

MISUSE OF ADMINISTRATIVE RESOURCES DURING 2017 LOCAL SELF-GOVERNMENT ELECTIONS IN GEORGIA



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KEY FINDINGS

As a result of monitoring of 2017 local self-government elections, Transparency International Georgia has identified some negative trends with respect to misuse of administrative resources. Illegal registration of voters in the polling stations in Tbilisi and engagement of the employees of budgetary organizations in the election campaign are the problems that merit particular attention.

Misuse of enforcement administrative resources during electoral processes

In terms of misusing enforcement administrative resources, unlawful registration of voters at the polling stations in Tbilisi was particularly alarming. Instead of eliminating the unacceptable practice, it was further encouraged by the election commissions. In most cases, the applied practice posed serious risks of controlling the voter's free will and processing personal data. In addition, the process of complaint registration turned out problematic on the Election Day.

As for the pre-election period, various opposition political party candidates were regularly talking about intimidation of their candidates. Other noteworthy cases concerned the problems in staffing the Precinct Election Commissions.

Misuse of legal administrative resources during electoral processes

Several serious problems have been observed regarding the misuse of legal administrative resources during electoral processes. Although the re-assignment of the representatives of the heads of municipalities to non-permanent positions might not be immediately connected to local elections, such events, nevertheless, yielded many questions. The new rule of staffing election commissions was also problematic.

Misuse of institutional administrative resources during electoral processes

Several types of institutional administrative resources have been misused during electoral processes. Compared to other types of administrative resources, the inappropriate use of this type of resource was the most problematic.

What merits attention in this regard, similar to the previous elections, is the fact that the ruling party - the Georgian Dream was mobilizing people employed in budgetary organizations on mass scale to attend election events virtually in every region. At all large-scale election campaign meetings organized by the Georgian Dream that TI Georgia observers attended, the tendency of full mobilization of employees of the budgetary organizations was identified. Although it was difficult to find people who would openly say that they were compelled to attend the meetings, some civil servants voiced their disapproval of the received instructions. What is more, it is hard to imagine that practically all employees of the budgetary organizations would be truly willing to attend the party events and not be driven by other reasons instead. Even if mobilizing civil servants for the electoral campaign was not regarded as a direct violation of the law, at the very least, it did promote extreme polarization of the public service and is therefore unacceptable.

Questions regarding the electoral motivation arose due to the new General Auditor's decision to replace the State Audit Office Deputy Nino Lomjaria, who supervised the monitoring of the financing of the political parties, several weeks before the elections.

The information disseminated by the media organizations according to which the directors of Tbilisi kindergartens were collecting lists of the Georgian Dream supporters caused additional concern. Audio recordings are available which confirm that the Deputy Director of the Kindergarten Management Agency reportedly gave the directors of kindergartens illegal orders. Nevertheless, the Prosecutor's Office of Georgia could not see the grounds for launching an investigation, which is not quite clear and raises a number of questions.

While dozens of cases of illegal campaigning have been observed, including through social networks, the election administration has not offered adequate response to any of them.

Throughout the reporting period, *TI Georiga* submitted a total of 16 complaints to the Central and various District Election Commissions concerning the use of institutional administrative resources. Only two complaints were granted. The violations mainly concern the following areas: illegal campaigning on the part of civil servants during working hours, and misuse of administrative resources and official positions by various municipalities.

Misuse of financial administrative resources during electoral processes

No change to the central or local budgets that would violate the Election Code regulations has been identified during the reporting period. As for electorally motivated spending, no particularly problematic trend has been observed in this regard either.

INTRODUCTION

One of the major influences on electoral processes is typically the use of administrative resources. Such influence can, in fact, be as great as to predetermine even the election outcome. Therefore, much attention should be given to limiting the use of these resources.

Transparency International – Georgia has been studying the issue for many years now. This time, we are pleased to release a final report, which explores misuse of administrative resources during 2017 local self-government elections. The report covers the period from 1 June to 30 November 2017. The first round of the elections took place on October 21, with 250 observers of TI Georgia monitoring the process. Our observers were primarily stationed in election districts of Tbilisi. In some of the election districts throughout Georgia, the second round of elections was organized on November 12.

