

Tamar Zhvania

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Dear colleagues,

I am very glad to have this chance to share with you Georgia's experience in dealing with electoral disputes. Thanks to CoE and Venice commission, this annual platform gives us a unique opportunity to discuss the most important election processes and bring on table the challenges we face and deliberate over the ways of addressing them.

Election dispute process is quite complex in Georgia, it includes too many details and each of them may take an hour of discussion, thus, in my presentation I will give you a general overview of the process and I will share with you in detail the challenges which we are in the process to resolve; I will also share some of the established mechanisms, which were recognized as a positive addition to the process.

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Briefly speaking about the EDR system within the Election Administration of Georgia, I should say that during the election period, electoral complaints and appeals circulate within the three – level administration, which consists of election commissions at central, district and precinct levels. These commissions are collegial bodies composed by members nominated by election subjects, and members elected by upper level commissions. In general, as you see on the slide, commission decisions are being appealed at the upper level commission and finally go to the court.

The Election Code establishes an expeditious dispute resolution process for complaints and appeals against election commission decisions with one to two calendar days allotted for appeals and decisions. It is often underlined that the reduced terms for appealing EA decisions lead to a high number of complaints submitted with procedural violations, which itself results in the high number of decisions of the commission to dismiss the discussion of the complaints on merits. However Georgia's election process is overloaded with strictly defined deadlines, which overlap and interact with each other, creating a comprehensive system where the amendments to one or another procedure lead to the substantive changes to various electoral processes.

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Apart from our internal audit, the main guiding tools for us to determine the major challenges and shortcomings within the electoral process, are the reports of international and local observer organizations as well as public opinion polls conducted prior and after elections.

October 28 Presidential Elections in 2018, were the last general elections conducted in Georgia. While evaluating the EDR process, OSCE/ODIHR outlined several challenges which refer to electoral disputes.

Overly comprehensive legislative framework is linked to a very complex election code, which tries to respond to the existing political culture of the country. The CEC after each conducted elections, drafts the

legislative proposal for the Parliament of Georgia envisaging all the procedural shortcomings revealed during the conducted elections. These proposals include the corrections to procedural issues covering all aspects of elections. Step by step we have achieved substantive improvements in terms of simplifying some procedures, correcting legislative gaps and defining new necessary regulations, however, at some point, some of the initiatives lead us to a political decision, which needs to be made by other electoral stakeholders and goes beyond the CEC competencies.

Referring to the complaints dismissed on the procedural grounds, the CEC itself tries to reduce the number of such complaints and improved its quality. Election legislation does not allow election commissions to discuss such appeals on merits. We have implemented various educational projects, which led us to the improved quality of the submitted complaints and I will be discussing them shortly. We also have a special form at election precincts to assist electoral stakeholders to submit accurate complaint. However, it still remains a challenge and we still have a high number of complaints which cannot be discussed due to the violation of the rules of its submission.

As for the voters right to submit a complaint at Election Administration, it has been a long-lasting recommendation and EA has its own vision of the issue. Voters do have a right to submit the complaint on E-day about their voting rights, which means that they may appeal the issue of their electoral registration – in particular if they are absent in the voters’ list. As for other procedural issues, representatives of civil society organizations who are present at polling stations may also submit complaints on violation of their behalf. Taking into consideration all these mechanisms created for protecting voter’s suffrage, additionally granting them the possibility to submit the complaint on E-day, can be anticipated as an additional tool in the hands of other electoral stakeholders to artificially provoke disorder at the polling station or artificially increase the number of complaints. However, it is another political decision to be made by Parliament.

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In contrast to the stated challenges, there have been initiated various practices, which are recognized to bring positive developments to the EDR process in Georgia.

In general, transparency of each and every election process is very highly valued by the Election administration. The EDR process is not an exception. For free access to the content of electoral disputes, the CEC runs an online registry of complaints, which is accessible on the CEC webpage. The OSCE/ODIHR stated in this regard-“I am quoting”- “The online register of complaints maintained by the CEC enhanced the transparency of the complaint resolution process. While complaints and appeals, including those requesting administrative sanctions, were generally handled by the election administration and courts in a transparent manner within legal deadlines, in some cases decisions lacked sufficient legal reasoning”.

In response, while working on the improvement of quality of legal ruling by the EA, the first step we took after 2017 local elections was the initiation of the internal audit of the EDR process. We have studied all DEC decisions in detail and revealed weaknesses in legal writing, we have systematized the shortcomings and developed targeted trainings for DEC representatives aiming to eliminate the improper practice and promote uniform approaches to dispute resolution. The CEC legal department carried out a substantial

amount of work within the framework of this initiative, and as a result, very positive results were achieved for the next coming elections.

