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MISUSE OF ADMINISTRATIVE RESOURCES DURING 2018 PRESIDENTIAL ELECTIONS IN GEORGIA

INTERIM REPORT

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ABBREVIATIONS

CEC - Central Election Commission

DEC – District Election Commission

GD – Georgian Dream

GNCC - Georgian National Communications Commission

GYLA - Georgian Young Lawyers' Association

ICFFE - Interagency Commission for Free and Fair Elections

ISFED - International Society for Free and Fair Elections

NGO – Non-Governmental Organization

N(N)LE – Non-Profit (Non-Commercial) Legal Entity

OSCE – Organization for Security and Cooperation in Europe

PEC - Precinct Election Commission

TI Georgia – Transparency International Georgia

UNM - United National Movement

KEY FINDINGS

Monitoring of 2018 Presidential Elections, conducted by TI Georgia from June 1 to October 20, revealed several negative trends in terms of misuse of administrative resources.

Misuse of Enforcement Administrative Resources during Electoral Processes

Several important cases of misuse of enforcement administrative resources have been observed. Recruitment of independent members of DEC and PECs was worth mentioning. Similar to the previous elections, fairness of this process has been questioned. In some cases, opposition parties have released pre-defined lists of commission members. According to them, selection process was just a formality and DEC and PEC members have been already selected before the official recruitment process had started. In addition, several phone conversations have been released, which could prove active involvement and influence of the ruling political party on recruitment process of PEC members.

Although opposition political party supporters organized rallies against Salome Zurbashvili - a ruling party supported presidential candidate, during her election campaign meetings, violent incidents almost were absent. One violent incident has been observed in Kutaisi City Assembly where couple of ruling party members of the Assembly beat a colleague from opposition, because he insulted Salome Zurbashvili in his Facebook post.

It is worth mentioning that the Prosecutor's Office apparently tried to discredit the UNM, the former ruling party, by announcing results of an old investigation on alleged murder attempt of Badri Patarkatsishvili by high officials of the previous government. Prior to that, Rustavi 2, an anti-government TV Channel, has made public series of secret audio recordings. These recordings concerned the alleged terror on business, existence of informal militia-type groups, high-level corruption and illegal actions in uninvestigated viral cases. Apparently, the mentioned announcement of the prosecutors' office was made in order to take public attention out of the viral recordings. The same might be true in case of the Minister of Internal Affairs, when he stated that he knew every detail who and how planned destabilization and provocation in the country while commenting on the mentioned recordings. The Minister Gakharia did not provide any proof of his allegations and there is no information whether the investigation started.

Over two month-long open verbal attacks by various public institutions against leading election observation organizations were among concerning trends. One of the goals of such attacks could be a desire to discredit these organizations. Thea Tsulukiani, a chairperson of the ICFE and the Minister of Justice at the same time, is worth mentioning. Her unconstructive actions and statements against the observation organizations urged three leading NGOs to leave the Commission. The Chairman of the Parliament also was worth mentioning as he compared the leaders of these NGOs to fascists.

Some decisions of the GNCC also appeared to be problematic. We believe the GNCC illegally asked some broadcasters to provide certain information about media coverage of their opinion polls. In addition, the GNCC had vague positions on some political ads demonstrating its biased approaches.

Misuse of Legislative Administrative Resources during Electoral Processes

In 2018, no such legislative amendment was made that might be considered as a misuse of administrative resources. However, last year we wrote about a legislative amendment, which set a new rule for forming of election commissions after 2017 local elections. This rule clearly favored the ruling party and ensured its dominance in election commissions. Because this is

the first general elections for election commissions formed based on the mentioned rule, it was worth mentioning in this report.