During the elections, TI Georgia kept track of all the events that could entail misuse of administrative resources for electoral purposes or similar activities. The reported facts were studied and verified by the lawyers of the organization, three regional offices and seven regional observers. The lawyers double-checked relevant cases for their compliance with the Georgian election legislation and international standards.

The report first defines the misuse of administrative resources for electoral purposes and presents its various forms and types. The subsequent four chapters are dedicated to the overview of general trends and specific cases of possible misuse, whereas the concluding chapter summarizes recommendations of TI Georgia.

CHAPTER I. WHAT IS THE MISUSE OF ADMINISTRATIVE RESOURCES DURING ELECTORAL PROCESSES?

There is no commonly accepted definition of an administrative resource and its misuse for electoral purposes either in Georgian or in 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

Illegal registration of voters at the polling stations in Tbilisi was particularly alarming. In terms of misusing enforcement administrative resources during 2017 local self-government elections. Instead of eliminating the mentioned unacceptable practice, it was further encouraged by the election commissions. In most cases, the applied practice posed serious risks of controlling the voter's free will and processing personal data. Furthermore, the process of complaint registration turned out problematic on the Election Day.

In the run-up to elections, some opposition parties made allegations about the pressure being exerted on their election candidates. In this regard, Dmanisi Municipality deserves particular attention, as its Gamgebeli Gogi Barbakadze spoke about specific cases of pressure on his supporters. The ruling party removed the candidacy of Barbakadze from the elections, exacerbating the tension between him and the Georgian Dream. The problems encountered in the course of staffing precinct election commissions are also worth mentioning. Further details on these and other specific cases are presented below.

1. The Election Day

1.1. Control over the will of voters

On the Election Day (October 21), a new alarming trend was observed in Tbilisi, which was reflected in the attempt to make an illegal influence over the will of the voters. In particular, in almost every precinct of Tbilisi monitored by our observers, representatives of the parties were collecting and recording personal data of the voters from the precinct table lists. While during the previous elections, registration of the voters by political parties was performed outside the polling stations, now the process was running inside. In this regard, representatives of the political unions – the *Georgian Dream* and the *Leftwing Alliance* were most active.

Being present at the polling stations, representatives of the given election subjects were writing out unique registration numbers of coming voters from the list. By comparing them against the publicly displayed list of voters outside the station, they were able to obtain personal data, such as name, surname and address of the voter.

Congruent to Article 41, clause 1 (e) of the Election Code of Georgia, an observer shall have the right to observe registration of voters in the voters' list. However, it does not envisage the right to collect information for its further processing. Congruent to Article 4 of the "Law of Georgia on Personal Data Protection", „data may only be processed for specific, clearly defined, legitimate purposes. Further processing of data for the purposes that are incompatible with the original purpose shall be inadmissible”.

Hence, processing of the above-mentioned data (obtained from the registrar and the voters' public list) allowed to collect new type of information — *presence of voters at the polling station*, which could be processed only on the legitimate grounds stipulated by Article 5 of the Law on Personal Data Protection. In our case, no such grounds were present.

While collection of information on presence of the voters at the polling stations was illegitimate, the obtained data could also be used for exercising pressure and controlling free will of the voters.

The Central Election Commission (CEC)³ and the Personal Data Protection Inspector⁴ immediately released their statements on the Election Day. Later on, in response to the appeal of the Georgian Young Lawyers' Association, Tbilisi Court of Appeals also discussed the matter, endorsing the position of the observing organization. With the decision of the court of 28 October 2017, decree N48/2017 issued by N3 District Election Commission (DEC) on 28 October 2017 was annulled, whereby collection of data from the list of voters by political parties had been declared legitimate. The DEC was asked to study circumstances of the case and issue new acts after the examination.

3 CEC Statement on information disseminated in media: <https://goo.gl/m3Sq7>

4 Statement of the Personal Data Protection Inspector: <https://goo.gl/TZ1xdD>

Below, we present extracts from the statements of CEC and Personal Data Protection Inspector as well as from the resolution of Tbilisi Court of Appeals.

CEC

„Name and surname of a voter as well as the registration number presented in the voter list represent public information and are not classified as personal data. Hence, the persons authorized to observe elections are not prohibited from verifying public information of voters at any stage of the polling process“.

Personal Data Protection Inspector

„An observer has the right to observe registration of voters in the voter list. Though, meantime, it is important to ensure that data are not collected and further processed for exercising control or pressure on the voters.“

Tbilisi Court of Appeal

„Though observers are not authorized to collect and record identification, personal data of the voters, the commission chairpersons have not duly assessed and eliminated their actions“.

