



Cancellation of the 2010 Palestinian Local Elections

West Bank/Gaza

International Foundation for Electoral Systems

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Background

On February 8, 2010, the Council of Ministers (the Cabinet) of the Palestinian Authority scheduled the overdue local elections for July 17, 2010. This was despite clear indications that Hamas would boycott elections in the West Bank and that Hamas authorities would prevent elections in Gaza.

The Central Elections Commission (CEC) adhered to the call and initiated electoral operations by opening voter registration centers throughout the West Bank. As anticipated, the CEC was prevented from conducting voter registration in Gaza. The CEC informed the Cabinet that it was not able to conduct elections in Gaza, and on April 25, the Cabinet issued a decision which postponed the elections there *“until the CEC is able to carry out the necessary technical and administrative preparations”*.

In the West Bank, the CEC proceeded with preparations for the polls and initiated registration of electoral lists¹ (nomination) on June 1, 2010. The nomination period was slated to conclude by June 10, according to the electoral law.

The CEC regional offices were prepared to receive hundreds of registration applications from day one of the nomination period. However, by the beginning of the last day of nomination, the CEC staff had received less than 10% of the expected number of applications. With only a few hours of the nomination period left, the CEC received information that the Cabinet had cancelled the elections and decided that it will not proceed to the next step in the electoral process - publication of the electoral lists.

On July 18, four electoral lists responded to the Cabinet’s decision by filing a lawsuit, challenging the Cabinet’s right to cancel elections.

¹ List of candidates.

Cancellation of Electoral Process

The Cabinet's decision on June 10, 2010, cancelled the call for elections, which was issued by the Cabinet in February 2010. While the wording of the Cabinet's statement mentions "*postponement*" of local elections, for all intents and purposes the decision, in fact, *cancelled* the elections indefinitely. The statement provided no explanation for the cancellation decision, other than the elections had been postponed "*for the sake of public interest*".²

Upon receiving the Cabinet's decision, the Chairman of the CEC summoned all staff for a meeting and instructed them to end all electoral activities. As the decision was announced just an hour before the end of the nomination period, the CEC instructed its field offices to continue to receive applications from lists that wished to register³ despite the announced cancellation, in the event elections were to be resumed. The CEC made a neutral statement following the cancellation, without commenting on the legality of the Cabinet's decision.⁴

Rumors of a possible cancellation circulated prior to the announcement, as internal disorganization became apparent in several political factions.⁵ Following the cancellation, a few protests were organized but, overall, the response was muted.⁶

Legal Aspects of the Decision

The Local Elections Law provides neither the Cabinet nor the CEC with the authority to cancel elections. The law does mention the possibility of "*postponing*" elections in case of technical difficulties, but only for a time period of four weeks. What is more, the request to postpone the elections must come from the CEC.⁷

However, the Cabinet's decision to cancel elections was not based in the provisions of the local elections law that allow postponement of elections; instead, the Cabinet simply cancelled its own call for elections (issued on February 8, 2010) by recalling the decision. Specifically, the decision issued on June 10 canceled two previous decisions:

- *Cabinet decision No. 01/36/13/LO/PA (issued on February 8, 2010)* which calls for local elections to be held on 17 July, 2010;

² The Cabinet's statement <http://www.elections.ps/template.aspx?id=529>

³ According to some estimates, the CEC received less than 400 lists across the West Bank, but it is unclear how many applications were complete. Over 80 % of the lists submitted their applications on the last day of nominations, many of them in the last hours. Because of the time pressure, many lists failed to submit complete applications. After the elections were cancelled, the CEC decided that it would not publish the lists and candidates that successfully registered.

⁴ CEC's statement on the cancellation of elections can be found here <http://www.elections.ps/template.aspx?id=530>

⁵ Palestinian media reported that President Abbas scolded his own faction's conduct in the local elections at the Fatah Revolutionary Council meeting on the July 22. Abbas attacked Fatah for failing to agree on candidates and to organize electoral lists: "We must hold ourselves accountable for the events that happened, but if we don't, I tell you that our movement is finished" [...] "and I don't exclude myself from responsibility". Revolutionary Council formed a fact-finding commission to investigate the decision to cancel the local elections. Jerusalem Media and Communications Center (JMCC) July 23, 2010.

⁶ In June and early July, political factions (mainly Popular Front for the Liberation of Palestine (PFLP), Democratic Front for the Liberation of Palestine (DFLP), Palestinian People's Party (PPP), Fida and Palestinian National Initiative (PNI)) and NGOs organized demonstrations to protest Cabinet's decision on cancellation of local elections. Demonstrations took place in Hebron, Nablus, Tulkarem, Ramallah, Salfeet but the organizers did not succeed to mobilize significant number of citizens and political activists.