Misuse of Institutional Administrative Resources during Electoral Processes

Several types of institutional administrative resources have been misused during electoral processes. What merits attention in this regard, similar to the previous elections, is the fact that the ruling party - the GD was mobilizing people employed in budgetary organizations on mass scale to attend Salome Zurbashvili's election events almost in every region. Employees of budgetary organizations were also asked to provide supporters lists for the same candidate. Some cases of illegal campaigning and use of state communication means for electoral purposes have also been observed. Similar to the previous elections, the CEC and DEC's did not consider clear campaigning through personal Facebook accounts of civil servants as electoral agitation. This issue remains problematic.

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 (TI Georgia) has been studying the issue for many years now. This time, we are pleased to release an interim report, which explores misuse of administrative resources during 2018 presidential elections. The report covers the period from 1 June to 20 October 2018.

These presidential elections are distinct because the Georgian Dream (GD), a ruling party, did not nominate its official candidate and openly supports Salome Zurbashvili, formally an independent candidate. This was a challenge for our observers since administrative resources are mainly used by the ruling party in favor of its own candidates. In this reality, stronger arguments were needed to justify electoral motivation behind the use of administrative resources.

In the reporting period, TI Georgia kept track of all the events that could entail use of administrative resources for electoral purposes or similar activities. Lawyers of the organization, three regional offices and seven regional observers studied and verified reported facts. 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 during electoral process and presents its 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 spirit 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

Several important problems have been identified in terms of misuse of enforcement administrative resources during 2018 presidential elections. Two-month long verbal attacks of the leaders of various public institutions against the local election observation organizations were worth mentioning. Apparently, the main goal of these actions was to discredit these organizations prior to the elections.

Recruitment of independent District Election Commission (DEC) and Precinct Election Commission (PEC) members remained problematic. Similar to the previous elections, fairness of this process has been questioned. In some cases, opposition parties have released pre-defined lists of commission members. According to them, selection process was just a formality and DEC and PEC members have been already selected before the official recruitment process had started. In addition, several phone conversations have been released, which could prove active involvement and influence of the ruling political party on recruitment process of PEC members.

Although opposition political party supporters organized rallies against Salome Zurbashvili - a ruling party supported presidential candidate, during her election campaign meetings, violent incidents almost were absent. One violent incident has been observed in Kutaisi City Assembly where couple of ruling party members of the Assembly beat a colleague from opposition because he insulted Salome Zurbashvili in his Facebook post.

It is worth mentioning that the Prosecutor's Office apparently tried to discredit the United National Movement (UNM) by announcing results of an old investigation on alleged murder attempt of Badri Patarkatsishvili by high officials of the previous government. Prior to that, Rustavi 2, an anti-government TV Channel, has made public series of secret audio recordings. These recordings concerned the alleged terror on business, existence of informal militia-type groups, high-level corruption and illegal actions in uninvestigated viral cases. Apparently, the mentioned announcement of the prosecutors' office was made in order to take public attention out of the viral recordings. The same might be true in case of the Minister of Internal Affairs, when he stated that he knew every detail who and how planned destabilization and provocation in the country while commenting on the mentioned recordings. The Minister Gakharia did not provide any proof of his allegations and there is no information whether the investigation started.

Some decisions of the Georgian National Communications Commission (GNCC) also appeared to be problematic. We believe the GNCC illegally asked some broadcasters to provide certain information about media coverage of their opinion polls. In addition, the GNCC had vague positions on some political ads demonstrating its biased approaches. This and other specific cases are thoroughly described below.

1. ATTEMPTS TO DISCREDIT LOCAL ELECTION OBSERVATION ORGANIZATIONS

In the reporting period, local election observation organizations became a target of verbal attacks by various high-officials and public institutions. These attacks started after publishing first interim reports by election observation organizations. Georgian Young Lawyers' Association (GYLA) and International Society for Free and Fair Elections (ISFED) were the first victims. Inappropriate comments were made by certain high government officials, the Chairpersons of

the CEC³, GNCC⁴ and the IACFFE⁵. Later this process turned into campaign.

