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12.04.2017

**On the Process of Post-Electoral Complaints:**

**TECs and the CEC**

**Signed Voter Lists**

The legal team of the Citizen Observer Initiative (hereinafter: the COI) has launched a process of complaints on around 1000 facts of violations reported by its observers working in the field. On 3 and 4 April 2017, 325 complaints were submitted to the 37 TECs /no complaint was sent to TEC 6/, of which 167 were complaints based on facts of violations of objective electoral rights and 158 - on subjective, notably the rights of the COI observers.

There were a number of obstacles to the effective carrying out of the complaints process conditioned by the new restrictions introduced by the legislative amendments adopted by the Government in May 2016. There were also obstacles created by a number of TECs. The restrictions introduced by the new amendments were directed mainly to reducing the number of complaints filed by the legal team of the COI.

These restrictions included:

1. Prohibition on submission of complaints by post and a requirement to hand deliver a complaint to the relevant TEC;
2. Limiting the deadlines for the submission of complaints: on the day of voting complaints can be submitted by 22.00pm; on the day following the day of voting – between 12.00pm and 18.00pm; and on the second day following the day of voting – between 9.00am – 11.00am.
3. Legal consequences of not attaching the originals of POAs to all complaints;
4. The requirement to attach a copy of the certificate of the observer submitting a complaint.

These requirements created an unnecessary burden on launching an effective process of complaints by the legal team, as a result of which it was impossible to submit any complaints during the day of voting and it was impossible to submit any complaints during the counting and the summary of the results of the vote since the TECs were allowed not to accept them by law.

In addition to the aforesaid, in 4 TECs, the members of TECs were refusing to accept the complaints by saying that the person having delivered the complaints had to have a POA from the complainant, which was a requirement not foreseen by the law. They only accepted them after lengthy explanations and negotiations that a courier is not required to have a POA for delivering a complaint to TEC.

**The Issue of Appointment of TEC Hearings**

In 3 TECs – numbers 30, 28 and 10 - hearings were initially scheduled on the same day or the day after the TECs received the COI complaints, which means that there was going to be no effective examination of these complaints as the TECs obviously did not spend reasonable time on even getting familiarized with these complaints.

TEC 10 decided to nevertheless postpone the hearing to 6.04.2017 later that day.

The COI received several calls from different TECs in the evening of 6.04.2017 and early morning of 7.04.2017 notifying the legal team about holding hearings on the same day. Whenever the notice was too short,a motion was made by phone to postpone the hearing to a more reasonable time to enable the lawyers and observers to attend the hearings. These motions were rejected in the majority of cases.

A call was received from TEC 24 at 10.30 notifying about the hearing to be held at 12.00. A motion was made on postponing the hearing to enable the COI to participate in the hearing. The COI was asked to submit the motion in writing, which actually means delivering this motion to Vanadzor.

TEC 29 notified at 11.06 that they were to hold a hearing at 12.00. A motion was made about postponing the hearing. The TEC representative hang up without answering.

TEC 23 notified the COI at 10.50 of a hearing to be held at 12.00. A motion was made about postponing the hearing. The answer was that the motion would be examined and that the TEC would call back. However, the COI received no call back.

TECs 29, 14, 15, 24, 32 and 12notified in the morning of 7.04.2017 of the fact that they were convening hearings on the same day. The time of hearings ranged from 10.30 to 15.00.

The people who spoke on behalf of TECs 2 and 29 informed us that the timing of hearings was agreed with the CEC. From the conversations with these two TEC representatives it became clear that TECs lacked the requisite independence and that they agreed their steps with the CEC.

The TECs’ short notices aimed at depriving the COI lawyers and observers of the possibility to attend TEC hearings. However, the lawyers managed to attend the overwhelming majority of the hearings of which they were notified. The couple of exceptions related to hearings with unreasonably short notices and long distances.

It should also be noted that the COI had observers in all TECs from 2.04.2017 until 7.04.2017. All TECs kept insisting that the observers evacuated the premises of TECs given the fact that TECs were not convening any sessions and, therefore, the observers had no right to be there. And this was happening despite the fact that the COI member organizations submitted more than 300 complaints to various TECs. The observers reported that TECs were claiming to have no duty on those days whereas they were supposed to examine the complaints sent by the COI.

Once it became clear that the COI lawyers were attending the hearings, the remaining TECs then stopped notifying the COI of any forthcoming hearings.