⁷ Local Elections Law, Article 5.

- and, *Cabinet decision No. 02/46/13/LO/PA (issued on April 25, 2010)*, which declares that the Central Elections Commission is unable to conduct elections operations in Gaza and therefore local elections will go ahead in the West Bank only.⁸

While the elections law does not provide authority for cancellation, the Cabinet argued that the legality of the Cabinet's action is grounded in other laws and governmental administrative framework and practices (e.g. administrative procedures that allow for annulment of a Cabinet decision within 60 days in case of special circumstances).

Judicial Process

In response to the cancellation, four electoral lists⁹ filed petitions to the High Court challenging the legality of the Cabinet's decision to cancel local elections. The four cases relied on the same argumentation for their petitions and the Court treated the cases as one. Legal aid to the plaintiffs was provided by the human rights organizations Jerusalem Legal Aid and Human Rights Center, Al Haq, and Addameer.¹⁰ The Cabinet was represented by the attorneys Khalid Awwad and Najat Breiky from the Office of the Attorney General.

At the first hearing on July 18, the Court, headed by Mahmoud Hammad, accepted jurisdiction and scheduled the second hearing for September 20 when the case was heard on its merits. Two additional hearings were held on October 11 and November 8, before the High Court handed down the verdict on December 13, 2010.

The Appeal

In the appeal to the High Court, the plaintiffs claim that the Cabinet's decision to cancel elections constitutes unjustified interference with the citizens' right to practice democracy and partake in political life. The plaintiffs contested the legality of Cabinet's decision based on the following claims:

- First, the sole authority to request the postponement of local elections lies with the Central Elections Commission (CEC), and without CEC's request, the Cabinet cannot postpone elections.
- Second, in case the local elections are postponed, the postponement cannot exceed four weeks and the Cabinet's decision should specify a new election date within that timeframe.
- Third, such a postponement can only stem from technical difficulties, and no such difficulties were present or presented by the CEC.
- Fourth, the Cabinet's decision to cancel elections because of "unsuitable circumstances and the political situation" is not a valid justification, as the same "unsuitable" circumstances [i.e. internal Palestinian divisions] were also present when the call for elections was issued.

The Defense

After the initial hearing in July, the Cabinet submitted a written reply to the plaintiff's challenge, defending the legality of the Cabinet's decision to cancel elections. While the second and the third hearings were limited to brief presentations of the appeal and the defense, in the fourth hearing on November 8, the Cabinet's attorneys elaborated their argumentation. The attorneys argued that it was in the public interest to "*maintain*

⁸ In its defense, the Cabinet only refers to the cancellation of the second decision, which falls within the time-frame of 60 days, and not the first, which does not.

⁹ The four electoral lists are: "Ramallah for All", Tulkarem "Independents' list", "Martyr's of Asira" (Nablus), and "Al Watan for All" (Tulkarem).

¹⁰ The lawyers representing the plaintiffs are Bassam Karajah (Jerusalem Legal Aid), Nasser Al Rayyes (Al Haq), and Anes al Barghouthi (Addameer).

security” and *“prevent clashes on a national level”*¹¹, as conditions on the ground were unsuitable for holding elections. Moreover, the reversal of the Cabinet’s decision to call for elections is in accordance with administrative regulation as *“the administrative authority which issued the decision has the right to reverse the decision during a period of 60 days from the date of issue”*, according to the attorney.

The central positions of the Cabinet’s defense are the following:

- The decision to the cancel elections cannot be overruled by the High Court as it *“relates to national security”* and therefore is not within the Court’s jurisdiction.¹²
- The postponement of local elections was only intended until national reconciliation is achieved.
- The Cabinet took the decision in the interest of national stability due to the unsuitable conditions for holding elections: *“Carrying out elections as scheduled was impossible because of the coup in Gaza and its repercussions”* which included preventing the Central Elections Commission from executing electoral operations in Gaza.¹³
- Security forces would not have been able to guarantee the security, impartiality and fairness of elections in the Southern Governorates (Gaza), due to the *“fragmentation of the homeland”*.¹⁴
- The claim that the Cabinet’s decision to postpone elections was for political reasons, due to it being issued shortly before the deadline for nominations, is false, as the Cabinet did not consult with political factions before making the decision.
- Hamas and Islamic Jihad decided to boycott elections, which further contributed to the exceptional circumstances.
- Moreover, should the Court decide to nullify the Cabinet’s decision to cancel elections, the ruling would not be implementable. Circumstances on the ground remain unsuitable for elections, and considering how much time has passed since the electoral process has been interrupted, the Central Elections Commission would have to, for example, undertake a new voter registration program to include voters that have turned 18 since the last registration.