Thea Tsulukiani, the Chairperson of the IACFFE (the Minister of Justice), criticized the report of GYLA and blamed the organization for implementing plans of political parties and being partial. In response to inappropriate comments made by Tsulukiani, two opposition parties and the aforementioned two NGOs left the commission in protest.

As noted, the Chairperson of the CEC made incorrect comments the next day after GYLA published its report⁶ on August 20. Tamar Zhvania described the GYLA's report as "not serious" and "unprofessional".

Later attacks continued against other election observation organizations. On September 13, ISFED published its first interim report on elections⁷, where it criticized two decision of the GNCC. On September 14, Kakha Bekauri, the Chairperson of GNCC⁸ described conclusions of the report as "unqualified" and "lie". Moreover, Bekauri called on international organizations to find out how local NGOs spent their funds.

After unconstructive critique of the chairpersons of CEC, GNCC and IACFFE, aggressive rhetoric came from the leaders⁹ of GD – the Chairperson of Parliament¹⁰, MPs¹¹ and Tbilisi City Mayor¹². They tried to discredit election observation organizations by presenting incorrect and groundless accusations. The comments of Irakli Kobakhidze were worth mentioning, when he compared the heads of the leading NGOs to fascists. Such statements made by high public officials encourages attacks against NGOs. Unethical letters, containing Kobakhidze's phrases, sent to the Executive Director of TI Georgia proved that.¹³

Regardless of GYLA's and ISFED's leave, TI Georgia remained in the IACFFE to attempt to maintain a constructive cooperation for securing a healthy electoral environment. Nevertheless, due to the later developments and the aggressive rhetoric of the GD leaders, including the Minister of Justice, TI Georgia could not see any potential for constructive dialogue within the format of the IACFFE. Unfortunately, the agencies and high-level officials who should be responding to any case of misuse of administrative resources were themselves using these resources to discredit influential observer organizations.

Due to the aforementioned circumstances, TI Georgia also left the IACFFE.¹⁴ The ruling party and the Chairperson of the IACFFE have unfortunately failed to provide a professional and neutral work environment. The ruling party and the Chairperson of the IACFFE were solely responsible for these circumstances.

3 <https://goo.gl/2yNEFY>

4 <https://goo.gl/bpy4em>

5 <https://goo.gl/rNrFmS>

6 <https://goo.gl/n3pEdY>

7 <https://goo.gl/DoXieJ>

8 <https://goo.gl/xWzKej>

9 <https://goo.gl/ikBZEz>

10 <https://goo.gl/UmyRfW>

11 <https://goo.gl/2fBPHc>

12 <https://goo.gl/aAxUx6>

13 <https://bit.ly/2CyS8jW>

14 <https://goo.gl/uEgeWj>

Recommendation

High state officials and heads of public institutions should refrain from attacking and attempting to discredit election observation organizations;

2. VIOLENCE

On September 19 Amiran Kopaleishvili and Imeda Saghinadze, GD members of Kutaisi City Assembly, beat Gia Ukleba, their colleague from UNM.¹⁵ According to media, Ukleba's offensive Facebook post against Salome Zurabishvili was alleged reason for verbal and later physical attack on him. According to the Ministry of Internal Affairs, investigation has already started on alleged violence (article 126 of Criminal Code of Georgia).

Recommendation

Law enforcement bodies should promptly investigate the assault on the member of Kutaisi City Assembly

3. RECRUITMENT OF DEC AND PEC MEMBERS

Similar to the previous elections, fairness of recruitment process of independent DEC and PEC members has been questioned. In some cases, opposition parties have released pre-defined lists of commission members. According to them, selection process was just a formality and DEC and PEC members have been already selected before the official recruitment process had started.