In view of the fact that the COI submitted complaints to all TECs except TEC 6, and also the fact that TEC decisions become effective from the moment they are read out in the hearing, the COI is now deprived of the right to appeal certain decisions in a timely manner since the destiny of a number of complaints is uncertain and the decisions taken on these were not made available to the COI.

As it has already been mentioned, in a number of cases (16 cases) the COI was not notified about the sessions at TECs at all, which means that the date of sessions, as well as date of adopting decisions remaintotally unpredictable for the complainants. According to the new Electoral Code, TECs do not have any obligation to notify the complainant about the adoption of the decision either. The COI has received decisions which have been dated 8 April, which means that the deadlines set by the Electoral Code were not met, moreover, appeals and subsequent consideration of them in CEC was also thus made impossible.

The fact of adoption by TECs of decisions on the COI complaints on either April 7 or the following days made it impossible to have the CEC examine appeals of these decisions prior to summarization of election results on 9.04.2017. It should be noted that the law itself creates such an obstacle for the examination of the CEC of these appeals.

**The Hearings of the COI Complaints by TECs**

The lawyers who attended the hearings at TECs on behalf of the COI observers and member organizations reported the following:

On 6.04.2017, TEC 10 had draft decisions on refusing to institute proceedings. The lawyers, however reported that despite this, they were actually considering the complaints on the merits and asking the observers who attended the hearing questions on the violations they have reported /i.e. the merits of the case/. This, however, did not change the fate of these decisions and they were finally adopted as decisions on refusing to institute proceedings. According to the lawyers, the TEC members demonstrated clear bias and instead of listening to what observers had to say on a number of violations, they were expressing opinions that these were not violations and making various assumptions justifying the perpetrators of these violations.

On 7.04.2017 in TEC 9, the Commission already had draft decisions, one of which was about refusal to institute administrative proceedings, another on dismissing the complaint and the third – on referring the complaint to the law enforcement bodies. COI’s lawyers submitted motions on a/ examining the video recordings; b/ inviting PEC members to testify and c/ on examining the logs of the relevant PECs, which the Commission refused to accept stating that they would address the issue of accepting/refusing the motions by its decision.

The Commission refused to institute administrative proceedings on the failure by PECs to register the observers’ observations in their logs by stating that there was no evidence that the observers had claimed such a right. The Commission also refused to invite the relevant observers and interview them on the circumstances of this violation.

On 7.04.2017,when the COI lawyer arrived in TEC 32 at 11.45 he was told that the hearing was at 10.30 and that it was over. The lawyer submitted a POA given to him by the three COI member organizations, as well as 3 motions – on examining the logs of PECs no 32/7, 32/10, 32/20, 32/22, 32/25, 32/29, 32/31, 32/34, 32/39, 32/4 and 32/24; on providing him with the copies of the video recordings of the same PECs and/or enabling him to examine these; and on inviting the members of the PECs for an interview. These documents were accepted only after negotiations, which lasted for 10 minutes. The chairperson of the Commission refused to accept the POAs given by observers. The decisions taken by TEC 32 on the complaints of observers were given to the lawyer at 12.29 but he was not provided the minutes of the hearing despite the fact that the TEC chairperson assigned the secretary to give the minutes to the lawyer. The lawyer waited for a while to find that both the Chairperson and the secretary had disappeared. The lawyer visited TEC 32 later that day and once again demanded a copy of the minutes, which the secretary again refused to provide. In a few minutes the all the members of the commission came and started signing the log which made it clear for the lawyer that earlier they were either not present in the hearing or did not sign the minutes.

On 7.04.2017 another COI lawyer participated in the hearing held by TEC 20. The Commission had received 10 complaints of which 6 had been submitted by the COI. Note should be taken of the fact that the TEC had draft decisions which they read out during the hearing and adopted with none of the TEC members putting forward any objections to them. The lawyer submitted three motions in the course of the pronouncement of the first decision. However, the chairperson decided to decline the first motion and leave the other two unexamined without even putting these issues to the vote of the rest of the Commission. One of the motions related to the examination of the logs of the relevant PECs from which the COI observers reported violations. The Chairperson reasoned that, first, the logs had already been examined, second, they had been sent to the CEC and, third, that they had to take a decision within defined timeframes and the motions were only submitted during the hearing. The Commission adopted 5 decisions on refusal to institute administrative proceedings and one decision on dismissing the complaint on not allowing the COI observers to make observations in the PEC log. The TEC decided that there was no observer named Christina Lazar Sahakyan in PEC 20/22. The name of the observer was ChristinaSahakLazaryan. The lawyer motioned the TEC to regard this as a formal mistake. However, the TEC rejected this motion.