Thus, the position of the election administration has not been shared by other state institutions and observing organizations. Furthermore, the above-mentioned statement of the CEC has prompted the ruling party representatives to illegally process voters' personal information on the day of the elections and get the opportunity to exercise pressure on the free will of the voters.

Recommendations

- The Central Election Commission shall take into account the decision of the court and recommendations of the observing organizations at least for the future elections and prevent unlawful registration of the voters at the polling station.

1.2. Problems with complaint registration

On the Election Day, our observers faced many problems in registering complaints due to misconduct of the precinct commission chairpersons and secretaries. In spite of the fact that the commission secretaries were obliged to register complaints when they were duly filed in, in some cases they refused to do so. We faced such problems in 15 election precincts. At the 5th precinct of Chughureti district, one of our mobile group leaders was unduly expelled from the polling station when writing a complaint.

76th election precinct of Saburtalo is also worth mentioning. Our observer filed a complaint regarding the procedure of vote counting, which congruent to the law, should have been considered by the District Election Commission. However, the Precinct Election Commission, which had the obligation of forwarding the complaint to DEC, never did so. Responsible persons of the DEC, in their turn, did not check the entry of the registration log, which verified the fact of filing the complaint. As a result, the timeframe stipulated by the law for considering the complaints was violated.

2. Staffing the Precinct Election Commissions

Similar to the 2016 Parliamentary Elections, the process of professional selection of PEC members constituted a significant problem in this year's elections as well. During the present electoral process, the oppositional political parties still spoke about the DEC's having preliminary lists of such candidates whose appointment in PECs was to be determined based on their allegiance to *Georgian Dream*. The Teveli case was the most notable in this respect.

At 12:00, September 4, a **Telavi N17 District Election Commission** session was held that approved the appointment of 323 members of the Precinct Election Commission.⁵ On the same day, a few hours prior to that, a member of the United National Movement, Giorgi Botkveli, had held a press conference.⁶ He presented a list of persons, which, according to him, Georgian Dream had handed to the Telavi District Election Commission and that the Commission was going to approve the listed persons as members of the Commission.⁷ We compared the list publicized by Botkveli to the list of the members elected by the DEC and found that the two lists contained the same names.⁸ This incident reaffirms the suspicion that DEC's staffing procedure is only formal and that the decision is taken within the ruling party.⁹

Recommendations

- Greater regulation of the professional selection on the positions in the election commissions is necessary and clear competence requirement should be put in place. Candidate selection procedures must be so elaborated as to minimize the chances of political party activists being appointed to these positions;
- It is also desirable to reduce the number of the Election Commission members from 12 to 7, which would increase competitiveness between candidates and amplify the range of choice.

3. Alleged intimidation

The current governor of **Dmanisi**, Gogi Barbakadze, who was registered as an independent candidate in the Mayor's elections, said on September 15¹⁰, that Georgian Dream representatives were compelling him and several other independent candidates for the Sakrebulo (municipal council) membership to withdraw their candidacies. He named Sakrebulo deputies: Zulfugar Mikaelov from the Karabulakhi community, Kamran Khidirov from the Orozmani community, and Faik Rustamov from the Amamlo community among those pressurized. Mikaelov and Rustamov did not confirm the use of pressure, even though they withdrew their candidacies without stating an express reason, while Khidirov said that he had filed papers in the DEC as an independent candidate but later changed his mind and now is running in elections as a Georgian Dream candidate. Although the above persons do not confirm the use of pressure, the fact that they withdrew their candidacies without providing reasons thereof might be conducive to the belief that we really have to do with the use of pressure.

5 List of Persons Elected as PEC Members by the District Election Commission: <https://goo.gl/zMfV7T>;

6 Georgian Dream is preparing for falsification of elections", released by Rustavi 2, 04.09.2017: <http://rustavi2.ge/ka/news/84083>

7 The list published by the United National Movement: <https://goo.gl/3Q6Wk2>;

8 Comparison of the List released by the United National Movement to the list of persons approved by the District Election Commission <https://goo.gl/x7riqf>;

9 Similar facts were revealed during the 2016 parliamentary elections, see our report:

10 <http://droa.ge/?p=9419>;

On September 28, the aforementioned Gogi Barbakadze, Dmanisi Governor and by then the Development Movement mayoral candidate, released information about the Georgian Dream representatives compelling the villagers from **Irganchai** in Dmanisi district to swear on the Quran that they would vote for the ruling party. Other people living in the village confirmed Barbakadze's words.¹¹ At the October 9 meeting of the Inter-Agency Task Force for Free and Fair Elections, the Ministry of Internal Affairs representative stated that they had launched an investigation into the case.

