



Analytical Report № 3.

The Practice of Bringing to Justice Members of Election Commissions for Electoral Violations in the run-up to Election Day; Analysis for the period 2009 - 2015

Local Elections on September 13, 2015 Russian Federation

1. Introduction

In the run-up to Election Day, scheduled for September 13, 2015, the Interregional Public Foundation for Civil Society Development “Golos-Ural,” a subsection of the Movement for the Defense of Voters’ Rights “Golos” (hereinafter “Golos”), conducted the monitoring of the judicial practice of holding election commission members legally responsible for electoral law violations.

The research focused on violations of the electoral legislation committed by voting members of election commissions, for which they were held administratively or criminally responsible.

This report uses information and materials on the prosecution of members of election commissions posted on the official websites of the judicial and law enforcement bodies, on the websites of election commissions, as well as in judicial archives and the media.

“Golos” carried out the monitoring of prosecution cases for the period 2009-2015 because the largest number of judicial decisions and media reports to which “Golos” managed to gain access date back to 2009.

The report uses court rulings from 37 regions of the Russian Federation: Republic of Buryatia, Republic of Dagestan, Republic of Mari El, Republic of Sakha (Yakutia), Republic of Chuvashia, Tatarstan, Krasnodar Region, Primorsky Krai, Amur Region, Astrakhan Region, Vladimir Region, Voronezh Region, Ivanovo Region, Irkutsk Region, Kaliningrad Region, Kaluga Region, Kostroma Region, Kurgan Region, Kursk Region, Leningrad Region, Lipetsk Region, Moscow Region, Murmansk Region, Nizhni Novgorod Region, Novosibirsk Region,

Orenburg Region, Orel Region, Penza Region, Rostov Region, Ryazan Region, Samara Region, Saratov Region, Sakhalin Region, Tver Region, Tomsk Region, Chelyabinsk Region, and St. Petersburg.

These sample areas represent federal regions holding elections on September 13, 2015 that have the most complete information available on the subject matter.

The study examined the practice of **holding commission members administratively responsible** based on the following articles of the Code of Administrative Offences of the Russian Federation (hereinafter, the “Administrative Code”):

- Article 5.6 of the Administrative Code. Violation of the rights of an election commission member, a referendum commission member, observers.
- Article 5.11 of the Administrative Code. Election campaigning, referendum campaigning by persons who are prohibited from it by federal law.
- Article 5.22 of the Administrative Code. Illegal issue and receipt of an election ballot or a ballot for voting in a referendum.
- Article 5.24 of the Administrative Code. Violation of the law on vote counting, determining election or referendum results, and writing a report on voting results marked “Repeated” or “Re-count of votes.”

In addition, “Golos” was interested in **the practice of criminal prosecution of commission members** based on the following articles of the Criminal Code (hereinafter, “the Criminal Code”):

- Article 142 of the Criminal Code. Falsification of electoral documents, referendum documents.
- Article 142.1 of the Criminal Code. Falsification of voting results.

“Golos” emphasizes to all participants of the electoral process the need for strict observance of electoral legislation, as well as that legislature violators may face penalties.

“Golos” bases its work on internationally accepted standards of election monitoring; “Golos” strictly observes political neutrality, which is one of the main conditions of independent and objective election monitoring.

2. Conclusions and Recommendations

Administrative penalties that may be levied on members of election commissions are relatively minor in comparison to the severity of their transgressions. Often, holding commission members administratively responsible is indicative of efforts to conceal more serious violations of electoral laws, such as falsification of electoral documents and ballot rigging.

Most of the information presented in the report on the criminal prosecution of commission

members is linked to the falsification of election documents in order to increase voter turnout. Requests to increase turnout either come directly from the administration or are encouraged by the practice of rewarding (by means of bonuses) those election commissions that reported the highest voter turnout. Some of the cases presented in the report reference certain “unidentified persons” who, according to trial verdict reports, involved commission members in a crime or organized criminal groups together with commission members.

In cases where perpetrators were prosecuted, they received the most lenient punishment possible. In none of the cases did the perpetrators receive actual jail sentences.

