

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Entering Voters into the Mobile Ballot Box List May Contain Signs of Criminal Offence

GYLA continues to study the decision made by Vani DEC no.53 on 26 April 2018. By this decision, in **25 out of 31 polling stations within Vani Electoral District, about 300 additional voters were entered into the mobile ballot box lists**, which is more than 3% of registered voters in the polling stations concerned.

Observers of GYLA additionally requested from the DEC copies of materials related to

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the above proceedings, in particular:

- decree no.13/2018 of the DEC and its annex;
- minutes of the relevant meeting of the DEC;
- copies of voter applications for mobile voting received by the DEC from Vani polling stations;

In addition, observers of GYLA studied the issue of entering voters into the mobile ballot box list at polling stations no.21 and no.23 of Vani. **Based on the interviews with PEC members** the following was found:

- At the polling station no.21, applications for entering voters into the mobile ballot box list were submitted to the PEC by coordinators, these applications then served as the basis for entering the voters into the mobile ballot box list;
- At the polling station no.23, it was found that several voters entered into the mobile ballot box list refused to cast a ballot stating that they didn't want to participate in elections. According to PEC members, these voters were not pleased about the fact that they had been included in the mobile ballot box list.

Under para.2 of Art.33 of the Election Code, [if a voter](#) is unable to visit polling station on polling day, s/he may apply to the PEC for mobile voting at least two days before the polling day. A voter is entered into the mobile ballot box list after *the PEC secretary registers and endorses with his/her signature a written application or telephoned verbal application of a voter specifying the precise time of the telephone call and the telephone number.*

In light of this, it is safe to conclude that with regard to polling stations no.21 and no.23 of Vani, legal regulations for entering voters into the mobile ballot box list have been possibly violated. In addition, the above facts may contain signs of a criminal offence. Further, it is possible that similar facts also occurred in other polling stations.

We would like to explain that the decree no.13/2018 of the DEC is unsubstantiated, so are the minutes of the relevant meeting of the commission. Therefore, we are unaware of what exactly prompted the DEC to make such decision and whether it had been informed about the need of concrete voters to cast a ballot through a mobile

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ballot box.

Under Art.96 of the General Administrative Code of Georgia, during an administrative proceeding, an administrative agency must investigate all important case-related circumstances and render the decision through the evaluation and comparison of those circumstances. Issuance of an individual administrative act on the basis of a circumstance or a fact not investigated by the administrative body in the manner determined by law is prohibited.

By virtue of Art.53 of the Code, an individual administrative act issued in writing must include written substantiation. If during the issuance of an administrative decree an administrative agency acted within its discretionary authority, the written justification must include reference to all factual circumstances that were substantially important for the issuance of the decree.

In addition, under para.7 of Art.11 of the DEC Regulations, a commission should thoroughly consider an application/complaint within 2 days after it was received and render corresponding decision (decree).

In light of the above, the DEC failed to conduct administrative proceedings in an adequate manner and to thoroughly investigate the issue, which leads us to believe that the decision in question is unsubstantiated and falls short of the principles and standards of administrative proceedings.

GYLA continues to study the case in relation to the above facts and it will publish additional information in the near future.