Apart from Dmanisi, allegations about the exercise of pressure could be heard in other election districts as well. However, as a rule, investigative agencies failed to detect signs of the crime, mainly because the alleged victims denied the facts of pressure.

11 Cf. Kvemo Kartli TV story "Who and why had the people swear on the Quran.", 28.09.2017: <https://www.youtube.com/watch?v=SY9ammb8Tnk>

CHAPTER III. MISUSE OF LEGAL ADMINISTRATIVE RESOURCES DURING ELECTORAL PROCESSES

The Legal resources of the state imply the use of its legislative, executive and judicial authorities for electoral purposes. Such actions could include such changes to the law that affect only certain political groups, unfair adjudgements, etc.

A few serious problems were identified during the reporting period with respect to the use of legal administrative resources for electoral purposes. Although the removal of the representatives of the heads of the municipalities from the staff lists might not be directly connected to local elections, that fact, nevertheless, raised many questions. Another problem stemmed from the adoption of the new rule for staffing election commissions.

1. Removal of the Representatives of the Heads of Municipalities from the Staff Lists

In June and July 2017, the position of representatives of the Head of Municipality (so called Gamgebeli) was removed from the administrative unit staff lists of Samegrelo-Zemo Svaneti municipalities and labor agreements were signed with those working on the pertinent positions. The change affected 168 representatives in Samegrelo-Zemo Svaneti region. Importantly, similar changes occurred in almost all municipalities throughout the country. In our opinion, these actions did not conform to the Georgian legislation and, most importantly for this report, could have had a negative impact on the electoral processes.

The Law on “Civil Service” now obliged public institutions to ensure the ranking of all positions within the establishments in accordance with the new regulations by 1 July. Pursuant to Article 125, par. 1 and 2, of the Law, if the position involves the fulfillment of supplementary, technical or temporary functions and duties, it shall be removed from the staff and a labor contract shall be signed with the employees working on such positions.

The municipalities of Zemo Svaneti and other regions decided that the position of the representative in the administrative units is supplementary, technical or temporary and removed it from the staff lists. Whereas the Law envisages the existence of this position while the set of their duties and responsibilities as defined in the Municipal Government (Gamgeoba) regulations is constant in its essence and, in this sense, is not materially different from the job descriptions of some positions in the municipality staff lists.

Apart from possible breach of law, the transfer of the Gamgebeli representatives to the civil contract increased the risks of their political engagement, particularly as regards the local self-government elections. Hitherto Gamgebeli representatives in all municipalities were appointed through open competition and with no fixed term; In Samegrelo-Zemo Svaneti, most of them had even completed certification. Now, when employed based on a labor agreement, they will be appointed following a simplified competition rule (which might only imply an interview with the Gamgebeli), while the contract will now have a fixed term, after the expiry of which they can be released without any grounds.

The Gamgebeli representatives themselves have confirmed the above presumptions and doubts. After the enactment of the amendment, several Gamgebeli representatives from the Zugdidi and Senaki municipalities contacted *Transparency International Georgia*. They told us that the labor agreements for Gamgebeli representatives in the administrative units, in their belief, would be extended in proportion to the results that the ruling party would show per specific villages in the 2017 local self-government elections. They were worried and voiced doubts that this decision would be used for pressurizing the Gamgebeli representatives during the pre-election period. However, they refrained from speaking publicly.

