Political parties and candidates need to have access to funding in order to convey to voters their goals and vision, and at the same time to get information about the views from the people.⁷⁸ In light of this, GD initiative on depriving parties of the state funding is perceived as a willful punishment of the opposition by the government.⁷⁹ **GYLA calls on the Parliament to consider the objective and purpose of the state funding for political parties and to reject disproportionately restrictive, unsubstantiated norms in the legislation. Consequently, the organization calls on the Parliament to decline this draft law.**⁸⁰

(2) GYLA negatively assesses the initiative on abolition of a party election registration. Firstly, the bill does not meet the criteria of predictability and accuracy. The terms “leader” and “as a leader” may have a wide interpretation. This creates the risk of non-unified approach and subjective application of the law, which is inconsistent to the international standards.⁸¹ The sanction shall be proportionate and the least intrusive remedy,⁸² otherwise it may have an effect similar to the abolition of a party.⁸³ Therefore, the negative impact of abolition of election registration on pluralistic democracy is worthy of attention, which further questions the relevance of this initiative of human rights standards. **Considering above mentioned, GYLA calls on the Parliament of Georgia to reject this draft law.**

⁷¹ Ibid.

⁷² Ibid.

⁷³ “Elections, political crisis and strategic partnership – interview with Kelly Degnan”, information portal TV “Formula”, 24.12.2020, Available at: <https://bit.ly/3i3XQgv>, Updated on: 05.01.2021.

⁷⁴ Ibid.

⁷⁵ “Gregoreva on GD draft-law “this is a step backwards”, information portal “Netgazeti”, 23.12.2020, Available at: <https://bit.ly/3hLyNPd>, Updated on: 05.01.2021.

⁷⁶ “According to GYLA, the purpose of cutting a state funding for parties due to political protests is to punish the opposition”, official web page of GYLA, 23.12.2020, Available at: <https://bit.ly/3rYxkJZ>, Updated on: 05.01.2021.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ See ECtHR, Vona v. Hungary, no. 35943/10, 9 July 2013, para. 58, Available at: <https://bit.ly/3syH1iK>, Updated on: 16.01.2021.

⁸² Parliamentary Assembly (PACE), Resolution 1308 (2002)1: Restrictions on political parties in the Council of Europe member states Parliamentary Assembly, para 11. Available at: <https://bit.ly/3oQAsFT>, Updated on: 16.01.2021.

⁸³ ECtHR, Linkov v. the Czech Republic, no. 10504/03, 7 December 2006, In: EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (OSCE/ODIHR) GUIDELINES ON POLITICAL PARTY REGULATION, 2ND EDITION, CDL-AD(2020)032, Para. 106, Available at: <https://bit.ly/3ssFF8V>, Updated on: 16.01.2021.