



MISUSE OF ADMINISTRATIVE RESOURCES DURING ELECTORAL PROCESSES: 2016 PARLIAMENTARY ELECTIONS IN GEORGIA

Interim Report

Misuse of Administrative Resources during Electoral Processes: 2016 Parliamentary Elections in Georgia

Interim report

September 2016

Authors:

Gigi Chikhladze

Tamta Kakhidze

Co-author and research supervisor:

Levan Natroshvili

This report was prepared with the support of the American people through the United States Agency for International Development (USAID). The opinions stated in the report belong to Transparency International Georgia and do not necessarily reflect the opinions of the United States government.



Contents

Introduction	3
Key Findings	4
Chapter I. Definition of the Misuse of Administrative Resources for Electoral Purposes	6
Chapter II. Misuse of Enforcement Administrative Resources during Electoral Processes	7
1. Suspicious Selection of PEC Members.....	7
2. Intimidation of Kindergarten and School Principals and Politically Motivated Dismiss	9
Chapter III. Misuse of Legal Administrative Resources for Electoral Purposes	10
1. New Rule on Distribution of Free Advertising Time.....	10
2. Decrees of the CEC.....	11
2.1. 19 August #58/2016 Decree of the CEC.....	11
2.2. 24 August #60/2016 Decree of the CEC.....	11
Chapter IV. Misuse of Institutional Administrative Resources for Electoral Purposes	13
1. Mobilizing employees of the budgetary organizations for pre-election campaigning.....	13
1.2. Meeting in Zugdidi	14
1.3. Meeting in Gurjaani	14
2. Illegal Campaigning.....	14
1.1. Illegal campaigning at budget-funded events	14
1.2. Illegal campaigning through municipal means of communication	15
1.3. Illegal campaigning by foreign citizens.....	15
3. Misuse of other institutional resources for electoral purposes.....	16
3.1. Municipal SMS messages in favor of the ruling party.....	16
3.2. Pre-election ads by the state agencies	17
Chapter V. Misuse of financial administrative resources	18
for electoral purposes	18
1. Electorally motivated state initiatives.....	18
1.1. Increase of the retirement pension	18
1.2. Benefits to mountainous regions.....	19
Recommendations	20

Introduction

Misuse of administrative resources is one of the key factors bearing a significant impact on election environment. In fact, the severity of the impact can be as great as to define ultimate outcomes of the elections. Therefore, restricting use of administrative resources is an area of utmost importance.

Transparency International Georgia (TI Georgia) has been exploring this issue for a number of years now. This time, we are pleased to release an interim report that explores misuse of administrative resources for 2016 Parliamentary Elections. The report covers the period between June 8 and September 25, 2016. As June 8 marked an official launch of the election campaign, we have decided to take the given date as a starting point. Some of the cases depicted in the study took place before June 8; although, due to their high significance, we have still decided to include them in the report.

In the reporting period, the organization used to keep track of all the events, which could have entailed misuse of administrative resources for electoral purposes or similar activities. The recorded facts have been examined and verified by our lawyers, four regional offices and six long-term regional observers. Furthermore, the lawyers have double-checked relevant cases for their compliance with the Georgian legislation and the international standards.

The report initially defines the essence and types of using administrative resources for election purposes. The next four chapters are dedicated to specific cases of possible misuse whereas the concluding chapter summarizes the recommendations outlined by TI Georgia.

Key Findings

The monitoring conducted by TI Georgia for the period between 8 July and 25 September 2016 revealed that misuse of administrative resources for parliamentary elections has not reached the scale to have a significant impact on overall election environment.

Misuse of enforcement administrative resources for election purposes

In the run-up to elections, some political parties frequently made statements about the pressure being exerted on their election candidates and their supporters by the law enforcement agencies. However, it turned out rather difficult to verify/confirm most of the reported cases. In some instances, alleged victims of the pressure refrained from disclosing greater details on the facts while in others, the facts could not be substantiated. Political parties frequently claimed as well that employees of the State Security Service attended their campaign meetings.

The election process has been adversely affected by personal video and audio recordings of various political party leaders disseminated via Internet. It is noteworthy that the law enforcement authorities could not succeed in investigating any of the facts and authors or distributors of the tapes remain unknown. Moreover, a few weeks prior to the elections, the Chief Prosecutor introduced to the public a new video footage depicting dispersal of 26 May 2011 rally and put charges on the former Head of the Constitutional Security Department, Data Akhalaia. Release of the video footage five years later, just shortly before the elections casts serious doubts on the electoral motives behind the given act.

Another fact of possible misuse of enforcement administrative resources was observed in the selection of the election commissions. Dismissal of employees in some kindergartens in suspicious circumstances deserves attention as well.

Misuse of legislative administrative resources for election purposes

We have observed no serious cases concerning misuse of legal administrative resources for election purposes. We have not detected either mobilization of the state agencies or evident bias in favor of or against any political party. Nevertheless, there were cases when decisions adopted by some administrative agencies were unfair or illegal, as we believe. In this light, the new rule adopted by the Parliament on distribution of free advertising time and two decrees of the CEC are worth mentioning.