Recommendations

- The local self-government bodies should bring the personnel policy in conformity with the Georgian legislation and restore the position of the Representative of the Municipality Head in the staff list;
- The Civil Service Bureau must elaborate a more detailed instruction on this issue

2. New Rule of Staffing the Election Commissions

On July 26, amendments were made to the Election Code, the Organic Law of Georgia, which changed the rule of staffing election commissions. Under the new amendments, appointment of members of the election administration by parties will depend on the number of votes received by the party in the most recent parliamentary elections. In contrast, to the previously existing rule, according to which the appointment of members of the election commissions was dependent on the amount of the funding that the party received from the state budget. Pursuant to the new amendment, parties will be allowed to appoint more than one member in the election administration, which, in turn, will fall short to ensure a multi-party representation in the election commissions. For example, if, prior to the above amendments, Georgian Dream had only one member among the seven members appointed by the parties, it will now, after the enactment of the amendments, have four members. The amendment was drafted by MPs of the ruling party. As envisaged by the draft, it entered into force after announcement of the results for 2017 local self-government elections.

The explanatory note for the draft law stated that the above amendment aimed to improve the sustainable functioning of the election administration. In reality, however, it is fraught with more dangers both in terms of maintaining the trust in the election administration and in relation to ensuring an equal electoral environment for political forces, as it unquestionably serves to strengthen the ruling party positions in the election administration. Importantly, the civil society and experts, both within the country and internationally, have long discussed the need to amend the rule for staffing the election administration in such a way as to ensure that this important institution is more protected from undue political influence and draws on the expertise and independence of its members.¹² Instead of implementing fundamental reforms, as required by the rule of recruitment in election commissions, the enactment of the amendment has further politicized this institution, as the new rule will lead to establishing a dominant position of the ruling party vis a vis other parties at all levels of the election administration.

Recommendations

- The rule of staffing the election administration should be linked to election results, although not in the present unjustified form: one party should only be entitled to appoint one member in the election administration rather than several members, as in the proposed amendment.

12 Statement of NGOs about the new rule of staffing of election commissions, 07.06.2017: <https://goo.gl/pHYk6j>

CHAPTER IV. MISUSE OF INSTITUTIONAL ADMINISTRATIVE RESOURCES DURING ELECTORAL PROCESSES

During 2017 local self-government elections, several types of institutional administrative resources were used for election purposes. Compared to other types of administrative resources, misuse of this type of resources was most problematic.

Just like the previous elections, in all the regions of Georgia, large-scale mobilization of employees of budgetary organizations¹³ was observed for the campaign meetings of the ruling party “Georgian Dream”. The information disseminated by media organizations on compilation of the list of Georgian Dream supporters by Tbilisi kindergarten principals raised particular concerns. However, it is not quite clear why the Prosecutor’s Office did not start an investigation on the matter. While dozens of cases of illegal campaigning were observed, including through social networks, the election administration did not offer adequate response to any.

Decision of the Auditor General on replacement of the Deputy Auditor Nino Lomjaria just a few weeks prior to the elections raised additional questions. Nino Lomjaria was in charge of monitoring political party finances.

Overall, the organization filed 16 complaints to CEC and various district commissions on misuse of institutional administrative resources. Out of these, 2 complaints were approved. For the most part, violations were observed in the following directions: illegal campaigning by public officials during office hours, misuse of administrative resources by various municipalities and abuse of power.

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

At all large-scale election campaign meetings of the Georgian Dream attended by our observers, the trend of full mobilization of employees of the budgetary organizations was observed. Although it was difficult to find people who would openly state that they had been compelled to attend the meetings, several civil servants expressed their disapproval of the received instructions. What is more, it is hard to imagine that practically all employees of the budgetary organizations would be truly willing to attend the party events and not be driven by other reasons instead. Even if mobilizing civil servants for the electoral campaign did not constitute a direct violation of the law, it does, at the very least, promote extreme polarization of the public service and is therefore unacceptable.

Zugdidi

A video was released on September 16¹⁴ that shows that employees of budgetary institutions from various municipalities attended the nomination of the *Georgian Dream* mayoral candidate in the city of Zugdidi. Although the meeting was held on a weekend, meaning that the civil servants had not violated campaigning regulations, the fact that many of the budgetary organization employees most probably did not participate in these events voluntarily remains most problematic.

What caused greatest concern was the fact that school principals and teachers brought students to attend the meeting. There were cases when children were enticed into the place by being told that they would attend a concert but, upon arrival, they discovered there was a presentation of the Georgian Dream’s mayoral candidate.

Having students and teachers taking interest in similar meetings is not a problem per se; nevertheless, it is important to ensure that, while engaging them in the process, their free choice is not overlooked.

