



ISFED
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საერთაშორისო კომისია
მშვიდობიანი საარჩევნო
საზღვარგარეთო
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Recommendations for Improved Electoral Environment

(Special Polling Stations)

I. Special polling stations

About the problem

The Election Code of Georgia allows establishment of special polling stations in military units with more than 50 voters (military servicemen, officers, persons with special rank of the Ministry of Defense of Georgia), in hospitals and other inpatient facilities with more than 50 voters, and more.

Clearly, para.4 of Article 23 of the Election Code of Georgia envisions opportunities (as opposed to mandatory rules) for establishing special polling stations, whereas DEC decided to establish (or not to establish) special polling stations in areas with more than 50 voters on ambiguous grounds.

In addition, the above provision does not provide an exhaustive list of places and circumstances where special polling stations may be set up. In particular, by stipulating that there are “more” cases where special polling stations may be set up, para.4 of Article 23 creates room for abuse. The said provision also stipulates that in a military unit (command) with no more than 50 voters, a polling station may be set up based on a substantiated written request of the unit commander. The above stipulation is ambiguous because it does not clarify what constitutes a “substantiated written request” or what serves as grounds for denying or accepting the request.

The above provision raised many questions in the past. In addition to military units, it also allows setting up of polling stations at police stations, in prisons, at the State Protection Service offices, etc. This leads us to the question of whether police counts as a military unit. Do all police officers and all personnel of Special Protection Service or the Ministry of Defense

count as military personnel?

Based on the interpretation of the foregoing provision by the election administration and court, the term “military unit” also denotes police, while the military personnel also denotes workers of the Ministry of Internal Affairs. The interpretation is founded on Article I of the Law of Georgia on Police, stipulating that “Georgian police is a system of law-enforcement, special, police and paramilitary agencies, exercising executive authority...” (old formulation).

We believe that the foregoing interpretation of the norm is wrong because according to the law, police is a system of various types agencies with different types of functions, *including* paramilitary agencies, i.e. not all agencies of police are “paramilitary”. This is further evidenced by a number of presidential decrees, including the Decree on Conscription, establishing the number of recruits for the Ministry of Internal Affairs of Georgia (MIA) to be conscribed to paramilitary sub-units subordinated to MIA, meaning that not all police units are military units.

In 2008 and 2010 elections, all employees of penitentiary institutions voted according to their workplaces (as opposed to their places of registration) because for ambiguous reasons they were required to work on the Election Day. Consequently, in 2010 such voters participated in election of LSG bodies (both through proportional and majoritarian electoral systems) for territories where they didn’t live.

On election day of 2012 parliamentary elections, OSCE/ODIHR observers noted that “some special ‘military unit’ polling stations were established in factories and Ministry of Defence repair shops; de facto, they only served civilian ministry employees, who had been reassigned from their regular polling station.”¹

The above practice is based on para.5d of Article 31 of the organic law of Georgia, stipulating that employees of the Ministry of Corrections of Georgia (in addition to a few other agencies), whose service conditions require them to be located in a place other than their registration addresses, must be included on the general list of voters according to their workplaces.

We must also highlight the recent positive trend of distancing law enforcement authorities away from the election processes. Law enforcement officers were allowed to exercise their right to vote according to their places of residence (registration), including in 2013 presidential elections. The number of special polling stations was greatly reduced: only 34 special polling stations were established for the presidential elections in 2013 - a significant decrease from 71 special polling stations in 2012 parliamentary elections², whereas in 2012 LSG elections, the Ministry of Defense drastically reduced the number of special polling stations to 9, which is a significant decrease. Members of Georgian military usually vote according to their places of residence, which is an important improvement from the earlier practice in which military servicemen voted according to their places of deployment.³

¹ OSCE/ODIHR Election Observation Mission final Report, Warsaw, December 21, 2012, p.9

² GYLA election monitoring report of 2012 presidential elections

³ GYLA election monitoring report of 2014 LSG elections

Nevertheless, establishment of special polling stations and rules for voting by military servicemen through majoritarian electoral system reemerged as a problem in October 31, 2015 by- elections of the parliament of Georgia.

Applicable International Standards

Venice Commission and OSCE/ODIHR recommend that the Election Code should include an express indication that special polling stations are set up in strictly exceptional circumstances and that, whenever possible, military voters should vote either at their place of residence or in civilian polling stations (located near their base).⁴

Based on para.3.2. (xi) of the Code of Good Practice in Electoral Matters, “military personnel should vote at their place of residence whenever possible; otherwise, it is advisable that they be registered to vote at the polling station nearest to their duty station”.⁵ “It is recommended that civilian Ministry of Defence employees and related enterprises and uniformed personnel not assigned to barracks or base housing vote at their regular polling stations. The possibility that all other military personnel stationed within Georgia vote at regular polling stations could be revisited.”⁶

As to military servicemen, “It is not unusual for electoral legislation to permit the setting up of special polling stations within military units located in remote areas that are far from any population center. While such an arrangement may be unavoidable, it should be accompanied by an express stipulation that this is strictly exceptional and, wherever geographically possible, voters serving in the military should vote in ordinary civilian polling stations.”⁷

“Where servicemen cannot return home on polling day, they should preferably be registered at polling stations near their barracks. Details of the servicemen concerned are sent by the local command to the municipal authorities who then enter the names in the electoral list. The only exception to this rule is when the barracks are too far from the nearest polling station.”⁸

Recommendation

In light of the foregoing, we believe that members of the military should vote in ordinary polling stations, according to their places of registration. In order to do so, they should apply to relevant PEC 16 days in advance. If a member of the military can't vote in ordinary polling station because, for instance, s/he is unable to return home on the Election Day, s/he may vote in a civilian polling station nearest to his or her duty station.