Misuse of institutional administrative resources for election purposes

During the reporting period, a wide range of institutional administrative resources has been misused for election purposes; however, it has not reached the scale to bear a significant impact on the election environment. In all regions of Georgia, large-scale mobilization of employees of the budgetary organizations has been observed for campaign meetings of the ruling party Georgian Dream. There were certain cases of illegal campaigning, including through the social network. Advertising by the State Agencies through video ads, SMS messages and other communication channels has become rather frequent lately.

Misuse of financial administrative resources for election purposes

According to the Election Code of Georgia, apart from exceptional cases, it is prohibited to increase public funding and initiate new budgetary programs for 60 days prior to the elections.

During the reporting period, no amendments have been made to the central or local budget; otherwise, it would be viewed as violation of the above-mentioned regulation. For 60 days before the Election Day, i.e. from August 8, several municipalities have amended their budgets. Although, all of them seem to fit into the overall framework of the law.

As for the electorally motivated public spending, i.e. cases when the budgetary programs are initiated a few months before the elections mostly to win the votes, two initiatives of the Government are worth mentioning: a) increase of retirement pension from July and b) benefits introduced in mountainous settlements from September 1.

Chapter I. Definition of the Misuse of Administrative Resources for Electoral Purposes

There is no commonly accepted definition of an administrative resource and its misuse for electoral purposes either in Georgian or international law. However, a wide range of international documents related to the given issue attempt to establish a common approach to the above-mentioned phenomena. Based on the analysis of these documents and opinions expressed by scientists, TI Georgia identifies the following types of administrative resources¹:

Type of administrative resource	Essence
Enforcement	<i>Selective use of state enforcement, including coercive powers against political opponents, their supporters and voters. For instance, politically motivated detention of individuals, intimidation, assault, threatening, discharge or other forms of coercion.</i>
Legislative	<i>Use of legislative, executive and judicial branches in favor of/against the electoral interests of a certain political party or candidate. For instance, adoption of a law, which puts a certain party at an advantage.</i>
Institutional	<i>Use of human and non-monetary resources of state agencies, as well as use of media and communication outlets funded or owned by the state to facilitate or hinder election campaign of a certain political party or a certain candidate.</i>
Financial	<i>Use of budgetary resources of the central or local government agencies to facilitate election campaign of certain political party or candidate</i>

The Georgian legislation provides a narrow definition for the misuse of administrative resources during electoral processes, frequently leaving a number of issues beyond regulation. In particular, an administrative body may carry out a series of activities that, although in compliance with the law, might provide goods to the society in a way to bear a significant impact on voters' behavior. In such cases, it is difficult to draw a line between the state and a political party that represents a requirement under the 1990 OSCE Copenhagen Conference Document².

Hence, when referring to the misuse of administrative resources during the electoral processes, we mean not only violation of the Georgian legislation, but also acts against the spirits of the Copenhagen Document and universally accepted electoral principles.

¹ How to Monitor and Report on the Abuse of State Resources – an Introduction, *Dr. Magnus Ohman, April 14, 2014*

² <http://www.osce.org/odihr/elections/14304>

Chapter II. Misuse of Enforcement Administrative Resources during Electoral Processes

As shown by past experience, misuse of enforcement resources for electoral purposes usually implies formal or informal intimidation exerted by the state on activists of various political forces. Formal duress implies criminal prosecution of a politically active person (or administrative legal process). In case of informal intimidation, officials through different means of power abuse are exerting pressure. Cases of such pressure occurred abundantly before 2012 parliamentary elections, as widely documented in our reports.³

In the run-up to 2016 elections, certain political parties made frequent allegations about the pressure being exerted on their election candidates and their supporters by the law enforcement agencies. However, it turned out rather difficult to verify/confirm most of the reported cases. In some instances, alleged victims of the duress refrained from disclosing greater details while in others, the facts could not be substantiated.

The election process has been adversely affected by personal video and audio recordings of various political party leaders disseminated via Internet. It is noteworthy that the law enforcement authorities could not succeed in investigating any of the facts and the authors and distributors of the tapes remain unknown. Moreover, there are doubts in the public that security services could be standing behind fabrication/dissemination of the given tapes, driven with the aim of discrediting oppositional political parties. The given suspicion is further reinforced by the fact that although the respective agencies had ample time to investigate the cases, no results have been produced so far.

Furthermore, a few weeks prior to the elections, the Chief Prosecutor introduced to the public a new video footage depicting dispersal of 26 May 2011 rally and put charges on the former Head of the Constitutional Security Department, Data Akhalaia. Release of the video footage five years later, just shortly before the elections casts serious doubts on the electoral motives behind the given act.

Another fact of possible misuse of enforcement administrative resources was observed in the selection process of PEC⁴ members. Suspicious discharge of certain kindergarten employees in spring deserves attention as well. Even though the given cases of discharge occurred beyond the reporting period, we have still included them in the report due to their high significance.

1. Suspicious Selection of PEC Members

August 19-23 was defined as the deadline for the competition to select PEC members for 8 October parliamentary elections. As we have learned earlier, in a number of municipalities PEC members would allegedly be selected based on pre-compiled lists.