¹³ **Budgetary organization** – an institution and/or an organization authorized to dispose of funds under budgetary programs/ sub-programs, which prepared its own budget draft, fulfills it and performs reporting in line with established norms, procedures and rules.

¹⁴ <https://www.youtube.com/watch?v=4bxnMR3lkGO>

Sadakhlo

On October 5, the media reported that teachers and pupils from Sadakhlo School #1, Sadakhlo School #2, Tzakendi and Molaoghli public schools attended the Georgian Dream electoral meeting in the morning hours, during the lessons, which led to the disruption of the educational process. Natia Mania, School # 2 teacher, posted the relevant information on her Facebook.¹⁵ According to the Sadakhlo school principal, pupils went to the meeting on their own initiative. Kenan Omanov, head of the Marneuli Resource Center, said they did not have information regarding the above fact and that the issue would be examined by the School Disciplinary Committee.

In this case, it is difficult to assess whether the students and teachers attended the meeting on their own initiative or they were subjected to certain pressure. It should be noted however that the presence of the school principal at the same meeting during the school process is conducive to the feeling that such actions are being encouraged among students. Consequently, we might have to do with the violation of the electoral legislation as well as the articles of the Law on General Education, which prohibit politicizing the school process in the general education institutions.

Marneuli

Another fact concerning the mobilization of schoolteachers, principals and kindergarten educators was identified in Marneuli. On September 24, Georgian Dream nominated Teimuraz Abazov as Marneuli Mayoral candidate. According to the information released by the media, Marneuli Public School teachers, directors and kindergarten educators attended the meeting.¹⁶

The author of the article writes that the majority of people attending the meeting said they came there on a special request, but refrained from commenting officially.

2. Involving kindergarten directors in electoral processes

The video footage released by Monitor studio on October 4 featuring a journalistic investigation shows that the directors of Tbilisi Pre-school Institutions had supposedly been instructed by Nikoloz Todradze, Deputy Director of the Tbilisi Kindergartens Management Agency, to collect lists signed by over 100 voters registered in Tbilisi and representing Georgian Dream supporters.¹⁷

Directors of kindergartens are officially subordinate to the Tbilisi Kindergarten Management Agency. Subsequently, this case clearly indicates the involvement of the officially subordinate persons in campaigning, which is a violation of the election legislation and constitutes a criminally punishable act. However, the Prosecutor's Office did not launch an enquiry into this case despite the fact that there was sufficient ground to start the investigation

Transparency International – Georgia filed a complaint to the CEC, urging it to offer an adequate response to the fact. However, the commission declined the complaint, relying on the allegation of the offender as the only evidence. The letter that the organization received runs as follows: **„within the administrative proceeding, the Chairperson of the CEC addressed Mr. Temur Tordinava, Director of Tbilisi Kindergartens Management Agency with a request to present written opinion about the facts depicted in the video material. Based on the presented opinion, no violation of Article 49 of the Election Code has been observed. Consequently, drafting of an administrative act does not seem to be reasonable.”** Thus, according to the letter, the Central Election Commission used explanation of the alleged offender as a counter-evidence to the video material and adopted a decision in favor of the latter. We believe that the CEC had not thoroughly investigated substantial circumstances of the case, giving them an incorrect assessment.

15 -Teacher: school process disrupted as a result of students and teachers attending the Georgian Dream meeting, On.ge, 05.10.2017: <https://goo.gl/svfEhv>

16 „The majority of the candidate nomination participants are teachers“, Marneuli FM, 24.09.2017: <https://goo.gl/6j3tH2>

17 <https://www.facebook.com/monitorstudio/videos/1582146188514746/>

Recommendations

- Heads of budgetary organizations should refrain from unlawfully involving public officials subordinate to them in pre-election campaigning and should respect their labor rights. Also, they should not disrupt the functioning of municipal bodies through involving their employees in campaigning;
- The Prosecutor's Office should launch an investigation on the alleged facts of illegal orders being issued by the Tbilisi Kindergartens Management Agency Deputy-Director to kindergarten directors.

