

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



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Results of Monitoring the Election Day of Zugdidi City Municipal Assembly By-Elections

The Georgian Young Lawyers' Association monitored by-elections of Zugdidi City Municipal Assembly on 13 May 2018. Elections were held in three electoral precincts in the local majoritarian electoral district of Tsaishi Community. Static observers of GYLA monitored the entire Polling Day in all three electoral precincts, the district electoral commission was also monitored.

Election Day was mostly peaceful and voters were free to make their choice. On the Polling Day, **observers of GYLA filed a total of 6 complaints with the electoral administration** over refusal of commission members from the United National Movement to fulfill duties of a commission member.

Observers of the organization paid special attention to implementation of procedures for vote counting and drafting of summary protocols by electronic means. More specifically, all three precincts used special machines for casting and counting of votes. It was a pilot testing of e-counting, which is a novelty and may serve as the basis of the decision to introduce electronic counting of votes in the future.

The electoral administration was ready for pilot testing of the procedure for electronic counting and tabulation of votes. PEC members performed effectively on the Polling Day. However, on account of the novel voting procedures the polling process proceeded at a slower pace compared to other elections. Registrars of voters had to spend some time on explaining voters about new rules for filling in ballot-papers and how to correctly place them in a special envelope.

Overall the process of e-counting was successful. Polling results became known soon after the polling process was concluded, diffusing the tension that traditionally exists at polling stations.

GYLA welcomes and supports any initiative that aims to increase effectiveness of PEC performance and improve electoral processes. The organization supports simplifying

polling procedures and introducing new technology at polling stations, including electronic counting of votes.

Notably, most problems identified by GYLA ☐ monitoring of elections over the past few years [had to do with counting of votes and summarizing of results.](#)[1]

It should be noted that the terms of using electronic means for counting of votes during Zugdidi City Municipal Assembly By-Elections have been established by a transitional provision of the Election Code and the corresponding resolution of the CEC.[2] These procedures were different from the polling procedures provided in the Election Code.

We believe that in an event of using electronic means for elections, the normative framework should be improved and brought in full compliance with the rules for implementing electoral procedures using electronic means. Basic polling procedures provided in the Election Code should not be disregarded by adopting regulations meant for exceptional cases. Success of the said process also depends on voter education and awareness, as well as tailoring ballot form and design and the procedure for filling in the ballot paper to individuals with specific needs.

Violations detected and trends identified:

- Free medical testing on the Polling Day

As elections progressed on the Polling Day, free testing for HIV/AIDS, tuberculosis and hepatitis C within the state program was available to voters outside the polling station no.74, during a certain period of time. This fact was witnessed by GYLA observer. The information was also reported by local media.[3]

According to this report, the program has been implemented in the village for more than a month but the reason why free medical tests were provided on the Polling Day was that people do not visit outpatient clinics to make use of this opportunity.

Under Art.25² of the organic law of Georgia on Political Associations of Citizens, a party may not, directly or indirectly, through a party candidate, representative or any other person, transfer or distribute goods or services to citizens of Georgia free of

charge (not including the exceptions allowed by the law), or to entice citizens of Georgia by supplying or promising assets or services. In addition, it is prohibited to carry out said actions in favor of or against a party.

GYLA notified the Central Election Commission of Georgia about this fact. We believe that this issue should also be examined by the State Audit Office. GYLA continues to study the fact.

- Campaigning outside polling stations

Supporters of electoral subjects were present outside all three polling stations (no.73, no.74 and no.103). Political union *European Georgia* – *Movement for Freedom* was campaigning outside all three polling stations by screening videos on specially installed monitors to explain voting procedures in a manner that benefitted their candidate. In addition, supporters of the political union *Georgian Dream* placed party flags and campaign materials outside polling stations no.73 and no.74, while supporters of the *Free Georgia* brought the old national flag to the territory outside the polling station no.74.

The existing legislation prohibits campaigning on the Polling Day inside the polling place, while campaigning outside the polling place is allowed. Campaigning outside the polling place is a problem because it can be viewed as a mechanism for influencing free will of voters. The issue should be regulated by law. One possible solution is declaring election silence on the Polling Day, as is the case with certain countries. Another solution is introducing the notion of a territory outside polling station in the Election Code.[4]

- Violation of casting of lot procedures

In all polling stations of Zugdidi Electoral District of Tsaishi Community, commission members appointed by the *United National Movement* refused to participate in casting of lots for identifying commission members that would accompany the mobile ballot-box (polling stations no.74, 103 and 73 of Zugdidi).[5]

We believe that refusal of the commission members to participate in the casting of

lots or to perform functions determined as a result of casting of lots amounts to inadequate performance of obligations of a commission member or culpable failure to perform such obligations, which jeopardizes conduct of the election procedures in compliance with requirements of the law.

Notably, over the last few years some PEC members have intentionally refused to fulfill obligations of a commission member provided in the law, which can be viewed as a form of boycotting. Although certain changes were made in the law in 2017 to mediate the risks, the fact is that the existing provision is inadequate to ensure against all anticipated risks. There is still a possibility for actions of certain commission members to create risks of disrupting the polling process at a polling station. It is important to continue discussions in this regard. In addition, this issue suggests that composition of the electoral administration needs to be reformed.

Since the day it was founded in 1994, GYLA has been actively monitoring legislative, executive and local self-government elections in Georgia, in an attempt to promote conduct of elections in a peaceful and fair environment, and strict abidance by Georgian legislation during the election processes.

[1] Post-election day complaints mostly concerned a number of inaccuracies in PEC summary protocols. More specifically, inconsistently filled in summary protocols, numbers not reconciling, protocols of correction prepared in violation of legislation, etc. are still a challenge.

[2] Art. 185¹⁶ of the Election Code of Georgia; Resolution no.24/2018 of the Central Election Commission of Georgia, dated 16 April 2018

[3] <http://www.radioatinati.ge/akhali-ambebi/article/64333-caishshi-saarchevno-ubnebthan-c-hepatitisa-da-aiv-shidsis-ufaso-analizebi-tardeba.html>

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[4] We believe that campaigning and distribution/placement of campaign materials in a polling place and within a certain radius (50-100 meters) from a polling place on the Polling Day should be prohibited.

[5] Pursuant to subparagraphs 11A and 111A of Art.61 of the Election Code, functions are assigned to commission members based on casting of lots carried out before polling begins. The commission chairperson identifies, by casting lots, 2 commission members from among the members appointed by parties to accompany a mobile ballot box (if necessary). If a member of the commission to accompany the mobile ballot box, identified by casting of lots, refuses to fulfill the function assigned to him/her, s/he loses the right to participate in subsequent casting of lots for distribution of other functions of commission members. PEC chair should decide which functions to assign to such commission member.