
Adjudication of Election-Related Complaints and Appeals by Electoral Administration and Courts: Assessment of Nongovernmental Organizations

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Tbilisi, Georgia – Transparency International Georgia, the International Society for Fair Elections and Democracy and the Georgian Young Lawyers' Association submitted 154 complaints and appeals to the electoral administration and courts before the 30 May 2010 local elections, on the election day and after the elections. Of these, 27 were upheld in full, 12 were upheld partially and 108 were rejected. In 7 cases, the problem was resolved locally.

Transparency International Georgia only submitted complaints and appeals to the Central Electoral Commission (CEC). The organization presented a total of 9 complaints and seven appeals to the CEC. All of these concerned the violations recorded in the pre-election period (illegal participation of public officials in the campaign, their use of administrative resources for the campaign, the pressure against voters and opposition candidates). The CEC upheld 1 complaint in full and another 1 partially, while rejecting the rest. In some cases, the CEC concluded that there had been no violations of the electoral law, while in other cases it deemed the presented evidence to be insufficient. On the election day, Transparency International Georgia submitted 1 complaint. The complaint was related to the failure to post the voting rules in the polling station. The problem was addressed immediately.

The International Society for Fair Elections and Democracy submitted 78 complaints to the CEC, the district electoral commissions and courts. Of these, 12 complaints were related to restriction of observers' rights. The CEC and the district electoral commissions only upheld 3 complaints of this kind. 6 complaints concerned violations of voters' rights. Of these, 1 complaint was subsequently upheld and 3 were rejected by electoral commissions, while the problem was resolved locally in 2 cases. There were 42 complaints regarding violation of procedures for voting and completion of voting summary protocols (24 complaints regarding violations concerning voting and 18 complaints concerning violation of the procedures for protocol completion). Of these, 9 were upheld in full, another 9 were upheld partially and 20 were rejected, while the problem was resolved locally in 4 cases.

The Georgian Young Lawyers' Association submitted complaints to courts (city courts and courts of appeal), the CEC and the district electoral commissions (in Tbilisi, Batumi and Kutaisi). Most of the complaints concerned attempted voter bribing, violation of voting and vote count procedures and irregularities recorded during the summarization of election results. In different complaints, the organization called for administrative or disciplinary sanctions against the commission members responsible for the violations, annulment of election results in electoral precincts or a recount of ballots.

The Georgian Young Lawyers' Association submitted a total of 39 complaints to the district electoral commissions. Of these, 12 were upheld in full, 1 was upheld partially and the rest were rejected. The organization challenged the decisions of the district electoral commissions in the

CEC (12 complaints) and in courts (8 complaints). The CEC did not uphold any of the complaints, while a court upheld 1 complaint partially.

Three major trends became apparent during the adjudication of complaints by the CEC and the district electoral commissions:

1. When the complaints were upheld, the electoral commissions imposed the smallest possible sanctions on the members of the lower-level commissions who had committed violations. They explained this by suggesting that the remuneration of the commission members would not be enough to cover the financial sanctions established by the law.

The electoral administration also resorted to the smallest possible punishment when imposing disciplinary sanctions. Of the four types of sanctions established by the law (notice, warning, deduction of part of a salary, early termination of authority), the higher-level electoral commissions usually resorted to the two that are least severe: notice and warning.

There were cases where the discussion of possible sanctions against precinct electoral commissions members was delayed to such an extent that their authority expired before the final decision was made and they therefore escaped the punishment.

The CEC rejected several complaints against districts and precinct electoral commission members stating that (1) it was impossible to fully implement certain provisions of the electoral law and (2) the commission members had to work in a tiresome and stressful regime.

This kind of approach to the violations by the electoral administration merits an extremely negative assessment. By acting in this manner, the electoral commissions demonstrated indifference towards the violation of legal provisions, while also failing to reduce (and possibly even increasing) the risk of similar violations during the future elections.

2. During the adjudication of complaints, the CEC and the district electoral commissions did not attempt to examine the cases in detail and to identify the actual state of affairs. They were rather interested in finding fault with the complaints in order to refuse to discuss or uphold them.

Often, the witnesses identified by the complaining parties in their complaints were not questioned, the evidence attached to the complaints was not examined thoroughly, additional information was not collected, the accuracy of information provided by lower-level commissions (which deliberately distorted the circumstances of the matter in some cases) was not verified, etc.

In some cases, when passing decisions, representatives of the electoral administration interpreted the law in a biased manner (favoring the ruling party or electoral commissions), while also interpreting the same provisions differently in different cases. The provisions of the electoral law that regulate complaints procedures and observers' access to polling stations were particularly problematic in this respect.

Ultimately, it was apparent that, instead of ensuring implementation of legal provisions and fairness of the elections, the electoral administration aspired to defend commission members and the ruling party.

3. One of the most unfortunate developments is the fact that, during the adjudication of appeals, some members and officials of the CEC and the district electoral commissions viewed the representatives of observer organizations as adversaries. They frequently acted in an extremely aggressive manner and even resorted to personal insults.

Such discussions usually resulted in the failure of the parties to examine and assess the facts and the adoption of biased and inappropriate decisions by the electoral administration.

In the summary statement on the pre-election period published on 29 May, the nongovernmental organizations generally assessed the Central Electoral Commission's activities positively, highlighting its transparency and constructiveness. The situation was already much worse in the district electoral commissions at that point. Unfortunately, the CEC was unable to retain this constructive attitude until the very end and cast a shadow upon its reputation as an unbiased and professional entity through its handling of the complaints.

In this respect, the only positive difference between the 2008 and 2010 elections was the fact that all precinct electoral commissions had the complaint forms prepared by the CEC, while the district electoral commissions fulfilled their duty to inform complaining parties about the date and time of complaint adjudication.

Along with promoting resolution of a number of other problems, the role of observer organizations also implies recording violations and calling for appropriate reaction. The electoral administration also has a right and a responsibility to initiate inquiries into violations though it considered organizing the elections to be a priority at this point. In this situation, it must try to at least do the very minimum it can and, if it is unable to initiate such inquiries independently, examine the information collected by the observer organizations thoroughly and make decisions according to the requirements of the law.