Congruent to the Election Code of Georgia, out of 13 members, seven members are appointed by political parties whereas 6 members are recruited on professional grounds. The process of selecting right the given six members was put at doubt in terms of its transparency.

According to the law, District Election Commission (DEC) shall conduct an open and transparent competition to select members of the Commission based on their professional skills. Before the end of the selection process, the opposition political parties reported through the media that some election districts

³ 10 September 2012 interim pre-election report <http://goo.gl/p0eL7p>;
27 September 2012 final pre-election report: <http://goo.gl/hzguL3>

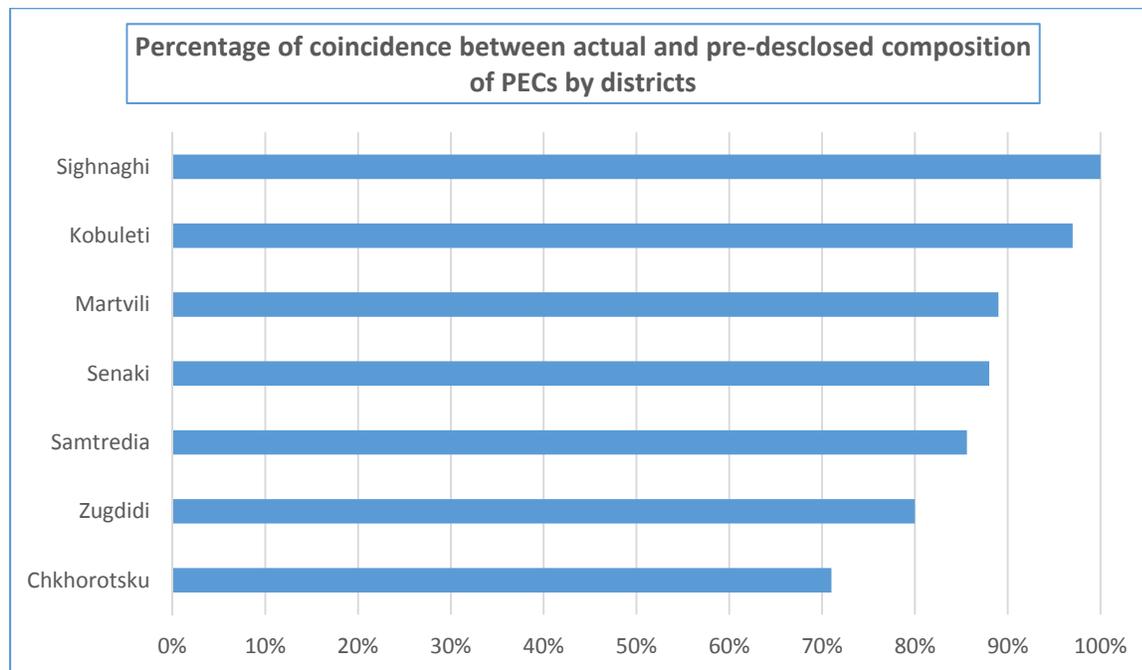
⁴ Precinct Election Commission

had pre-compiled lists composed of the Georgian Dream activists, relatives and acquaintances. They disclosed the lists, which provided full or partial composition for eight election districts, with 1,507 persons in total.

According to the authors of the information, these individuals should have taken vacant positions in PEC. Should such action be confirmed, it should have been classified as misuse of administrative resources for electoral purposes.

After the Central Election Commission posted on its official website composition of precinct election commissions throughout the country, we checked whether they coincided with the pre-disclosed lists of the oppositional parties.

Comparison of the data revealed that from 1507 persons, 1307 exactly matched the ones posted on the CEC site, making up 86.7% in total. In particular: in Senaki N63 election precinct, 242 persons coincided out of 275 (88%); in Kobuleti N71 election precinct – 280 persons out of 288 (97.2%); Martvili N62 election precinct – 182 persons out of 204 (89.2%); Zugdidi N65 and N66 election precincts – 327 persons out of 414 (80%); Chkhorotsku N67 election precinct -12 persons out of 16 (75%); Samtredia N55 election precinct – 256 persons out of 299 (85.6%); Signaghi N25 election precinct - all 11 persons coincided (100%).



It is difficult to explicitly state whether the persons included in the pre-disclosed lists are activists of the Georgian Dream or whether they were actually appointed to PEC positions, but even the fact that there is a huge coincidence between the lists casts doubt on reliability and impartiality of the process.

Recommendations

- For PEC members selected on professional grounds, it is necessary to introduce greater regulations and establish clear and well-defined qualification requirements;
- It is necessary to develop procedures of candidate selection, that will minimize chances of political activists being appointed to the given positions.

2. Intimidation of Kindergarten and School Principals and Politically Motivated Dismiss

Spring of 2016 was remarkable for large-scale and abundant dismiss cases of kindergarten and school principals. Although the reported facts took place beyond the reporting period, they merit attention due to their pre-electoral and political nature. On March 21-23, *Director of the Kindergarten Management Agency* fired nine kindergarten principals (NN 83, 6, 2, 215, 85, 211, 90, and 92), citing findings of the internal audit and monitoring service as the basis for dismissal. It can be stated that the audit report was of formulaic nature whereas the process itself showed signs of politically motivated discrimination.