The Verdict

On December 13, the High Court handed down the final verdict, ruling that the decision of the Cabinet to cancel the local elections is illegal. Two of the appeals¹⁵ were rejected by the Court, however, as their registration as candidates for the electoral lists lacked proper documentation. Judge Hammad read aloud the nine-page decision to the court room, stating the following reasons as the basis for the Court’s ruling:

¹¹ See the Cabinet’s written responses, dated August 5, November 7 and 8, and signed by Najat Breiky and Khaled Awwad. IFES has in its possession copies of the Cabinet’s written responses in Arabic.

¹² The plaintiffs’ lawyer Nasser Ar-Rayyis noted that the Palestinian Basic Law says nothing about the cabinet being sovereign and immune to judicial re-examination. The cabinet’s decisions, he added, are considered administrative decisions subject to appeal and judicial re-examination. Maan News, November 8, 2010 <http://www.maannews.net/eng/ViewDetails.aspx?ID=331985>

¹³ See the Cabinet’s written responses, dated August 5, November 7 and 8, and signed by Najat Breiky and Khaled Awwad. IFES maintains copies of the Cabinet’s written responses in Arabic.

¹⁴ Ibid.

¹⁵ Wattan electoral list (Tulkarem) and Ramallah for All electoral list.

- The Court rejected the Cabinet's claim that this case falls outside the High Court's jurisdiction as it concerns the "*sovereignty of the state*". No circumstances, such as "*war or a diplomatic crisis*"¹⁶, that might justify a reference to the sovereignty of the state, are present. And, even in such a situation, the Court would have a role in scrutinizing the Cabinet's decisions.
- The Court noted that, the Cabinet was aware of the inability of the CEC to organize elections in Gaza (as informed by the CEC) and recognized this with a decision on April 25, which instructed the CEC to proceed with elections in West Bank while postponing elections in Gaza indefinitely. Therefore, the inability to organize elections in Gaza cannot be used as argument for cancellation.
- The Court specifically noted that it does not view local elections as disrupting or endangering the "*wellbeing of the homeland*"¹⁷, rather, local elections help provide stability and unity. Elections of local councils affect people's daily lives directly as the councils are in charge of providing basic services; these elections are not political and not related to national or international events. The Court views the cancellation as interference with the democratic process.
- The Court explained that the Cabinet can only cancel a decision within 60 days of its issuance, and only if it was a wrongful decision in the first place; thus, the call for elections issued on February 8 is outside the time-frame, and the Court considered the call for elections to be in accordance with the law and therefore irrevocable.¹⁸
- The Court ruled that the cabinet does not have authority to postpone elections unless the CEC requests a postponement due to technical reasons. After the Cabinet calls for elections, it does not have the authority to postpone elections without a request from the CEC, and this was not the case. Regardless of this, the CEC's statement on June 10 notes that the Cabinet's decision amounts to a "*cancellation*" and not "*postponement*", and there is no basis for cancelling elections according to the law.

The Court stopped short of providing instructions to the government on how to implement the decision, as this is not in the High Court's authority. The judicial process is thereby finished.

Aftermath of the Judicial Process

As reaction to the verdict of the High Court, the CEC issued a short statement informing the public that the CEC sent a letter to the Prime Minister "*declaring the readiness of the Commission to implement any decision of the Council of Ministers regarding the call for elections within the timeframe defined in the election laws*"¹⁹.

Representatives of the Follow Up Committee (PFLP, DFLP, PPP, PNI, FIDA and Independents) held a press conference at the premises of Wattan TV following the announcement of the verdict, expressing their hope that a new date for elections would be announced shortly. At the time of writing this paper, the Cabinet's reaction on the verdict is still expected.

¹⁶ See Official Court verdict from December 13. IFES has a copy of the verdict in its possession.

¹⁷ See Official Court verdict from December 13. IFES has a copy of the verdict in its possession.

¹⁸ The Cabinet decision issued on 25 April only served to confirm the date of the local elections, and to confirm that elections will take place in the West Bank but be postponed in Gaza indefinitely. To cancel this decision does therefore not cancel the elections, the verdict read.

¹⁹ CEC's statement can be found here <http://www.elections.ps/atemplate.aspx?id=875>