In this regard the case of Krtsanisi DEC was worth mentioning. On August 27, Levan Bezhashvili, one of the members of opposition coalition "The Strength Is in Unity", presented a footage¹⁶ of phone conversations, which might show very close cooperation between the GD office and the chairpersons of Krtsanisi DEC and PECs. In case of authenticity, the footage allowed to draw a conclusion that recruitment of independent DEC and PECs members was coordinated by the GD office. According to this footage, Nino Maisuradze, a coordinator of election commissions from GD, sent to Davit Petviashvili, the chairperson of Krtsanisi DEC, and other officials of PECs a list of people who should be appointed,. After the release of this footage, "The Strength Is in Unity" requested resignation of Tamar Zhvania, the chairperson of CEC.¹⁷ Couple of hours after this presentation Petviashvili submitted his resignation letter¹⁸ to CEC, which was promptly approved.¹⁹

Later on, another case of alleged violation of recruitment process of independent PEC members was revealed. On September 11, Dimitri Koripadze, a member of the UNM, made a statement²⁰ that PEC members in #62 Khelvachauri DEC will be selected based on a consent of GD. He also presented pre-defined list of people who should be appointed. TI Georgia compared this pre-defined list to the list of people who later were officially appointed and we found almost 90% coincidence between these lists.

15 <https://goo.gl/NKHb2S>

16 <https://goo.gl/adAcsh>

17 <https://goo.gl/ahDQQZ>

18 <https://goo.gl/vmrEr9>

19 <https://goo.gl/t5oPJm>

20 <https://goo.gl/hxxL5x>

Recommendation

It is necessary to have a greater regulation of the selection procedures for professional appointments in the election commissions alongside with clear qualification requirements. Procedures for selection of candidates should minimize chances for political party activists to be appointed on these positions;

4. ACTIONS OF GNCC

4.1. COVERAGE OF PUBLIC OPINION POLLS

In the pre-election period, the GNCC asked some broadcasters to provide certain information about media coverage of their opinion polls in order to verify their reliability. This created a threat of self-censorship and violation of the law on Personal Data Protection.

In August, the GNCC sent a letter to broadcasters and determined certain verification requirements for those media organizations, which planned to purchase a service of opinion polls. It is worth mentioning that Georgian legislation does not require such verification since it might have a risk of violation of personal information regulations.

Last year the GNCC submitted a legislative proposal²¹ to the Parliament with the aim of making media outlets legally obliged to check the results of conducted polls before revealing them to the public. This proves that current regulations do not include such requirements.²²

The GNCC has not issued a public explanation of the specific procedure for verifying poll credibility. However, the written communication²³ between the GNCC and the Personal Data Protection Inspector conducted²⁴ in November 2016 revealed that the regulatory commission considered a possibility of providing third parties, including the GNCC itself, with personal data and information about political views of poll participants in order to verify poll credibility.

The Personal Data Protection Inspector responded²⁵ that the commission had the grounds to process personal data but there were no grounds to process special category data, that was to say, information related to political views, and that making this information public or making it available to a third party without the consent of an interested person was inadmissible. The Inspector, however, also said that, since the Election Code, as an organic law, had a higher hierarchical status than the Law of Georgia on Personal Data Protection, the normative act of a higher status should be given preference. **This way, the Personal Data Protection Inspector essentially confirmed to the GNCC that it had the right to request the information about the identity and political views of public opinion poll participants.** The Inspector did not consider international experience, including the Council of Europe recommendations²⁶, where such practice does not exist.

The GNCC's desire to oblige the broadcasters to verify the credibility of public opinion surveys and then to control whether the broadcasters were acting in accordance with the law:

21 <https://goo.gl/6i9SYN>

22 <https://goo.gl/BsPMhS>

23 <https://goo.gl/kxNQ2Y>

24 <https://goo.gl/CmEB2K>

25 <https://goo.gl/CmEB2K>

26 <https://goo.gl/Mq61ry>

- Posed a threat to the commissioning of public opinion polls by the broadcasters and then publicizing their results;
- Blatantly violated the secrecy of special category personal data, namely, the information concerning political views;
- Created an environment of self-censorship for public opinion poll respondents;
- Created a threat that the confidentiality of answers given by respondents would not be protected and that, in the future, the citizens would not participate in public opinion polls at all or would refrain from answering politically sensitive questions.