Establishment of wide platforms where main electoral stakeholders sit together and bring on the table the most important electoral issues, very frequently, leads to the joint solutions of the existing problems. As another supportive platform for such discussions, the Inter-agency Task Force for Free and Fair Elections (IATF) is being established in Georgia. It has been established as an institutional mechanism to prevent and respond to violations of the electoral legislation of Georgia by public officials. IATF is being set up under the auspices of the Ministry of Justice of Georgia during the election period and representatives of CEC, political parties and local observer organizations along with other electoral stakeholders are invited to participate in its sessions. IATEF issues non-binding recommendations aiming at preventing the misuse of administrative resources, including through social media, refraining from violence, and calling public officials to respect the legal framework. During 2017 Municipal Elections, the commission issued six recommendations out of which three referred to the cases of the misuse of administrative resources. During the 2018 elections, the commission reviewed 37 complaints and issued six non-binding recommendations.

After 2018 elections, the CEC initiated and created its very own platform of discussions under the slogan - "Discuss Together". By inviting local and international observer organizations, the most urgent and pending challenges which need to be addressed are being discussed during the joint meetings. Exactly the EDR process was the main topic of discussion of June 18 meeting where very important ideas were shared by electoral stakeholders.

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And still the main and the most powerful tool at hand of the Election Administration of Georgia to advance the EDR process, is the educational programs and training, which lead to awareness raising and capacity building of electoral stakeholders.

In terms of education policies, we are not restricted by training only EA representatives. We try to reach out to other election stakeholders and build their capacity in submitting and dealing with election complaints. We frequently host legal experts and practitioners at the CEC in order to enhance the qualification of our legal staff in dealing with election disputes, administrative proceedings and legal writing. For 2019 we have initiated a new project with the support of CoE, which we think will be very fruitful in terms of analyzing the legal shortcomings in EDR process. Within the framework of this project, the CoE legal expert will research and study in-depth the decisions of the Election Commissions. The expert will focus on detecting the formalistic approaches to the particular cases and will issue a recommendation on the possible improvements of the commission's legal decisions. This will enable us to see our challenges from the perspective of the independent expert and evaluate our weaknesses from the side. We think this will be the best way to promote new tangible improvements in the EDR process.

One of the very important programs supported by IFES refers to the conduct of working meetings with judges discussing administrative cases of Common Courts. The most recent two-day working meeting was conducted in Borjomi in September 2018 by the CEC in cooperation with the Supreme Court, with the

involvement of the High Council of Justice and co-financing by IFES. Similar programs significantly support the improvement of the quality of rulings on election disputes.

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Referring to educational projects, I would like to share with you another quote from OSCE/ODIHR final Report: “Citizen Observers and party representatives could benefit from further training on procedures on election dispute resolution and documenting election violations. The CEC could consider additional efforts to educate stakeholders on the complaint process and their right”.

As you see on the slide we go beyond the EA and train all electoral stakeholders who are involved in EDR. Most recent trainings conducted for EA representatives and for the representatives of other state entities include as participants the DEC Chairpersons, Deputy Chairpersons, and Secretaries; we reach out to the representatives of the executive and local self-governing bodies, observers, representatives of political parties and election subjects.

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To conclude, I would like to underline that, over the years, we have achieved tangible progress in terms of improving various aspects of election processes in Georgia, including the EDR. While analyzing the EDR statistics, we track not only the number of the complaints but also the sources and the content. The comprehensive registry of complaints gives us the possibility to conduct complex analysis of the complaints and relevantly respond to the main tendencies and reveal the most vulnerable aspects of EDR. During the recent years, the statistical analysis of the disputes and the content of the complaints revealed that we have fewer and fewer requests for annulments and recounts of PEC results; DEC has a better quality of legal writing and rulings; and we have fewer and fewer cases appealed in the courts.

The main measurement of our success is directly linked with the satisfaction of voters in the service that EA provide to them. By tracking the voters’ attitudes towards the Election Administration over the years, we can confidently say, that their positive attitudes and trust increase over the years. These tendencies are very well-reflected in public opinion polls and I very often shared them in my presentations. However, in terms of procedural issues, we highly value the reports of observer organizations. For this slide I have selected some of the statements from OSCE/ODIHR final report on 2018 elections, which we are very glad that they appear in the report.

In the end, I would like to underline the importance of joint efforts of all electoral stakeholders and state that creating fair election environment requires commitments from all involved parties as well as the respect to the widely recognized rules. A single actor may direct its commitments to a particular priority and achieve significant progress in one or other aspect; however the systematic improvement and overall integrity of election processes require uniform approach and the will of all electoral stakeholders to design the effective responses or resolve the problem.