

Misuse of Administrative Resources during the Electoral Processes: 2014 Municipal Elections in Georgia

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Table of Contents

Executive Summary.....	3
Introduction	6
I. The Definition of the Misuse of Administrative Resources during the Electoral Processes.....	7
II. The Misuse of Coercive Administrative Resources during the Electoral Processes	9
1. Opposition party nominees being pushed to withdraw their candidacies.....	9
2. Detention, Summoning and Prosecution of Opposition Political Party Activists	10
III. The Misuse of Legal Administrative Resources during the Electoral Processes	12
1. Restricting Independent Candidates to Run for Mayor and Municipality Governor Offices ...	12
2. Declaring Civil Servants of Local Municipalities as Interim Staff	13
3. De-registration of Candidates due to Residence Census.....	13
IV. The Misuse of Institutional Administrative Resources during the Electoral Processes.....	15
1. Informal nomination of current governmental officials as candidates very early in the electoral period.....	15
2. Providing Gifts and other Assistance for Electoral Purpose by Civil Servants	16
3. Misuse of Administrative Resources by Tbilisi Mayor and Government Chancellery	18
4. Social Advertising	18
V. The Misuse of Financial Administrative Resources during the Electoral Processes	20
1. The increase of the Local Municipality Budget before Elections.....	20
2. Expanding the Number of Social Assistance Beneficiaries	21
3. Electorally Motivated Initiatives of Central Government	22
VI. An Assessment of State Bodies Working on Electoral Issues	24
1. Central Election Commission	24
2. State Audit Office	24
3. Parliamentary Inter-Faction Group.....	24
4. Inter-agency Commission for Free and Fair Elections	25
VII. Recommendations.....	26

Executive Summary

The results of the monitoring done by Transparency International Georgia (TI Georgia) from the period of 1st of January to the 12th of June, 2014, have demonstrated that, in comparison with the 2012 Parliamentary elections, there were fewer instances of the misuse of administrative resources during the electoral processes. However, a larger number of issues were reported when compared to the 2013 Presidential elections. This will be discussed with more detail in different chapters of the report.

The Misuse of Coercive Administrative Resources during the Electoral Processes

In this regard, the misuse of coercive administrative resource can be considered more problematic when compared to the 2013 Presidential elections. In particular, the following alarming trend needs to be specially mentioned: Opposition election candidates were pushed to de-register from electoral lists. Throughout the entire pre-election period, this was a matter of grave concern; as such issues had the negative impact on the competitive electoral process. In addition, there were cases of opposition election candidate being summoned to investigative agencies or being pressed with charges. However, the legal prosecution of candidates has not turned into a trend. The Prime Minister's 14th of April call on law-enforcement agencies to refrain from summoning political party activists supposedly had a positive impact on the electoral process.

The Misuse of Legal Administrative Resources during the Electoral Processes

Misuse of this type of administrative resource was reported in numerous cases during the 2012 Parliamentary elections. Only a limited number of such cases were found out in 2013. This year two cases related to specific legislative initiatives need to be noted:

- The legislative initiative which bars independent nonpartisan candidates from running in mayors' and the municipality governors elections.
- Amendments made to the Law *"On Public Service"* which declared all public servants employed in local self-governance bodies as interim public servants.

The Central Election Commission's (CEC) incoherent decisions regarding the de-registration of several election candidates might fall into the same category of the use of administrative resources.

The Misuse of Institutional Administrative Resources during the Electoral Processes

Institutional resources were the most often misused resources in the 2013 Presidential elections. Particularly, there were several cases of illegal participation of public servants in election campaigns.

During the 2014 local elections, such illegal participation of public servants in the election campaign has not been reported on a wide scale. However, as opposed to the 2013 elections, other issues caused more concern, such as incumbent state officials informally announcing themselves as candidates far in advance the elections. ; These candidates sometimes providing the population with gifts purchased by state resources etc.