Naturally, a public opinion survey should not contain errors and should not be used for manipulation. To prevent this, the law²⁷ establishes rules for the media with regard to publicizing the results of public opinion polls, including an obligation to indicate the following information: who commissioned and conducted the poll, methodology, margin of error and so on.

4.2. STEPS TOWARDS REGULATING PRE-ELECTION ADVERTISEMENT

On September 25, the GNCC published a statement²⁸ criticizing the time allocated for free political advertising by the TV channel Rustavi 2, and a separate statement criticizing the content of such ads aired by broadcasters. On the same day, GNCC Chairperson sent letters²⁹ to all broadcasters requesting them to remove three ads from air on the basis of them being illegal. We believe that both of these actions casted doubt on the institutional impartiality of the regulator and contain signs of use of administrative resources for election purposes in favor of the ruling party candidate Salome Zurbishvili.

A statement of the GNCC and a letter from its Chairperson did not constitute legal acts and were not binding for broadcasters. Therefore, the Commission and its Chairperson have, in effect, issued a recommendation aimed at restricting specific broadcasters and political actors.

In its statement³⁰, the GNCC expressed concern about the increase of free political ad limit by Rustavi 2. Even though the Commission noted that the broadcaster's decision was in line with the law, it was nevertheless concerned that the "ads were primarily aimed at discrediting a single presidential candidate and making sure that this candidate does not get elected". The presidential candidate in question was Salome Zurbishvili.

The Georgian Election Code defines political/pre-election advertising as a commercial broadcast by the media aimed at *promoting/hindering* the election of an electoral subject. Therefore, the argument used by the GNCC was invalid, since election subjects had the right to place ads directed against other candidates. A broadcaster also was authorized by law to increase the time it allocated for free political ads as long as it was within the legal limit, which Rustavi 2 had not violated, and allowed all qualified election subjects to place their ads on air without discrimination.

According to the letters³¹ sent to broadcasters by the GNCC Chairperson Bekauri, airing of an advertisement that was aimed at hindering the election of Salome Zurbishvili was illegal and, therefore, ought to be removed immediately. Bekauri presented the following

27 Article 50,5 and Article 82, Election Code of Georgia

28 <https://goo.gl/8tEMK9>

29 <https://goo.gl/gkjkWC>

30 <https://goo.gl/UqbkMW>

31 <https://goo.gl/mvQdZN>

arguments:

1. One ad used a clip from a political TV show with a journalist Inga Grigolia. Georgian legislation prohibits the participation of news journalists or presenters in political ads.

Georgian law indeed prohibits news presenters from participating in political ads, however, the ad in question used a clip from a TV program that clearly did not intend the participation of the journalist in a political ad of any election subject.

2. The Commission stated that the second ad insulted Zurabishvili and referred to her as a traitor, “which violates ethical norms and denigrates the person.”

We believed that such expressions should not be considered as a violation of ethical norms since political statements directed towards public figures are subject to a higher standard of freedom of expression by both Georgian law and international principles.

3. Certain assessments used in one of the ads were obscene in nature.

Obscenity is defined by the Law on Broadcasting as an action which is in conflict with ethical norms established in society and which has *no social and political*, cultural, educational or scientific value. We believe that an ad that used a statement made previously by an election subject to present them in a negative light in the eyes of the voters had political value, regardless of whether one agreed with it or not. Therefore, this type of advertising was in line with the law.

Consequently, it was unclear what legitimate aim the Commission’s statement and its Chairperson’s letter had, especially since:

- Neither of them was aimed towards bringing about a legal outcome.
- The Commission’s statement disapproved actions that were permitted by law acknowledging that no law has been violated.
- The Chairperson’s letter attempted to interpret the law without discussion within the Commission.
- Both were aimed at restricting the actions of TV companies and opposition political parties.