It should also be noted that criminal and administrative cases were brought against commission members only in a small number of instances that offer a reason to suspect that an offense or a crime had been committed. In many cases, refusals to bring charges, or terminations of legal proceedings initiated by prosecutors, are surprising, especially where there is substantial video and physical evidence of criminal wrongdoing, and where obvious investigative actions are not being pursued by the prosecution.

The lack of penalties for massive-scale electoral law and citizen electoral rights violations helps to spread such violations further. Easy avoidance of punishment, as well as the relative lightness of punitive measures, are causes of widespread violations during elections in Russia.

We regret to conclude that judicial and law enforcement systems, and the state in general, underestimate and belittle the high degree of social danger resulting from crimes committed around elections. Election commissions of different levels show a lack of independence in decision making, and commission members act on informal instructions and recommendations that have nothing to do with the current electoral law.

These findings allow “Golos” to offer the following recommendations:

To public authorities vested with the legislative initiative:

- It is necessary to increase fines for administrative offenses related to electoral law violations and to deprive perpetrators of said offenses from the right to work in election commissions of all levels for a period of 5 years.

To election commissions at various levels:

- Do not act on recommendations and informal orders that do not comply with the current electoral law;
- Ensure greater protection of commission members in case of their persecution for refusing to commit illegal acts.

To state judicial and law enforcement bodies:

- Take measures to identify and punish instigators and organizers of crimes committed by election commission members and related to ballot rigging and election results;
- Investigate more conscientiously violations and crimes, based on clear evidence and testimony equality.

3. The Practice of Holding Election Officials Administratively Responsible for Electoral Legislation Violations

Holding commission members administratively responsible for electoral law violations is more common than criminal prosecution.

In recent years, “Golos” and its partners have recorded a significant number of violations by members of precinct election commissions (hereinafter PECs) of the rules governing voting organization, implementation and results determination, as well as instances of rights violations of other participants in the electoral process during voting. The most common violations are:

- Violation of polling station registration, including lack of information materials for voters;
- Prohibiting taking photos and videos at polling stations;
- Distortion of vote counting procedures;
- Violation of the procedure for voting outside a polling station;
- Failure to submit election commission documents for review to observers;
- Unjustified removal of observers, commission members, and representatives of the media from polling stations;
- Failure to issue or issuing violations of voting results protocol copies.

According to judicial precedents, the **most commonly** prosecuted offence among those listed above for election commission members is incorrect **certification of copies of voting results in violation of the law**. The reason is that the very copy of a voting protocol is the written evidence of a violation, which can help hold a person administratively responsible, usually a chair or secretary of the PEC, who issued and certified a voting results protocol. It is much more difficult to hold PEC members responsible for other offenses because this requires video, written, and photographic evidence, as well as witness statements that would be convincing to the Court. This applies, above all, to violations of observer rights, rights of election commission members, and rights of media representatives, as well as election campaigning at polling stations, violations of vote counting procedures, etc.

In cases where there is no opportunity to penalize commission members for a more serious electoral law violation –as happens when the violation is not properly recorded – parties and

candidates try to hold commission members responsible for improper certification of a copy of a voting protocol.

For example, in the Krasnodar Region, after the elections to the State Duma of the Federal Assembly of the Russian Federation in 2011, lawyers of the Communist Party, some other parties, and several NGOs organized a wave of lawsuits and issued a series of statements to law enforcement agencies on the subject of wrongly certified copies of the voting result protocol. As a result, some members of the commission were held administratively responsible.

Penalties for certifying copies of the voting results in violation of the law are small: from 1,500 to 2,000 rubles. For other administrative offenses committed by members of election commissions, penalties are also minimal. They typically range between 1/5 and 1/3 of the monetary compensation that electoral commission members receive for their work at the polling stations.

The statute of limitations for administrative responsibility for election legislation violations is one year (Art. 4.5. of the Administrative Code). If a commission member is held administratively responsible for an incorrectly certified copy of a voting protocol, he or she is barred from working in an election commission for the period of one year.