The misuse of Financial Administrative Resources during the Electoral Processes

There was practically no case of illegal use of financial resources in the 2013 Presidential elections.

As for the pre-election period in 2014, one case was reported where the budget of Dusheti municipality was increased in the campaign period, which represents a clear violation to the law.

In addition, it is intriguing that the financing of certain budgetary programs in many municipalities has been increased one or two days before the start of the campaign period. Although this is not a violation of the law, it clearly demonstrates the weakness in the Georgian legislation in this regard.

Together with the increase in local budgetary expenses, the number of eligible beneficiaries of central and local social assistance programs was also expanded. This will require to make additional amendments to the budget after the elections (this may entail redistribution along the articles or codes, or an increase in expenses). Such behaviour should also be considered as motivated by electoral processes.

In certain cases, the central government has proposed initiatives that were purely motivated by election purposes. The presentation of several programs during the pre-election period can be considered as a means for the central government to propel its local candidates to victories.

Central Election Commission Activities

The Central Election Commission played an important role in shaping the pre-election period in 2014: its June 3 resolution should be viewed as a positive step as it addressed the issue of possible abolishment of city council party lists. This initiative removed the danger faced by opposition candidates to have their proportional lists cancelled in several municipalities. However, there was an instance when the CEC did not show consistency - de-registration of Akmamed Imamkulyev, a candidate for Marneuli municipality governor office.

The State Audit Office Activities

The State Audit Office's monitoring of the financial activities of political parties can be positively assessed. Unlike 2012, the State Audit Office did not exhibit a different approach in its works with various political parties.

Also, in the spring of 2014, the Office created a temporary consultative commission working on the legality of political financing and monitoring issues in order to ensure transparency. Its members include representatives of local and international organizations. The commission regularly receives information about the Office's monitoring of political parties financing.

The Parliamentary Inter-Faction Group Activities

In January 2014, the Inter-Faction Group in the Parliament restarted its activities which mainly aimed to reform the election legislation. The group introduced a big number of legislative amendments; however, most of them were of technical nature. In spite of the involvement of political parties and NGOs, there have been no major changes to the electoral law. The most positive achievement of the group was to set up a 50% threshold to be reached by mayor and municipal governor candidates in order to win the electoral race, otherwise a second round has to take place. This was requested by political and civil groups active in election-related matters.

Overall, the Inter-Faction Group appeared unable to make important independent decisions. Compromises were made along with the Prime Minister's statements but not within the working group.

The Inter-Agency Commission for Fair and Free Elections

The composition of the Commission, administered by the Ministry of Justice, was approved by the order of the Minister of Justice on the 3rd of April. The first session was held on the 11th of April. However, it should be noted that the Commission violated the law by commencing its work later than it was obliged to.

Since the launch of its operations, the Commission issued 18 recommendations that also covered the renewed recommendations from the previous year's Presidential Elections, including one from the Prosecutor's Office. According to the latter, it is appropriate to refrain – until the end of the poll day - from interrogating as part of investigative measures those individuals directly involved in the 2014 local elections campaign, except for the case when there is urgency or a procedural deadline can be missed. In certain cases, recommendations and statements of the Commission have not been followed thoroughly. There has also been a serious difficulty with the inconsistent investigation by law enforcement agencies on the alleged cases of pressure put on candidates to withdraw from the electoral race.

Introduction

In General, the misuse of administrative resources is one of the most significant factors influencing the pre-election processes. It may even have an impact on the result of the elections. The pre-election period in the 2012 Parliamentary elections stood out in that, most of the time, administrative resources were used in favour of the ruling party (United National Movement) – adversely affecting the electoral process. Additionally, the oppression of politically active individuals by the government grossly violated human rights. This problem was less acute in the 2013 Presidential elections. However, the elections were seriously less significant than the Parliamentary elections. Therefore, it cannot be fully compared with the 2012 elections. With regards to the 2014 local elections, their importance and weight have significantly increased, especially after the local self-governance reform that allowed 11 mayors and 56 municipality governors to be directly elected.