Dismissed principals had been appointed to the occupied positions during the previous government and most of them had served as PEC chairmen during several elections. As the former directors claim, shortly before the dismissal, the Agency representatives had unofficially demanded/advised them to dismiss their deputies; after rejecting their proposal, internal audit of City Hall came into play and the opinion it drew served as an official reason for dismissal.

All nine directors have lodged a collective complaint with the court and study of the case is currently underway. On May 18, four other kindergarten directors were fired as well. In particular, Tbilisi City Hall audit report served as a basis for firing director of 36 kindergarten whereas directors of N3, 144 and 213 kindergartens were dismissed based on the report by Kindergarten Management Agency Monitoring Service. Just like the above-mentioned cases, former directors of the given kindergartens used to be PEC chairpersons and their official dismissal was preceded by the demand to fire their Deputies.

The three directors have filed a suit to the court with help of TI Georgia. Tbilisi City Court is studying facts for possible breach of labor rights and politically motivated discrimination against the claimants.

Chapter III. Misuse of Legal Administrative Resources for Electoral Purposes

In general, legal administrative resources represent one of the powerful tools to put political opponents on an unequal footing and secure preferential treatment of the ruling party. This type of misuse embraces use of state legislative, executive and judicial authorities for electoral purposes. Such activities may include amending of law in a way to put certain political group(s) at a disadvantage, adoption of unjust court decisions etc.

In the reporting period, no serious cases were observed concerning widespread misuse of legal administrative resources for election purposes. We have not detected either mobilization of the state agencies or evident bias in favor of or against certain political parties. Nevertheless, there were cases when decisions adopted by some administrative agencies were unfair or illegal. In this light, the new rule adopted by the Parliament on distribution of free advertising time and two decrees of the Central Election Commission (CEC) are worth mentioning.

1. New Rule on Distribution of Free Advertising Time

On June 22, the Parliament shortly moved amendments to the Election Code of Georgia stipulating new rule of distributing free pre-election advertising time among the election subjects. According to the new rule, to be eligible for advertising time, the election subjects are still required to pass 4 and 3 per cent thresholds in parliamentary or local elections, respectively. However, in contrast to the old regulation, advertising time should be awarded to all the parties of the bloc and not just to the number one. The overall duration of free advertising time has remained the same. As a result, while the advertising time on Georgian broadcasters used to be divided among 5 parties before, now it will be shared by 11 political parties, as in the previous elections two electoral blocs with 8 affiliated parties overcame the barrier.

The winning bloc Georgian Dream, composed of 6 parties, deserves particular attention. While free advertising time used to be granted to just 1 party out of the 6, by the new rule all six parties will enjoy the given privilege.

It is also noteworthy that a small group of MPs developed the draft law and a wide range of political parties was excluded from the process. Since the matter has immediate impact on their activities, all leading political parties should have participated in the drafting process.

Despite the fact that distribution of free advertising time by the old rule was unconstitutional, settlement of the matter in such a manner is not acceptable either; Apart from being unfair, the new rule adversely affects several oppositional political parties. Given its essence, the initiative may as well be regarded as misuse of legal administrative resources for electoral purposes.

<p style="text-align: center;">Recommendation</p> <p>It is necessary to ensure fair and just distribution of the advertising time. The new rule should consider proportion of votes received by the election subjects. In addition, differentiated approach needs to be assumed towards the advertising time for parties of the bloc and individual ones; in particular, individual parties should be granted a little bit more time to avoid misuse of the instrument and unnecessary establishment of political blocs.</p>

2. Decrees of the CEC

In the pre-election period, there were no serious questions or concerns regarding political neutrality and impartiality of the CEC. Overall, the Commission is doing quite well; but still there were two cases when its decisions, in our opinion, did not comply with the effective laws of Georgia. These cases do not represent typical examples of misusing administrative resources for electoral purposes; however, as there are certain doubts regarding the acts, we deemed it appropriate to include them in the report.

2.1. 19 August #58/2016 Decree of the CEC

On August 19, the CEC adopted a decree concerning registration of political parties as the election subjects. The decree relates to the political parties registered in the Public Registry, who are willing to get registered as the election subjects and meantime persons authorized for leadership/representation do not show up in the parties' register. For purposes of 8 October 2016 elections, leaders defined by the party bylaws shall be established as the persons authorized for leadership/representation of such parties.

Transparency International – Georgia does not agree with the given rule. According to the legislation, presumptions of authenticity and accuracy in Georgia apply exclusively to the National Agency of the Public Registry, which means that reference in the party bylaws should not be regarded as due basis for representation/leadership authorization.

In addition, by paragraph 2 of the CEC decree, the given rule does not apply to the persons whose appeal to the Public Registry on updating data of the authorized persons has been rejected. In our view, the given clause of the decree may result in the Public Registry losing its function due to the risk that political parties might no longer renew registration of their representatives. Consequently, the CEC decree allows political parties to circumvent the requirements of the law.

2.2. 24 August #60/2016 Decree of the CEC

On August 24, the Central Election Commission (CEC) adopted a decree defining a new rule of number assignment to participants of October 8 elections. As the decree states, an election subject may use the number it was awarded at the previous local elections. Two parties, the New Rights and the Patriots' Alliance have already taken use of the new rule to receive election numbers without casting lots.