3. Illegal Campaigning by Public Officials

Congruent to the Election Code of Georgia, public officials shall not engage in pre-election campaigning during working hours. In the reporting period, we have revealed several cases of violating the given regulation. Illegal campaigning through the social network "Facebook" was particularly prominent. In all identified cases, the election campaigning was carried out in favor of the ruling party Georgian Dream. The violations were reflected in public officials sharing the links supporting the Georgian Dream on their Facebook pages. Our regional coordinators in Mtskheta, Kvareli, Ambrolauri and Oni observed such violations. In response to detected violations, we applied to election commission of respective districts. Mtskheta and Kvareli district commissions declined our complaints, claiming "use of personal social pages, such as Facebook, by public officials to post/share/like information which is in favor or against any subject is not viewed by the election administration as engagement of the public officials in the pre-election campaigning."

We would like to emphasize that such narrow interpretation of the election campaigning by District Election Commissions goes beyond the purposes of the Election Code and can hardly serve as an effective way of achieving legitimate goal of the norm. According to the Organic Law of Georgia on the Election Code, apart from directly calling on the voters to support or oppose an election subject/ election subject candidate, campaigning is any public action that promotes or prevents election of the latter. By their actions (sharing of campaigning material on Facebook), public officials openly demonstrate their position and thus, carry out campaigning in favor of specific parties. Therefore, the position of Mtskheta and Kvareli district commissions, whereby sharing of campaigning materials on the Facebook page does not constitute participation in campaigning is not quite clear.

Transparency International Georgia appealed the decision of Kvareli District Election Commission at the Central Election Commission; though the latter fully endorsed the position of the DEC, leaving the decision unchanged. According to the CEC: „opinion has been spread by means of communication, which the CEC believes is a constitutional right of a citizen and does not constitute an administrative violation envisaged by the Election Code.” The Election Code defines campaigning as expression of an opinion by a particular person in favor of or against an election subject. Thus, Article 45 of the Election Code prohibits the public officials from expressing their opinions during working hours.

In addition, the CEC refused to approve the complaint of Transparency International – Georgia” on the following grounds: „expression of an opinion by a citizen on his/her personal page should not be regarded as an administrative offense, provided that it is just an opinion and its expression has not led to some specific violation.”

We believe that such judgment by the Central Election Commission is groundless, as by definition of the norm, for an action to be classified as a legal offense, it does not need to lead to violation of some additional norm. Campaigning by public officials during working hours represents by itself a violation of the law and therefore, it is not clear by which norm the commission was guided when drawing its decision.

Recommendation

- It is essential that the election commissions perceive campaigning through social networks as violation of the law and take appropriate decisions.

4. Illegal use of official position

Transparency international Georgia was informed that Lado Shvelidze, Zugdidi Municipality Gamgebeli representative in Kulishkari village, had violated Article 49 of the Organic Law of Georgia on Election Code.

According to the documents obtained by *TI Georiga*, Lado Shvelidze handed Davit Kodua, head of the Georgian Dream office, a list of persons employed in the Public Service including their ID numbers and names. Moreover, the document contains a graph that assigns a plus sign to one part of the listed persons, a minus to another part, and a question mark to yet another.

We believe that Lado Shvelidze, alongside the Election Code, may have violated the Law of Georgia on Personal Data Protection, pursuant to which he is forbidden to use his official authority for electoral purposes. Under the Law of Georgia on Personal Data Protection, processing and transfer of information to another person is inadmissible without the consent of the owner of the personal information and without the relevant legitimate grounds. *TI Georiga* appealed to the Zugdidi DEC but our complaint has not been granted.

5. Tbilisi City Hall Advertisements

A video commercial was being aired on Rustavi 2 and Imedi TV during September, featuring a slogan “Done for Tbilisi”. The commercial told about the infrastructural projects implemented by the Tbilisi City Hall over the period from 2014 to 2017.¹⁸ The video content advertised the Tbilisi City Hall and its placement, in our opinion, violated the Georgian legislation, on the one hand, while on the other hand, it had a negative impact on the pre-election environment.

The video commercial violated the Georgian legislation for the following reasons:

- In accordance with Article 66’ of the Law on Broadcasting and National Communications Commission decision No. 398/18 of 15 June,¹⁹ Ad placement in the broadcaster by an administrative body is deemed as financing the broadcaster and shall be forbidden, except in exceptional cases;
- Administrative bodies are not forbidden to place social advertisements. The video, however, was not published as a social advertisement. Notably, it did not even meet the pertinent requirements to be qualified as a social advertisement;
- Given the aforementioned two points, the Tbilisi City Hall had only one remaining legal grounds to have the video aired, this ground being the second sentence of Article 66’ (2) of the Law on Broadcasting allowing the City hall to procure the Broadcaster’s service “for the purpose of disseminating important information to the public”.