The actions of the GNCC and its Chairperson could be perceived as the use of administrative resources for election purposes since they served the interests of one election subject and were directed against the interests of other election subjects. Therefore, **we called on the National Communications Commission and its Chairperson to act within the limits established by law, abstain from similar statements / decisions and fulfill their functions impartially.**

Recommendation

The GNCC should act within the legislative framework and refrain from making such decisions, which can question its impartiality.

5. DISTRIBUTION OF SECRET RECORDINGS AND REACTION OF LAW ENFORCEMENT

In the pre-election period the situation became tense after Rustavi 2 revealed various secret recordings related to so called Omega case³² and Khorava Street case³³. Unfortunately, the government could not adequately respond to the allegations raised in the footage. There was an impression that the Government was using administrative resources like prosecutor's office for taking public attention out of these cases.

The first series of secret recordings concerned Omega case, where signs of elite corruption and strong informal governance could be detected.³⁴ Later an audio recording of Mirza Subeliani, one of the arrested persons in Khorava Street case, was revealed, where he talked about some alleged crimes. In case of authenticity, these recordings point to the signs of intimidation of former high officials and witnesses, torture and inhuman treatment.

The prosecutor's office started investigation of this case and explained that the investigation was focused on illegal possession and distribution of secret materials of private life, intimidation and secret recording of detained person and abuse of power.

On October 17, the prosecutor's office organized a briefing³⁵ where it noted that former high officials of Constitutional Security Service were detained for preparing a murder of Badri Patarkatsishvili. According to the Office, opening of this case was made possible by poofs found in an investigation of one of the high profile cases in 2016. The fact of revealing Patarkatsishvili case short time prior to the pre-election period, when it could be done much earlier, raised legitimate doubts that the prosecutor's office was used as an administrative resource for discrediting political opponents of the ruling party. This could seriously damage pre-election environment and create uneven playing field for electoral subjects.

The same might be true in case of the Minister of Internal Affairs, when he stated that he knew every detail who and how planned destabilization and provocation³⁶ in the country while commenting on the mentioned recordings. The Minister Gakharia did not provide any proof of his allegations and there was no information whether the investigation started.

Recommendation

The Prosecutor's Office and the Ministry of Internal Affairs should distance themselves from political processes and not be used for discrediting certain political groups.

32 <https://goo.gl/kHR6Da>

33 <https://goo.gl/T4vJJ8>

34 <https://bit.ly/2xYg1hE>

35 <https://goo.gl/SXRSq1>

36 <https://bit.ly/2CCBksa>

CHAPTER III. MISUSE OF LEGISLATIVE ADMINISTRATIVE RESOURCES DURING ELECTORAL PROCESSES

In 2018, no such legislative amendment was made that might be considered as a misuse of administrative resources. However, last year we wrote about a legislative amendment, which set a new rule for forming of election commissions after 2017 local elections. This rule clearly favored the ruling party and ensured its dominance in election commissions. Because this is the first general elections for election commissions formed based on the mentioned rule, it was worth mentioning in this report.

1. 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.³⁷ 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

- In the short run, the rule how to form one part of election commissions should be linked to the election results, but not like how it is now. One party should have a right to appoint only one member of commission, not couple of them;
- In the long run, the rule for forming election commissions should be comprehensively revised. The main political parties and other stakeholders should be actively involved in this process.

37 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

Several types of institutional administrative resources have been misused during electoral processes. 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 Salome Zurbashvili's election events almost in every region. Employees of budgetary organizations were also asked to provide supporters list for the same candidate. Some cases of illegal campaigning and use of state communication means for electoral purposes have also been observed. Similar to the previous elections, the CEC and DEC's did not consider clear campaigning through personal Facebook accounts of civil servants as electoral agitation. This issue remained problematic.