Congruent to the Election Code, the three political parties which received most of the votes at the previous parliamentary elections, have the preferential right to select the first, second and third numbers respectively. Alternatively, they may retain the numbers they were assigned at the previous parliamentary elections. As for the other parties, the law obligates them to take part in casting lots. We believe that the decree of the CEC contradicts the given norm, as it enables the political parties to avoid participation in casting by taking up the numbers they were assigned at the previous local elections.

We believe that both decrees of the CEC establish regulations, that contradict the Election Code and lead to ultimate breach of the law.

The Republican Party of Georgia filed a complaint to the court against the given decree. Transparency International – Georgia was engaged in the dispute under the status of the “friend of the court” (*amicus curiae*). Although the decree of the CEC definitely contradicts the Election Code, Tbilisi City Court dismissed the suit of the party, with the decision being later upheld by the Court of Appeal. During the

hearing of the case, it became evident that the judges did not know much about the election regulations and had difficulty with drawing correct conclusions.

Recommendation

It is essential to enhance professional qualification of judges in terms of addressing electoral disputes.

Chapter IV. Misuse of Institutional Administrative Resources for Electoral Purposes

Misuse of state institutional resources for political purposes implies use of office equipment, means of transportation, premises, subordinate civil servants as well as misuse of other intangible and human resources financed by the state in order to organize and conduct pre-electoral campaigns. Meantime, the given type of misuse encompasses use of state-funded media outlets in favor of or against certain political parties. As mentioned earlier, there is no commonly accepted definition and misuse of institutional resources may be considered in a broader sense

In the reporting period, a wide range of institutional administrative resources have been misused for electoral purposes; however, it has not reached the scale to bear a significant impact on the electoral environment. In all regions of Georgia, large scale mobilization of employees of the budgetary organizations⁵ has been observed for campaign meetings of the ruling party Georgian Dream. There were certain cases of illegal campaigning, including through the social network. Advertising by the State Agencies through video ads, SMS messages and other communication channels has become rather frequent lately.

1. Mobilizing employees of the budgetary organizations for pre-election campaigning

As a rule, employees of the budgetary organizations at the central and local levels represent an effective campaigning tool for the parties in power. During the last three elections, all ruling parties actively resorted to the given resource. The current run-up period was not an exception either.

In the reporting period, the political union Georgian Dream was actively engaged in organizing large-scale rallies and demonstrations in all regional centers throughout the country, which were constantly attended by the Prime Minister Giorgi Kvirikashvili and other party leaders. Our regional coordinators kept observing the given events in Gori, Batumi, Oni, Telavi, Zugdidi and other cities. Full mobilization of civil servants and other state employees was the fact that immediately leapt to the eye. Public officials attended the campaigning events from municipal councils, boards and city halls as well as employees of LEPLs⁶, state-owned non-entrepreneurial (non-commercial) legal entities⁷ and LLCs⁸.

The given meetings were mostly held during non-working hours or on weekends; therefore, campaigning regulations were not violated by the public officials. However, the problem stemmed from the fact that employees of the budgetary organizations seemed to be attending the meetings against their will. Although they refrained from openly expressing their opinion, at every meeting some respondents would confirm to our coordinators that they had been ordered by their supervisors to attend the meeting.

Facts of the mass mobilization give grounds to believe that norms of the Election Code prohibiting “engagement of subordinated or otherwise dependent persons in the activity, which facilitates nomination

⁵ **Budgetary organization** – an institution and/or an organization authorized to dispose of funds under budgetary programs/sub-programs, which prepares its own draft budget, fulfills it and performs reporting in line with stipulated norms, procedures and rules.

⁶ Legal Entity of Public Law

⁷ Non-entrepreneurial (non-commercial) legal entity

⁸ Limited liability company

and/or election of a candidate” could have been violated. It is inadmissible to compel employees of public agencies, local government or state funded organizations to take part in pre-election rallies and meetings against their own will.

1.2. Meeting in Zugdidi

On July 23, the Georgian Dream presented majoritarian candidates of Samegrelo region in Zugdidi, at the central square of the city. Several thousand voters attended presentation of the candidates. The meeting was held on a non-working day and our representative closely followed the given event. Presentation of the majoritarian candidates took place amid mass mobilization of employees of public institutions, local government agencies and state-funded organizations. We have talked with some of the attendants; as they confirmed, they were instructed to attend the meeting by their supervisors and local governor’s representatives in administrative units (villages).

1.3. Meeting in Gurjaani

A similar case was observed in Gurjaani, on September 9. According to the released video footage⁹, employees of Gurjaani Kindergarten Union were attending a meeting of the Georgian Dream candidate David Songhulashvili during working hours; as they allege, they were instructed to attend it by their supervisor.

A similar problem stood particularly acute during 2012 electoral processes, with large-scale involvement of civil servants in campaigning efforts. The upcoming elections differ from the previous parliamentary elections in the sense that the budgetary employees experienced much more severe and harsh pressure in 2012 and many of the affected persons did not refrain from expressing their views/opposing it openly. As for 2016, it seems that the pressure was relatively mild; though it does not diminish the importance of the problem.