For this very reason, the misuse of administrative resources during the electoral processes merits the highest attention. TI Georgia has been studying this issue for years. This report covers the period of 1st of January to the 12th of June 2014.

During the reporting period, the organization has been registering all cases where there could be an alleged misuse of administrative resources or similar behaviour. These facts have been studied and double-checked by the organization's lawyers, three regional offices and five regional coordinators. In addition, the lawyers also assessed the compliance of the relevant cases with Georgian election laws and international standards.

This report first provides the definition and types of misuse of administrative resources for electoral purposes. The following four chapters review specific cases of possible misuse of administrative resources during the 2014 municipal election. It is followed by an assessment of the work of state institutions working on electoral issues. The final chapter presents TI Georgia's recommendations drawn from the analysis.

I. The Definition of the Misuse of Administrative Resources during the Electoral Processes

There is no commonly accepted definition of misuse of an administrative resource for electoral purposes either in Georgian, or international law. However, a wide range of international documents on the matter attempts to establish a common approach to the above-mentioned phenomena. Based on the analysis of these documents and TI Georgia's own assessments, it is possible to identify the following types of administrative resources misused during the electoral processes:¹

Type of Administrative Resource	Example of possible misuse during the electoral processes
Coercive Resources	Illegal use of state coercive powers against political opponents, their supporters and voters, including politically motivated detention of individuals, intimidation, assault, threatening, discharge or other forms of coercion.
Legal (Legislative, Regulatory) Resources	Use of legislative, executive and judicial branch of the government for the interests of electing certain political party or candidate
Institutional Resources	Use of office equipment, means of transportation, premises, subordinate civil servants as well as use of other non-monetary, material and human resources financed by the state for organizing and conducting election campaigns
Financial Resources	Use of budgetary resources of the central or local government agencies to facilitate election campaign of certain political party or candidate

The Election Code of Georgia defines the misuse of administrative resources during the electoral processes very narrowly, often leaving many issues unregulated. In particular, an administrative body might take decisions that – although in compliance with the law - might provide goods to society in a certain way that will have a significant influence on voters' behaviour. In such cases, it is very difficult to draw a line between the state and a political party, which is a requirement of the 1990 OSCE Copenhagen Conference Document.²

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>

Consequently, by the misuse of administrative resources, TI Georgia not only means violations of the Georgian law, but also acts against the spirit of the Copenhagen document and universally accepted electoral principles.

II. The Misuse of Coercive Administrative Resources during the Electoral Processes

As shown by past experience, the misuse of state coercive resources during the electoral processes usually embraces formal or informal duress on activists of various political forces. The “Formal Duress” implies criminal prosecution of a politically active individuals (or administrative legal process). The “Informal Duress” encompasses pressure exerted by officials through different informal means of abuse. Instances of such duress occurred abundantly before the 2012 Parliamentary Elections, which has been widely documented in our reports.³

In this regard, the 2013 Presidential election was held in a much calmer environment. There have been no reports of cases of massive misuse of state coercive resources, which undoubtedly has been an important step since the last year’s election period. However, there were some notable incidents.

As for the 2014 local elections, the situation was far more troublesome. In particular, the following alarming trend needs to be specially mentioned: opposition election candidates were pushed to deregister from electoral lists. Throughout the entire pre-election period, this was a matter of concern; as such an issue s had a negative impact on the competitive electoral process. In addition, there were cases of opposition election candidate being summoned to investigative agencies or being pressed with charges. However, it is worth mentioning that legal prosecution of candidates has not turned into a trend. The Prime Minister’s 14th of April called on law-enforcement agencies to refrain from summoning political party activists, which supposedly had a positive impact on the electoral process. In particular, the following instances can be reported:

1. Opposition party nominees being pushed to withdraw their candidacies

At the end of May, opposition parties actively started contacting TI Georgia in order to provide information about cases of coercion on their candidates. Such coercion could have a serious impact on the electoral process. Mainly, the candidates concerned were ones from the opposition parties’ proportional lists in municipal councils.

