

Statement by

Georgian Young Lawyers' Association (GYLA), Transparency International – Georgia, International Society for Fair Elections and Democracy (ISFE), “Freedom of choice” coalition, other non governmental organizations engaged in the field of elections

Setting up an environment ensuring fair elections as well as providing political unions with conditions for equal competition is of utmost importance for Georgia's democratic development. However, some of the legislative amendments proposed by the Parliament impose severe and disproportionate limitations on the private sector, while the government is allowed broad excess to the use of administrative resources and campaigning. We voice our deep concern due to the possible restriction of the freedom of expression facing Georgian residents and the private sector.

By the present statement, we urge the Georgian parliament to uphold the international standards of human rights and take into account the opinions of the civil sector (**see the position of the non-governmental organizations**) when discussing the amendments to the Law on Political Unions of Citizens and the Criminal Code, and adopt the legislative amendments that:

- ✓ ensure the freedom of expression of the voters as well as the private sector;
- ✓ create the environment in which political unions can compete on equal terms
- ✓ do not impose strict and disproportionate limitations on businesses, non-governmental organizations, and voters during the pre-election period
- ✓ do not allow for a broad interpretation and, subsequently, do not imperil ordinary voters and legal entities

Signatories:

Georgian Young Lawyers' Association (GYLA)

Transparency International – Georgia

International Society for Fair Elections and Democracy (ISFE)

“Freedom of choice” Coalition

other non governmental organizations working in the field of elections

Adjoining with the statement:

1. Open society – Georgia Foundation

2.

3.

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The position of the non-governmental organizations concerning the introduction of imprudent restrictions upon private and non-governmental sectors and ordinary citizens

Currently, the Georgian Parliament is considering legislative initiatives that aim principally at amending the election environment in such a way as to impose restrictions on businesses, people engaged in businesses, non-governmental organizations, and political parties. The purpose of the above amendments is to regulate only these groups, they do not provide for the same kind of strict limitations on the officials, civil servants, in general, and other people engaged in the government sector who by their activities support the ruling party through the use of administrative resources or employing other methods.

Restrictions imposed upon the private sector are, to a certain extent, inconsistent with this field of activities. In some cases, they are disproportionate and overly strict in relation to the relevant breach. Subsequently, we have a totally unfair situation, given that the boundaries between the government and the ruling party are, in fact, effaced.

Specifically, according to the draft laws currently under the Parliament's consideration:

Article 164¹ of the Criminal Code - "bribing voters" is redrafted. A legal entity committing such a crime is subject to liquidation. This may be the outcome, for example, if a company delivers food supplies of small value to voters asking them to vote for a certain political party in return.

- Together with the political party, liable to criminal punishment is the voter, who asks for or receives money or other property/services from a given party. Voters, for example, are punishable with up to 3 years imprisonment if some of their medical services are covered by a party.
- Criminally punishable is not only direct, but also indirect tampering. Under such wording, bribery committed by a particular individual can always be linked to some political party For

example, if an individual (maybe a feigned accomplice), not acting on behalf of a party, asks a voter to vote in support of a given party receiving in return some amount/service, the crime can be construed as committed by that party indirectly, i.e. through somebody else, the consequences being the party's liquidation.

- The legal entity (such as a non-governmental organization or a business company) who appeals to voters through its representative, or other persons to support or abstain from supporting a party is subject to the restrictions established for political parties, namely: it is not allowed to receive any donation whatsoever from a legal entity; it is allowed to receive donations from individuals not exceeding the annual amount of 60,000 GEL; it is accountable to the Control Chamber; it can take loans only from private banks; it cannot receive donations (pro bono contribution) from legal entities and so on. This passage is an open violation of a legal entity's and its employees' freedom of expression.
- Restrictions established for political parties also pertain to legal entities who are directly or indirectly related to political parties or are "otherwise" under its control, as well as all legal entities and individuals who have business relations with an openly campaigning person. While the above limitations pose a threat to legal entities and ordinary citizens to conduct their activities in a free and unrestricted manner, they allow the government to exercise unlimited control over them.

Bribing a voter and transferring to him a property in return is, of course, unacceptable. However, the punishment for this violation should, at the same time, be commensurate and reasonable. In this respect, according to the OSCE and Venice Committee recommendations, governments should resort to party liquidation as an extreme punitive measure and only after other smaller penalties (such as fine) have been enforced. The above inconsistencies in the penalties also pose a risk to the unimpeded functioning of separate political parties.

The legislation does not contain a special article assigning criminal liability for such breaches of law dealing with the use of administrative resources as: unlawful use of administrative resources by civil servants, gaining advantage in campaigning through official capacity, and using budgetary funds in preparing materials depicting the campaigning entities' insignia. We consider it expedient to make the criminal legislation more stringent in this respect.

Under the draft law, restrictions are imposed on legal entities, their representatives and "other persons" who appeal to voters to support or abstain from supporting a certain political force. At the same time, however, the legislation does not ban civil servants from campaigning for a candidate when they are not fulfilling their official duties. In this particular case, the government's reasonable argument is the concern for the freedom of expression of civil servants. The same is true for those working in administrative bodies – employees of legal entities of public law (public registry, civil registry, income service, service agency etc.) are not prohibited to appeal to citizens to support or abstain from supporting a political group even when fulfilling their official duties. Coming from the superior responsibility of the latter as well as the civil servants, the restriction proposed by the draft

law is utterly disproportionate. At the same time, the purpose for interfering in the freedom of expression of legal entities, their representatives or “other persons” is also not clear. In our opinion, some local head of municipality can exercise a way bigger influence on common voters through campaigning openly for a political force than, say, an employee of a theatre or enterprise. Subsequently, coming from the high responsibility that public sector bears, the legislative environment ensured for civil servants should be not simply identical to that of private sector but even more rigorous and restrictive. Under the draft laws proposed by the Georgian Parliament, however, instead of making provisions for the role and responsibility of the public sector, and establishing adequate bans and sanctions on it, more rigorous and restrictive regulations are being worked out for the private sector.