Recommendation

Heads of budgetary organizations should refrain from illegal engagement of their subordinated staff in public officials’ pre-electoral campaigns and show respect for their labor rights. In addition, smooth functioning of municipal agencies should not be hampered due to involving employees in campaigning activities.

2. Illegal Campaigning

According to the Electoral Code of Georgia, public officials of the central and local budgetary organizations are prohibited to carry out campaigning during working hours and when performing official duties. Meantime, organizers of events, which are funded from the central or local budget, are not allowed to engage in campaigning. Campaigning by a foreign citizen is banned as well.

In the reporting period, there were a number of cases in which the regulations were violated.

1.1. Illegal campaigning at budget-funded events

Case of Archil Talakvadze

On August 7, the local government of Ozurgeti celebrated Gomismtoba 2016. The celebration consisted of a variety of sports, cultural and extreme activities. Along with the local government representatives, Archil Talakvadze, Deputy Minister of Internal Affairs, also attended the event. Within the event, Talakvadze delivered a speech to the audience and touched upon the projects and plans of the government. He dwelled upon the issues, which were beyond the scope of competence and functions of the Deputy Minister of

⁹ <https://www.youtube.com/watch?v=O6HWXpicais>

Internal Affairs. Thus, in our opinion, his appeal should be regarded as campaigning for the ruling party, whereas the action itself, campaigning at the local government-funded event, is explicitly prohibited by the Election Code.

TI Georgia appealed the case to the Ozurgeti District Election Commission on August 11, demanding respective penalty for Merab Chanukvadze, local governor of Ozurgeti Municipality. However, the DEC did not share our position and decided that since Mr. Chanukvadze was not an officially registered candidate at that time; his action could not have been perceived as campaigning.

Case of Merab Kvaraia

As the media reported on September 15, opening of N2 public school in Zugdidi was used by Merab Kvaraia, majoritarian candidate of the Georgian Dream as an event to carry out campaigning for the ruling party. As the video footage reveals, principal of the school presented Merab Kvaraia to the attending audience and asked him to utter a speech. The candidate took a chance to dwell upon the projects already implemented by the present government and the ones planned for the future.¹⁰

In our opinion, the given case should be regarded as the fact of campaigning, which is strongly prohibited by the Election Code of Georgia. We have already filed a complaint to Zugdidi District Election Commission; the issue is still under consideration.

1.2. Illegal campaigning through municipal means of communication

In the reporting period, illegal campaigning through social networks was an evident trend. Monitoring of various state agencies revealed that interview of the Georgian Dream majoritarian candidate was posted on official Facebook page of Oni Municipal Council. In our opinion, it represented illegal campaigning through use of administrative resources and therefore, we applied to Oni District Election Commission, which fully shared our position and drafted protocol of an administrative offense against the Council chairman. A similar case was observed in Bagdati municipality as well – campaign materials of the Georgian Dream were posted on the official Facebook page of the municipality.

Problems have been identified in terms of public officials carrying out campaigning activities for the ruling party during working hours: for example, Head of Human Resources Department of Kutaisi City Council Levan Gogelashvili shared a link on his Facebook page with the contents supporting the Georgian Dream¹¹. Such cases were reported in Akhaltsikhe municipality as well, where public officials were spreading information about presentation of Akhaltsikhe and Samtskhe-Javakheti majoritarian candidates by Prime Minister Giorgi Kvirikashvili.¹²

Recommendation

Public officials should refrain from any form of campaigning during working hours, especially if such campaigning entails use of administrative resources.

1.3. Illegal campaigning by foreign citizens

On July 31, the political party United National Movement presented its majoritarian candidates to the Parliament and the Supreme Council of the Autonomous Republic of Adjara¹³. The presentation took place nearby the regional office of the party. At the end of the rally, organizers presented to the activists the video

¹⁰ <https://goo.gl/bXjY5w>

¹¹ <https://goo.gl/urrud1>

¹² <https://goo.gl/urrud1>

¹³ <http://batumelebi.netgazeti.ge/news/52974/>

address by Mikheil Saakashvili, former President of Georgia and now Governor of Odessa District in Ukraine.

In the video address, the former President recalled the developments unfolded in Batumi in May 2004, expressed his gratitude to the local people for the support demonstrated at that time and called on the audience to support the National Movement once again in 2016 parliamentary elections.

It was not the first case of Saakashvili taking part in pre-election campaign meetings of the United National Movement: he called upon the population to support the former governmental team in Marneuli on July 11 and in Akhaltsikhe on July 14. Like Batumi, the Party was nominating majoritarian candidates there.

From 2015, the former President of Georgia is holding the post of Odessa Governor in Ukraine. As he has taken citizenship of Ukraine, he no longer represents a citizen of Georgia.

The Election Code of Georgia (Article 45, paragraph 4, clause “f”) explicitly bans foreign citizens engagement in pre-election campaign. In our opinion, address of Mikheil Saakashvili on July 31 represented apparent campaigning as congruent to the legislation, the following activities are defined as such: calling upon voters to support/vote against certain election subjects and candidates as well as any public action, which promotes or hinders his election, and/or contains signs of pre-election campaigning including participation in organizing pre-election events, storage and distribution of electoral materials, work on voters list, presence in political party representations.