In one instance, the TEC decided that since the observer was not registered in the PEC log, the complaint on her behalf was not valid.

As regards the failure by PEC to register the observers’ observations in the PEC log, the invited PEC members gave a written statement and insisted that the observers had not put forward such a demand.

On 7.07.2017 in TEC 26, the proceedings were similar. The motions submitted by the COI lawyer were declined and the Commission proceeded to pronouncing the draft decisions taken on the complaints submitted by the COI. In the cases of 3 PEC chairpersons the Commission informed that it had submitted a motion to the CEC on depriving these chairpersons of their PEC licences in view of the fact that a violation of the observers’ rights occurred due to failure to register the observers’ observations in PEC logs. The motions put forward by the lawyer were all rejected.

On 7.07.2017 in TEC 28, the COI lawyer reported that during the hearing of the Commission three draft decisions were read out, all of which related to the issue of the legal standing of the non-governmental organization. The cited legal basis was the decision of the RA Cassation Court No VD/3275/05/09 dated 1 April 2011. This decision was simply copied in the above three decisions with no regard being paid to the fact that a new law on NGOs was in force and the cited articles 3 and 15 now regulated totally different issues. In all cases the TEC found that the NGO did not have a standing to bring a complaint and did not consider that the NGO was authorized to bring a complaint on behalf of its observers. The four motions submitted by the lawyer were not considered due to the fact that the TEC found that these were new complaints and did not consider them.

On 7.04.2017 at 12.00 the COI lawyer participated in the hearing of TEC 31 in Gyumri. At issue were the 16 complaints relating to the violations recorded by the observers of the 3 COI member organizations. The Commission had a draft decision, which they went on to read out and found that the proceedings must not be instituted due to the fact that the observers did not have a legal standing.

On 7.04.2017 the COI lawyer participated in the hearing of TEC 21. The lawyer submitted three motions, which the Commission accepted but refused to consider. Despite the fact that the Commission refused to institute proceedings on the complaints, during the hearing the chairperson of the TEC gave his views on certain issues related to the merits of the complaints. For example, he believed that the overcrowding of PECs was due to failure of the voter registration equipment.

On 7.07.2017 in TEC 14 the Commission started by pronouncing the draft decisions, following which the chairperson put the decisions to the vote and the decisions passed unanimously. In all decisions it was indicated that an NGO did not have a legal standing to bring such complaints but could only challenge the decisions related to its accreditation. In the case of one complaint in which it was stated that the observer’s observations were not recorded in the PEC log, the TEC decision stated that they were motioning the CEC to deprive the chairperson of PEC 14/11 of licence, which nevertheless does not have any impact on the results of the vote in that polling station. Since the hearing was convened on a short notice, the observers arrived at the end of the hearing and were not heard.

**The Issue of Posting the Decisions of TECs on the Walls of TEC Buildings**

Under the Armenian electoral legislation, TEC decisions must be pinned on TEC walls within 24 hours following their adoption. This, added to the provision, according to which these decisions become effective once they are pronounced during TEC hearings, creates obstacles for appealing these decisions in such a timeframe that the CEC assesses the impact of these appeals while summing up the results of elections on the seventh day following the election day.

It should be noted, however, that in a number of cases the lawyers working for the COI recorded that these decisions were not pinned on the walls of the relevant TECs within the deadline set by the Code.

In particular:

On 7.04.2017 at around 14.00 one of the lawyers working for the COI visited TEC 30 to check whether the decisions adopted by that TEC were pinned on the wall in a place visible to all. TEC 30 is located in a schoolbuilding. The lawyer took a picture of the list of the candidates from parties and party alliances and found no other decisions on the TEC wall. Despite the fact that it was a working day, none of the TEC members was found in the TEC building and the doors of their workrooms were locked. The policeman that was found in one of the rooms told the COI lawyer that in the morning the TEC members were there but later they left.

The requirement of pinning the TEC decisions on the walls continues to remain problematic in terms of the right to bring an effective appeal against these decisions. The COI had recommended that these decisions be posted on the CEC website However, the authorities keep ignoring this recommendation.