Given that elections are held once a year, violators are able to perform the same functions already in the next elections. Consequently, **“Golos” considers it necessary to increase the penalty for false certification of a protocol copy of voting results, as well as for other administrative offenses related to compliance with the requirements of the electoral law and committed by members of election commissions**, and to deprive perpetrators of these violations of the right to work in election commissions at all levels for a period of 5 years.

Commission members sometimes commit administrative offenses in order to cover more serious crimes, such as falsification of election documents and falsification of voting results. Violations of the rights of voting commission members, rights of observers, and rights of the media are often linked to suppressing their actions on the reporting of law violations.

Distortion of vote counting procedures by commission members may be due to a desire to hide violations of electoral laws, not detected by observers and mass media representatives during the voting, and that could indicate falsification of voting results.

4. The Practice of Criminal Prosecution of Members of Election Commissions for Election Law Violations

Voting commission members face criminal charges much less frequently than administrative charges. As a rule, this is due to the direct falsification of voting results at polling stations.

As a rule, courts order punishment for criminal offenses under Part. 1 Art. 142 and Art. 142.1 of the Criminal Code only in the form of a fine (from 5,000 to 250,000 rubles) or in the form of a probation sentence. There is no information on commission members serving prison sentences for violation of electoral laws. Recent judicial precedents indicate that for forgery of several

voter documents, members of election commissions can face fines from 5,000 to 10,000 rubles, while forgery of dozens of such documents by election commissions can lead to probation sentences in the duration of 2 years.

Practice shows that in the presence of legal evidence and political goodwill (or, at least, in the absence of politically motivated resistance), voting members of commissions can be held accountable for violations of any of the procedures established by the electoral law, such as:

- Incorrectly certified copy of a voting protocol at a polling station;
- Violation of the procedure of ballot counting (for example, not filling out the extended form of the final protocol, violations of the opening sequence of portable and stationary ballot boxes, and opening a portable box without counting the number of ballots in it);
- Incorrect identification of a citizen with a passport;
- Deliberate forgery (falsification of documents) of election commission documents related to voting outside a polling station;
- Deliberate forgery (falsification of documents) of election commission documents related to early voting;
- Deliberate forgery (falsification of documents) of election commission documents in order to increase the number of voters (as a rule, in order to increase turnout);
- Deliberate forgery (falsification of documents) of election commission documents to distort voting results (i.e. increase the number of votes cast for individual candidates and parties).

Based on court documents, commission members are responsible for everything that happens at polling stations and with electoral commission documents.

Meanwhile, court documents often contain the common phrase “unidentified persons,” who according to the findings of investigations involved commission members in a crime or organized criminal groups with them. Often, the real perpetrators of the crime hide under this pretense, while commission members act merely as their executors.

The phrase “unidentified persons” appears in the judicial documents of the Moscow, Sakhalin, and Chelyabinsk regions. In the Sakhalin Region, in the election to the Sakhalin Regional Duma in 2012, the use of so-called “carousel” technology was disclosed and proven in court, whereby “unidentified persons” orchestrated multiple voting for the same individuals at different polling stations. At the same time, the only persons held responsible for this were the commission members involved in the violations.

In the Moscow Region, in the mayoral election of Voskresensk in 2009, in a building of the Voskresensk administration, “unidentified persons” enticed PEC chairpersons during the vote

count to replace ballots with votes for Mr. Yegorov with fake ballots in favor of Mr. Sleptsov. At least five PEC chairpersons were fined for ballot replacement.

In the Chelyabinsk Region, in the elections to the State Duma of the Russian Federation in 2011, at Polling Station no. 637, all the illegal actions were again committed by some “unidentified persons,” while it was only members of the precinct election commission who were held responsible for them.

Unfortunately, **law enforcement agencies are not eager to search for “unidentified persons” who give direct orders and who are organizers of election law violations.** As practice shows, “unidentified persons” are not interested in the fate of specific perpetrators (i.e. members of electoral commissions), and the members themselves are reticent to disclose the names and positions of the organizers at any stage of the investigation or during trial.

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