Responses of the election administration and the court to the case merits particular attention. Although violation of the law was evident, the CEC imposed no penalty on Saakashvili because the offense did not take place on the territory of Georgia, since he was not physically present there. In our view, the given decision is unjustified; such formalized and narrow interpretation of the law is unacceptable. By such logic, a person cannot be fined either if he is engaged in illegal campaigning through Facebook while being out of Georgia. It is noteworthy that the court upheld the argument of the CEC and rejected the applicant’s request to fine Saakashvili. The given fact once again confirmed low competence of the court in handling electoral disputes.

3. Misuse of other institutional resources for electoral purposes

Apart from violating specific regulations of the election law, certain state institutions have engaged in activities, which may be construed as misuse of administrative resources for electoral purposes. As we remarked in the very beginning, by our methodology misuse of administrative resources entails not only violations of the Georgian electoral regulations, but also acts carried out by the state agencies with a view to bringing benefit or harm to certain parties. In this regard, several acts are worth mentioning.

3.1. Municipal SMS messages in favor of the ruling party

Three weeks before the elections, local authorities actively began sending of short messages (SMS) and e-mails to citizens throughout the country, informing them about completion of infrastructural projects. 2-3 weeks before the elections, similar messages were received by residents of Batumi, Kobuleti, Kutaisi, Khashuri, Tskaltubo, Martvili, Zugdidi, Telavi, Ozurgeti, Zestaponi, Kedi, Poti, Senaki, Akhaltsikhe, Rustavi and other municipalities.¹⁴

¹⁴ <https://goo.gl/jUPvJP>; <https://goo.gl/ejJRty>; <https://goo.gl/frMo8A>; <https://goo.gl/s3d95d>; <https://goo.gl/rlSnhR>; <https://goo.gl/HOKnOv>; <https://goo.gl/yQC844>; <https://goo.gl/m6MOki>; <https://goo.gl/vqmEv5>; <https://goo.gl/fLtWk4>; <https://goo.gl/IB3mci>; <https://goo.gl/XH7Mfh>; <https://goo.gl/sqX6sK>; <https://goo.gl/ZQFNzz>

On the one hand it is good for municipalities to opt for effective means of communication with citizens, but, on the other hand, such activation in the pre-election period gives rise to certain questions. Provision of information on implemented projects shortly before the elections may be construed as an attempt to influence the voters in favor of the ruling party; although the text messages contain no appeals to support the ruling party, reference to implemented projects by the current government indirectly contains signs of misuse of administrative resources.

Questions arise with respect to security of the personal data of the message recipients: Municipalities have not specified the sources from which they obtained personal phone numbers of registered voters

Recommendation

State authorities should refrain from using personal data of registered voters in a way, which would raise doubts about the purpose of the use of administrative resources and security of personal data.

3.2. Pre-election ads by the state agencies

During the reporting period, one could frequently see video tapes and other visual materials on TV channels and social networks, which told the story of the Government or other public entities achievements or planned activities. Voters could see this type of information in the pre-election period as an electoral ad of the ruling party, which, in its turn, contains signs of using administrative resources for electoral purposes. Broadcasting of such videos under the status of social advertisement poses additional problem.

It should be noted that a similar problem stood acute in the past as well¹⁵, when video footages depicting government-implemented projects used to be broadcasted under the status of social advertising. With respect to the given issue, Inter-agency Commission for Free and Fair Elections presented a recommendation to the Government and the Public Broadcaster in the spring of 2013, urging them to suspend in the pre-election period airing of videos under the social status, as they could be perceived as election advertisement. Although they are no longer placed under the social ad status, the problem still exists with the budget-financed commercials, as they are perceived as pre-election ads.

In our opinion for a competitive environment, it is vital to ensure that this kind of administrative resources are not used for electoral purposes, regardless of whether it is direct violation of the law. The Election Code of Georgia fails to duly regulate the issue. It only prohibits dissemination of budget-funded videos and other materials, involving the election subjects and their numbers. Although the government ads do not contain symbols of any party, they have contents which do not differ much from standard electoral advertisements of the ruling party. By its essence, such action constitutes use institutional administrative resources, as it blurs the distinction between the ruling party and the state, which contradicts the spirit of the OSCE Copenhagen Document¹⁶.

Recommendation

State authorities should refrain from active promotion of the planned and implemented projects except for the cases when it truly has to do with social advertising and does not involve abuse of the given status.

¹⁵ <http://www.transparency.ge/blog/sotsialuri-reklamebi-mmartveli-partiis-samsakhurshi?page=1>

¹⁶ <http://www.osce.org/odihr/elections/14304>

Chapter V. Misuse of financial administrative resources for electoral purposes

Financial administrative resources represent one of the powerful tools to gain substantial advantage in the pre-electoral period. According to the Election Code of Georgia, it is prohibited to increase public funding and initiate new budgetary programs for 60 days prior to the elections. It implies that over the given period such changes may not be moved to the law. Nevertheless, the law does not ban implementation of pre-planned programs. That is the loophole the government usually manages to easily bypass by planning ahead budgetary programs and only implementing them in the run-up period. Due to the reason, we examine not only violations of the law, but also analyze the programs initiated and implemented in accordance with the law, but having a serious impact on the election results.