1. MOBILIZING EMPLOYEES OF THE BUDGETARY ORGANIZATIONS AND THEIR INVOLVEMENT IN ELECTION CAMPAIGN

In the reporting period, two different types of participation in election campaign have revealed. Firstly, the employees of budgetary organizations have been mobilized for campaign meetings and secondly, they were asked to collect a list of supporters.

1.1. MOBILIZATION FOR ELECTION CAMPAIGN MEETINGS

Employees of budgetary organizations, including civil servants, traditionally attended election campaign meetings of Salome Zurbashvili, a ruling party-backed presidential candidate. Zurbashvili started her campaign on September 12 in Kutaisi. Number of employees of budgetary organizations, including Ilia Chavchavadze Library and Akaki Tsereteli State University, attended the meeting, which was held during working hours.³⁸ On September 15 Valeri Gognadze, the director of N2 Public School, and Iza Vepkhvadze, the head of Kharagauli Theatre of Literature, attended the Kharagauli campaign meeting of Zurbashvili.³⁹ On October 2, Zurbashvili held campaign meetings in Ninotsminda, Akhalkalaki and Aspindza. Employees of City Halls, schools, kindergartens and other budgetary organizations attended these meetings.⁴⁰ On October 3, Zurbashvili was in Akhaltsikhe. That day 20 employees of Akhaltsikhe City Hall took their day-offs and most of them confirmed that they went to Zurbashvili's campaign meeting.⁴¹ On October 2-3, in total 80 civil servants of Samtskhe-Javakheti municipalities took their day-offs.⁴² High presence of the employees of budgetary organizations has also been observed in other campaign meetings of Salome Zurbashvili throughout the country.

These cases were worth mentioning because the employees of budgetary organizations depend on their political leadership, therefore, there is a high probability that they attended the mentioned meetings against their will. If it were true, it would be a violation of those provisions of Georgian Election Code, which prohibits involving subordinates in election campaign against their will.⁴³

What is more, it is hard to imagine that practically all employees of the budgetary organizations

38 <https://goo.gl/sdFhrz>

39 <https://goo.gl/UX6k4X>

40 <https://goo.gl/iSizCw>

41 <https://goo.gl/6emnWT>

42 <http://sknews.ge/index.php?newsid=19739>

43 Article 49.1.a of Election Code of Georgia

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.

1.2. INSTRUCTIONS TO COLLECT SUPPORTERS' LISTS

In several regions municipal officials were instructing directors and employees of Non-profit (Non-Commercial) Legal Entities (N(N)LEs) that receive funding from the Budget to mobilize supporters of Salome Zurbashvili and to provide certain individuals with the lists of potential supporters.

TI Georgia and its partner organizations have been informed about these instructions; we possessed the evidences that proved the credibility of these reports, however, in order to protect labor rights and personal information of employees of N(N)LEs and their family members, the organizations chose not to disclose the evidences.

In the interviews with observers, employees of N(N)LEs stated that under the instructions of municipal officials they have been provided with special forms that each should fill out with personal information of ten supporters. They also stated that the lists were to be prepared in order to support Salome Zurbashvili.⁴⁴ Such an action represented another type of involving subordinates in campaigning and is also prohibited by the law.

Recommendation

Heads of budgetary organizations should refrain from unlawful involvement of their subordinate civil servants in pre-election campaigning and respect their labor rights.

2. ILLEGAL CAMPAIGNING BY PUBLIC OFFICIALS

Pre-election campaign is regulated by the Election Code of Georgia, according to which public officials shall not engage in pre-election campaigning during working hours. Some public officials (a judge, a member of election commission etc.) are totally prohibited to campaign.