⁴ Venice Commission and OSCE/ODIHR Joint Opinion on the Election Code of Georgia, as amended through March 2010, adopted by the Council for Democratic Elections at its 33rd meeting and by the Venice Commission at its 83rd Plenary Session (Venice, June 4, 2010), <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cddl-2010013-e>, retrieved on Feb 4, 2011, para.60

⁵ Code of Good Practice in Electoral Matters, October 30, 2002, Opinion no.190/2002

⁶ OSCE/ODIHR Election Observation Mission final Report, Warsaw, December 21, 2012, p.9

⁷ OSCE/ODIHR Guidelines for Reviewing a Legal Framework for Elections, January 2001, Warsaw, p.29

⁸ Code of Good Practice in Electoral Matters, October 30, 2002, Opinion no.190/2002

We believe that establishment of special polling stations should only be allowed under strictly exceptional circumstances – e.g. when a member of the military is on active duty and therefore, unable to leave his/her military unit - in order to voting by non-military citizens or police officers in election in special polling stations.

Therefore, the Election Code should provide an exhaustive list of cases and circumstances in which special polling stations may be established. The Code should also provide strictly defined criteria for setting up of special polling stations, in order to avoid any abuse of applicable legislation. The Code should provide the list of circumstances that will make up a valid request for establishing a special polling station.

Proposed wording of applicable provisions:

Paragraphs 4 and 6 should be deleted from Article

23.

Prima Article 23 should be added in the Election Code and formulated as follows:

1. Military personnel of fixed-term contract service of military (paramilitary) forces and units of the Ministry of Defence, Ministry of Internal Affairs and the State Protection Service of Georgia shall vote according to their places of registration. To this end, they should apply to relevant DEC no later than 16 days in advance, with a request to be registered in the unified list of voters.

2. Military personnel of fixed-term contract service of military (paramilitary) forces and units of the Ministry of Defence, Ministry of Internal Affairs and the State Protection Service of Georgia whose service conditions require them to be located on a territory other than their place of registration, which belongs to a different electoral district, shall vote in polling stations nearest to their duty station.

3. A special polling station shall be set up under exceptional circumstances, no later than 15 days ahead of polling,

a) for military personnel of the Ministry of Defence of Georgia, who are on active duty on a territory other than their place of registration, which belongs to a different electoral district, and are unable to leave their place of deployment on the polling day because of their service obligations (members of the military subjected to a special regime), and their total number is above 50;

b) for military personnel of fixed-term contract service of paramilitary forces and units of the Ministry of Internal Affairs and the State Protection Service of Georgia, whose service conditions require them to be located on a territory other than their place of registration, which belongs to a different electoral district, and are unable to leave their place of deployment on the polling day because of their official obligations (members of the military

subjected to a special regime), and their total number is above 50;

c) for personnel of special penitentiary service of the Ministry of Corrections of Georgia, whose service conditions require them to be located on a territory other than their place of registration, which belongs to a different electoral district, and because of their official obligations are unable to leave their place of deployment (personnel subjected to a special regime), and their total number is above 50;

b) voters (patients) in a hospital or other in-patient treatment facility, when their total number is above 50;

c) voters imprisoned in a penitentiary facility, when their total number is above 50;

4. A military unit (command), a correctional facility, a hospital or any other inpatient treatment facility, where number of voters is no more than 50, shall be attached to the nearest polling station.

5. A special polling station shall be established under the procedures prescribed by the present law, according to location of a military unit, correctional facility, hospital and any other inpatient treatment facility.

6. A DEC should publish by press and other media the following information within no later than two days after establishment of a special polling station: number of polling station, PEC address, telephone (fax) number and other details.”

Para.8 of Article 23 should be formulated as follows:

“A DEC should publish by press and other media the following information within no later than five days after establishment of a polling station: number of polling station, PEC address, telephone (fax) number and other details.”

2. Voters on special list and their right to vote

About the problem

One of the most controversial issues is voting by military personnel deployed outside their places of registration. In particular, unlike voters on a special voters’ list, members of the military are able exercise their right to vote outside their place of registration. During previous elections, some electoral subjects suspected that movement of military forces in different polling stations ahead of the Election Day aimed to artificially increase the number of certain political party supporters.

Recommendation

We propose the following solution: similar to local elections, military personnel should be able to vote in majoritarian elections according to their address of registration. In particular,

unlike

other voters on the special list of voters, military personnel should not be able to exercise their right to vote in majoritarian or local self-government elections while they are on active duty outside the district where they are registered.

In addition, changes must be made in the existing practice, for the above rule to also apply to penitentiary personnel. Therefore, we believe that special penitentiary personnel should also be included in the annex of the special list of voters.

Proposed formulation of applicable provision:

Para.1f of Article 32 should be formulated as follows:

f) personnel of the special penitentiary service of the Ministry of Corrections of Georgia, whose service conditions require them to be located in a place other than the address of registration, which belongs to a different electoral district.

Para.5 of Article 32 should be formulated as follows:

Voters in a special list shall participate:

a) In both majoritarian and proportional elections if a voter changes location within the territory of the same electoral district, or of the same local election district in case of local self- government elections.

b) In Georgian parliamentary elections held under proportional electoral system, as well as in the Georgian presidential elections and in referendum, if a voter votes in the territory of another election district.

c) In Mayoral/Gamgebeli elections, if a voter's address of registration falls within the boundaries of electoral district of corresponding self-governing city/community.”

Paragraphs 6 and 7 of Article 32 should be deleted.