**The Process of Complaints to the CEC**

In all cases that the decisions of TECs were made available to the COI by either posting on TEC walls or sending them to the COI on 7.04.2017 (and not earlier), appeals on these decisions were drafted by the COI legal team. These appeals were drafted on 8.04.2017 despite the fact that by law the COI had three days at its disposal to draft the appeals. The reason for such speed was the intention to put information on these violations before the CEC before the latter summarizes the results of elections on 9.04.2016.

The COI legal team intended to submit 50 appeals against the decisions of 17 TECs (2, 3, 7, 8, 9, 10, 11, 14, 18, 20, 21, 22, 25, 26, 30, 32 and 36) on 9.04.2017. The CEC, however, refused to accept these appeals on the grounds that they were hand delivered to the CEC on a non-working day (9.04.2017, which was Sunday). In the meantime, the CEC was holding a session at 15.00 on 9.04.2017 to summarize the results of elections, which actually meant that Sunday was not a non-working day for the CEC. The COI believes that the CEC actually declined to accept the appeals with a view to avoiding to indicate the existence of these appeals in the decision on summing up the results of elections and to assess their impact on the results of elections.

The CEC accepted these appeals on Monday, 10.04.2017.

In summary, the work of the COI legal team demonstrates that the process of complaints continues to be an extremely formal process and that the relevant commissions are not interested in carrying out an effective examination of the violations of electoral rights of the actors of this process.

**On the Issue of Voting Instead of Others: Publicizing the Signed Voter Lists**

Three people applied to us stating that they had participated in elections. Two of them stated that their signatures are missing from scanned signed voter lists, while the third person – SonaPetrosyan stated that neither she nor her sister were given the voter list for signature in polling station 4/04 and that they voted without signing in the list.

The first of the two – ArgishtiMalinyan – who submitted a statement to the CEC, received a call from the CEC informing him that he had mistaken and that he had signed in the supplementary list which was not scanned and publicized and he was asked to take his statement back. A. Malinyan remembers very well that he had signed in the main voter list for which reason he did not take his statement back and asked the CEC to give him an answer in writing. However, the CEC informed him that they were very busy and would answer after elections.

In the second case – the applicants NarekHanneyan – informed us that he had participated in the elections but his signature is missing from the lists.

Another voter- Armine Amekhyan – came to ELA’s office and stated that she hadn’t participated in elections. However, there is a signature in front of her name in the signed voter list. She asked for legal assistance. She was handed down the template of the CEC statement, which she filled in and took to the CEC. The developments can be found in this statement (<https://citizenobserver.am/hy/news/view/dkpt2017-04-12-11-50)>. On 11.04.2017 in a phone conversation with Armine Amekhyan she had received a call from the police and informed that there was voting instead of her which happened accidentally and if necessary she will be invited to give a statement.

We received 3 more messages on FB and electronically from 3 other persons and at the moment we are in the process of providing legal advice to them. They were sent the template of the statement and asked to fill it in sign, scan and send it over.

In the first case, the informer was Liana Vasakyan who told us that her sister has resided outside Armenia for over one year and that there is a signature in front of her sisters name (AstghikVasakyan) in the signed voter list of the polling station 9/31.

Narek Hanneyan also informed us that there was a signature in front of the name of his sister, Marine Hanneyan in the signed voter list despite the fact that she has resided in Ukraine for the past 20 years.

There is a signature in front of the name of another citizen – VardanHambardzumyan despite the fact that for many years he has resided in the USA and was not in Armenia at the time of elections according to his father.

The ELA received another call from a citizen informing that there was a signature in front of the name of his dead neighbor and that she was willing to sign a statement. However, in an hour she called back and told us that she did not want to get involved into such affairs.

One citizen reported that in two addresses the residents do not reside in Armenia for over 25 years whereas he does not know those who are currently registered in these two addresses and in front of whose names there are signatures in scanned and publicized voter lists. He again refused to sign a statement.

Another citizen – ElenAleksanyan – reported that her data were not included in the list.

The observer Hayk Tigranyan reported that the number of signatures in the polling station 7/12 was 905 while according to the official data this number is 917.

The regular numbers of the citizens who participated in elections are currently being input into the COI system manually in order to enable cross checking and carrying out of a number of analyses.

The initial plan was to automatically input the data from the slips print out from the voter registration equipment, which appeared to be insufficiently correct due to discrepancies between the data in the slips and the scanned voter lists. Incidents of such discrepancies were also reported by observers.

So far due to the incident with Armine Amekhyan we have not submitted any other statement and to our knowledge this was the only case that has been referred to the police.

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