

Working on Electoral Reform Should Continue

On August 5 and 6, a meeting of the electoral reform working group was held to discuss initiatives prepared by the ruling party about amendments to the Law of Georgia on Political Associations and the Election Code. We would like to comment on the legislative initiatives discussed by the working group.

From the initiatives proposed, we welcome the changes in the **political party finance regulation**, based on which funding from the State Budget will follow the so-called regressive rule. This will help reduce imbalance in political party financing.

As to the changes in the Election Code, unfortunately the draft amendments proposed by the ruling party contain a number of problematic issues and if adopted, they will have a detrimental effect on the electoral environment ahead of the 2020 elections. Regulations related to freedom of expression and media are especially alarming. A significant part of the proposed amendments leave impression that they are directed against freedom of expression and place unfair burden on media, which will clearly have a negative affect on the work of media outlets during the election period.

- **Regulation of hate speech:** according to the changes proposed, “hate speech and xenophobia” will be inserted in para.3 of Article 45 of the Election Code, which determines the kind of text that should not be contained by appeals/statements of political parties, electoral subject candidates, electoral subjects and their supporters.

Such regulation of hate speech is in conflict with the high standard of freedom of expression in Georgia. Notably, the existing legislation does not provide definition of hate speech, meaning that the proposed changes will cause confusion about meaning of the term, posing the risk of incorrect interpretation. In view of the recent problematic court practice about freedom of expression, it is highly likely that the prohibition will become means for limiting critical expression by political parties and other actors during the election campaign.

We must underline that during the 2018 presidential election, the key problem was discrediting and starkly negative campaign by political parties and their supporters including through social media, but not the hate speech. Such negative campaign against candidate Zourabichvili was evaluated as “hate speech” by representatives of the ruling party, while in fact hate speech that means racist, xenophobic, anti-Semitic and similar statement targeting a certain group because of their particular characteristics, was less problematic during the previous elections and was used only a few times by politicians. It should be noted, that the Election Code already contains restrictions on the speech enticing national stifle and enmity, religious or ethnic confrontation.

- **Limiting anti-advertisement:** according to the changes proposed, anti-advertising may not exceed 25% of an electoral subject ad clip. This unfairly limits freedom of expression of political parties. Legislation allows anti-advertisement as a form of campaigning. Therefore, it is up to a political party to decide what kind of campaigning it will have, how it will communicate with voters and to what extent it will use anti-advertisement. As the presidential election has shown, negative campaign is clearly a problem, however this is caused by a low political culture and lack of ethical standards. This may not become the reason for limiting freedom of expression. Such gross intervention in the existing standard of freedom of expression may not be justified, especially when it comes to political processes and elections.

Additionally, in practice it may be ambiguous how to measure adverse publicity, which may put pressure on media, as the draft law prescribes responsibility of a media outlet for violation of the requirements by an advertiser.

- **Imposing responsibility on media for contents of an ad:** another issue is that according to the proposed changes, the broadcaster will be responsible for verifying contents of a political advertisement and not airing the advertisement that clearly violates the legislation. Failing to do so, according to the draft, will result in the broadcaster being fined by double the amount of advertisement rate. This regulation will have a chilling effect on media during election period. The proposed changes place unfair burden on media outlets on the one hand and on the other hand, they create a risk that a broadcaster will act as a censor. It is not unlikely that fearing sanctions, some broadcasters might refrain from airing political advertisements at all, which will increase the negative effect of the proposed regulation on the pre-election environment.

In light of the foregoing, we believe it is unfair and unjustified to adopt the proposed regulations. They will have a negative effect on the pre-election environment and place limitations of freedom of expression deteriorating the existing high standard of free speech in Georgia.

The proposed legal draft also concerns the rule of **composition of the election administration**. However, the proposed rules in this regard fail to address the existing challenges in election administration composition and do not provide any essential improvements to alleviate the dominance of the ruling party in electoral commissions. The changes prepared by the ruling party fail to address recommendations submitted by election observer organizations on such important matters as election administration composition, misuse of administrative resources, electoral disputes and campaigning regulations.

Therefore, we believe that it is important to continue working on electoral reform, in order for the final draft to respond to the existing challenges before initiating in the Parliament. It is important for legislative changes to ensure that elections are held in an equal and competitive environment. On our end, we are ready to continue participation in subsequent discussions of the electoral reform.

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