2.1. CAMPAIGNING THROUGH PRIVATE ACCOUNTS OF SOCIAL NETWORKS

In the reporting period, public officials were actively campaigning in Facebook. Various campaign information has been posted or shared in Facebook during working hours by public officials in the municipalities of Zugdidi, Gori, Kutaisi and Tskaltubo. However, election commissions have not satisfied any of our complaints in this regard. The CEC followed the previous years' practice⁴⁵ and did not consider election campaigning through Facebook as a sphere of its supervision.

Such a narrow interpretation of the election campaigning by the CEC and DEC's 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.

44 <https://goo.gl/nC3eVC>

45 <https://bit.ly/2JCP5cd>

TI Georgia and its partner NGOs raised this issue in discussion of MoU on Misuse of Administrative Resources and asked the CEC to provide adequate explanation.⁴⁶ However, an agreement with the CEC has not been achieved. The only compromise of the CEC was to acknowledge Facebook campaigning through personal accounts if administrative resources (means of communication) were used in this process. However, our practice showed that it is almost impossible to prove misuse of communication administrative resources in the process of Facebook campaigning.⁴⁷ As a result, election commissions only had to provide explanatory letters of public officials in response to our complaints.⁴⁸

2.2. CAMPAIGNING THROUGH WEBPAGES OF BUDGETARY ORGANIZATIONS

On September 19, infotkibuli.ge, a webpage of Tkibuli Municipality's N(N)LE Union of Cultural Institutions, posted campaign materials of Salome Zurabishvili.⁴⁹

According to Georgian Election Code, means of communication which are financed by state budget should not be used in campaigning. Infotkibuli.ge is a web page of Tkibuli Municipality's N(N)LE Union of Cultural Institutions and is financed from municipality budget. Tkibuli DEC satisfied our complaint and fined Nana Razmadze, an administrator of this web page.⁵⁰

Similar case was observed in Ninotsminda. On October 2 and 3 an official Facebook page of the City Assembly posted campaign materials of Salome Zurabishvili.⁵¹ TI Georgia also submitted a complaint on this case to Ninotsminda DEC and it is now under consideration.

Recommendation

The election commissions should perceive campaigning of civil servants through social networks during working hours as a violation of the law and make appropriate decisions.

46 <https://goo.gl/3CVmpf>

47 For instance, it is almost impossible to find out whether public servant used his private mobile internet or its employer while posting on Facebook

48 On <https://sachivrebi.cec.gov.ge> find decisions N50, N01/239, N89

49 <https://bit.ly/2xukylj>

50 <https://sachivrebi.cec.gov.ge/info.php?id=7064>

51 <http://sknews.ge/index.php?newsid=19513>

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 misuse of administrative resources during 2018 presidential elections, Transparency International Georgia has drawn the following recommendations:

- High state officials and heads of public institutions should refrain from attacking and attempting to discredit election observation organizations;
- A discussion should start about reforming the ICFF. The Commission works ineffectively under current mandate and supervision of the Minister of Justice;
- Law enforcement bodies should promptly investigate the assault on the member of Kutaisi City Assembly;
- It is necessary to have a greater regulation of the selection procedures for professional appointments in the election commissions alongside with clear qualification requirements. Procedures for selection of candidates should minimize chances for political party activists to be appointed on these positions;
- The GNCC should act within the legislative framework and refrain from making such decisions, which can question its impartiality;
- The Prosecutor's Office and the Ministry of Internal Affairs should distance themselves from political processes and not be used for discrediting certain political groups;
- In the short run, the rule how to form one part of election commissions should be linked to the election results, but not like how it is now. One party should have a right to appoint only one member of commission, not couple of them;
- In the long run, the rule for forming election commissions should be comprehensively revised. The main political parties and other stakeholders should be actively involved in this process;
- Heads of budgetary organizations should refrain from unlawful involvement of their subordinate civil servants in pre-election campaigning and respect their labor rights;
- The election commissions should perceive campaigning of civil servants through social networks during working hours as a violation of the law and make appropriate decisions.