In particular, we refer to electorally motivated spending of public funds for those programs that are initiated a few months before the elections, are aimed at winning the voters and may not be in line with long-term interests of the country. Mantine, we also refer to social state programs that lead to direct transfer of social goods to the population. Increase of social assistance and other allowances serves as an example.

For sound and competitive electoral environment, it is vital that such programs are not initiated shortly before the elections, as the ruling party/candidate may gain a substantial electoral advantage.

During the reporting period, no changes have been moved to the state or local budget, which could be deemed as violation of the above-mentioned regulation. For 60 days before the Election Day, i.e. from August 8, several municipalities have moved changes to the budget. Although, all of them seem to fit into the overall framework of the law. As for the electorally motivated spending, several state programs merit attention.

1. Electorally motivated state initiatives

For identifying electorally motivated public spending, we apply two-step analysis. In our opinion, if a certain program initiated by the central or local, government meets any of the four requirements; it shall be viewed as an electorally motivated spending. The criteria are as follows:

- the program is being implemented shortly before the elections;
- the program may influence the electorate in favor of a certain party;
- number of program beneficiaries is quite large;
- the program is largely populist, does not serve long-term interests of the country or its implementation in the given period is rather doubtful.

Based on the given criteria, we have singled out two state programs.

1.1. Increase of the retirement pension

From 1 July 2016, retirement pension has increased by 20 GEL to reach 180 GEL. The law on “2016 State Budget of Georgia”, which the Parliament adopted in December 2015, envisaged increase of the pension. Despite the fact that the change was moved to the budget in the previous year, it was officially launched just in July during the pre-election campaign. From the above-mentioned four criteria, the given initiative

happens to meet all; it was launched during the election campaign - about three months before the elections; it has potential to win over voters, as there are more than 700 thousand pensioners in Georgia, constituting about the fifth of the voters. Finally, it is recommended that increase in pension and social assistance closely correlate with the economic development of the country. Annual economic growth rate (3-4%) over the last two years can hardly sustain 12% increase of pension.

1.2. Benefits to mountainous regions

On 28 July 2015, the Parliament passed a law on "Development of Mountainous Regions", which envisages a variety of benefits and allowances for the dwellers of the mountainous areas. Right upon adoption of the law, 1 September 2016 was defined as the date of launching the benefits. In particular:

- Monthly supplement to the pension – no less than 20% and 20% of the social package;
- Assistance with heating during winter;
- Not less than 35% of public school teachers' basic salary, in professional schools – not less than 35% of remuneration; for teachers of special programs – not less than 50% of remuneration;
- Supplement for doctors – double amount of state pension; for nurses – in the amount of state pension.

When adopting the law in July 2015, it was already obvious that September 1 would fall in the pre-election period; as the initiative was of social nature and targeted a large number of beneficiaries, the ruling party would undoubtedly benefit. It should be noted that before the pre-election period 1582 settlements used to be beneficiaries of the program, whereas from July 1 the number was expanded to include 99 other settlements.

Meantime, a number of questions arise with respect to appropriate adoption of the law. For economic development of modern states, high level of urbanization is one of the crucial factors; artificial retention of people in the mountainous areas contains obvious signs of populism. Thus, all four criteria used for identifying electorally motivated spending are fully complied with.

Recommendation:

Both local and central authorities should refrain from increasing funding to assistance and similar programs in the pre-election period. Preferably, new large-scale initiatives shall not be launched shortly before the elections.

Recommendations

After analyzing the problematic issues, we have come up with the following recommendations:

- For PEC members selected on professional grounds, it is necessary to introduce greater regulations and establish clear and well-defined qualification requirements. It is necessary to develop procedures of candidate selection, that will minimize appointment of political activists to the given positions.
- It is necessary to ensure fair and just distribution of the advertising time. The new rule should consider proportion of votes received by the election subjects. In addition, differentiated approach needs to be assumed towards the advertising time for parties of the bloc and individual ones; in particular, individual parties should be granted a little bit more time to avoid misuse of the instrument and unnecessary establishment of political blocs
- It is essential to enhance professional qualification of judges in terms of addressing electoral disputes
- Heads of budgetary organizations should refrain from illegal engagement of their subordinated staff in public officials' pre-electoral campaigns and show respect for their labor rights. In addition, smooth functioning of municipal agencies should not be hampered due to involving employees in campaigning activities
- Public officials should refrain from any form of campaigning during working hours, especially if such campaigning entails use of administrative resources
- State authorities should refrain from using personal data of registered voters in a way, which would raise doubts about the purpose of the use of administrative resources and security of personal data;
- State authorities should refrain from active promotion of the planned and implemented projects except for the cases when it truly has to do with social advertising and does not involve abuse of the given status
- Both local and central authorities should refrain from increasing funding to assistance and similar programs in the pre-election period. Preferably, new large-scale initiatives shall not be launched shortly before the elections.