The video included footages of the constructed roads, bridges and other infrastructure restoration projects carried out in the years 2014 to 2017. The video did not provide information, as to the updates, procedures or emergencies that citizens should take into account. The video did not serve the purpose to disseminate important information to the public.

Moreover, airing similar videos during election campaign may be perceived by the public as an indirect advertisement in favor of the ruling party, which will count as use of administrative resources. *TI Georiga* often wrote about similar problems during the previous elections.²⁰ Importantly, after the release of our announcement, the Tbilisi City Hall stopped broadcasting such videos on TV channels. In addition, based on our appeal, the Georgian National Communications Commission decided on this case and shared our arguments. The Commission warned TV companies Rustavi 2 and Imedi against airing similar commercials.

18 Tbilisi City Hall Pre-electoral Advertisement, Transparency International Georgia 20.09.2017:

<http://www.transparency.ge/ge/blog/tbilisis-meriis-cinasaarчевno-reklama>

19 <http://gncc.ge/ge/legal-acts/commission/solutions/2017-392-18.page>

20 Pre-election ads by public agencies may be perceived as endorsements of the ruling party: 28.07.2016 <https://goo.gl/LxnD1K>

CHAPTER V. MISUSE OF FINANCIAL ADMINISTRATIVE RESOURCES DURING ELECTORAL PROCESSES

Financial administrative resource is one of the strongest resources for obtaining a solid advantage in the pre-election period. The Georgian Election Code does not allow for the increase in the funding of budgetary programs and initiation of new programs only during 60 days before the elections. This implies that no such amendment should be made to the law during this period, albeit the law does not prohibit the implementation of pre-planned programs. This is exactly why the government usually finds it easy to bypass this regulation, by planning to change the budget in advance and then implementing the specific programs in the pre-election period without any problems. This is the reason why we, in addition to highlighting the violation of law while examining this issue, also analyze budgetary programs that, although initiated and implemented in compliance with the law, can have a serious impact on the election results.

In these cases, we are usually talking about election motivated spending of state funds, i.e. the situation where such budgeting programs are initiated several months prior to the elections, which are primarily aimed at winning the voters hearts and might not conform to long-term interests of the country. At the same time, there are certain state programs with a special social focus that envisage direct transfer of ostensible social goods to the broad layers of the population. An example of this would be an increase of social and other benefits.

To ensure healthy and competitive electoral environment, it is very important that such programs are not initiated shortly before the elections, since through them the ruling party candidate / party is prone to obtain a serious advantage.

No change was identified in the central or local budget during the reporting period that would violate the above regulation of the Election Code. As for the electorally motivated public spending, we have not observed any particularly problematic trends in this regard.

RECOMMENDATIONS

After studying the cases of misusing administrative resources during 2017 local self-government elections, “Transparency International – Georgia” has drawn the following recommendations:

- The Prosecutor’s Office should investigate the cases where Deputy Director of the Tbilisi Kindergartens Management Agency had supposedly illegally instructed directors of Tbilisi Pre-school Institutions;
- For the next elections, electoral bodies should take into account the court’s decision on unlawful registration of voters at the polling stations and prevent such practices.
- It is necessary to have a greater regulation of the selection procedures for professional appointments in the election commissions alongside clear qualification requirements. Procedures for selection of candidates must serve to minimize the chances for political party activists to be appointed on these positions;
- It is advisable to reduce the number of members of the election commissions from 12 to 7; this would enhance competitiveness and choice of candidates;
- Heads of budgetary organizations should refrain from unlawful involvement of their subordinate civil officials in pre-election campaigning and respect their labor rights. Also, through involving their employees in campaigning, they should not interfere with the functioning of municipal bodies;
- Civil servants should not campaign during working hours, especially if they are using administrative resources during campaigning;
- It is necessary that election commissions perceive campaigning through social networks as a violation of the law and make appropriate decisions;
- During the pre-election period, government agencies should refrain from active advertising of the projects they had planned or implemented during the pre-election period, except when we really have to do with social advertisements rather than abuse of this status;
- Local self-government bodies should bring personnel policy in compliance with the Georgian legislation and restore the position of municipality heads in the staff list.