According to the Election Code of Georgia, a district election commission is entitled to de-register a party if that party has an insufficient number of candidates in its party list. In this regard, the law sets the following criteria: the electoral roll consist of more than 75 000 voters in a particular electoral district, a minimum number of 15 candidates must be present on the proportional list. If the electoral roll consists of less than 75,000 voters, a minimum of 10 candidates in required. According to the Election Code, if the number of candidates is lower than the figure given above two days prior to the elections the given party will not be able to run in the municipal council elections through the proportional electoral system in the election district concerned.

In fact, it could be argued that this law has allowed a premeditated campaign of coercion on opposition political candidates. According to the victims, the staff of the local law-enforcement agencies, other local civil servants and, in some cases, MPs were actively involved in such a

³ Interim Pre-election Report, 10 September 2012: <http://goo.gl/LusyeD>; Final Pre-election Report, 27 September 2012: <http://goo.gl/9mbYWW>

campaign. In this regard, the Prime Minister of Georgia on 31 May affirming that the *Georgian Dream* would not allow other parties to win in any municipality has worsened an already tensed political climate.⁴

Based on the information gathered by TI Georgia, up to 50 candidates from 6 different opposition parties in 15 districts of 8 regions withdrew their candidacies due to alleged coercion. Additional information about the cases in question can be found in the organization's other analysis.⁵ Despite these alarming developments, the steps taken by the law-enforcement agencies were unsatisfactory, and, according to us, the investigation was not properly conducted. This is not surprising as, without any investigation, the Ministry of Internal Affairs stated, on 1 June, that its staff had not exerted any coercion.⁶

2. Detention, Summoning and Prosecution of Opposition Political Party Activists

Investigative actions taken against politically active individuals are a challenge to a fair electoral process. These actions might not have their own political motive. However, it also might not be urgent to undertake them during the pre-election period. Although, the Inter-agency Commission had already recommended the Prosecutor's Office to refrain from interrogating politically active individuals in these circumstances, the Prime Minister's 14 April statement made at the Government session must be welcomed. In the statement, he urged the law-enforcement agencies to declare an informal moratorium on legal procedures against individuals involved in the local election campaign. Detention was to be used only in the most urgent cases, when there was clearly substantiated and unavoidable necessity.⁷

Several cases of detention of politically active individuals had been reported before the moratorium. In particular, on February 10 in Khobi, the district prosecutor's office of western Georgia detained Zurab Jibukhaia, Khoni municipality governor and Besarion Chelidze, Khoni municipality deputy governor on the charges of embezzlement of a large amount of state property, abuse of office and professional fraud. The case was related to the facts dating from 2010.⁸ The court ordered pre-trial detention to the detainees. Zurab Jibukhaia was a candidate of the United National Movement in Khoni.

On 11th of February, Zurab Otiashvili, the head of Dusheti municipality council, was detained for extortion, abuse of office and receiving a gift banned under the law.⁹ The charges against him were pressed due to alleged facts occurred in 2009. The court again ordered pre-trial detention. Similar to the Khoni case, Otiashvili was the candidate of the United National Movement in Dusheti municipality.

On the 28th of March, the staff of the investigative unit of the Ministry of Finance detained Malkhaz Diasamidze, the head of Khala village accusing him of extortion of state subsidies.¹⁰ Diasamidze is a

⁴ <http://www.civil.ge/eng/article.php?id=27294>

⁵ <http://goo.gl/GppQKY>

⁶ <http://police.ge/en/shinagan-saqmeta-saministros-gantskhadeba/6671>

⁷ <http://www.civil.ge/eng/article.php?id=27133&search=>

⁸ http://pog.gov.ge/eng/news?info_id=419

⁹ http://www.rustavi2.com/news/news_text.php?id_news=50707&im=main

¹⁰ <http://www.adjaratv.ge/en/?page=shownews&id=28704>

supporter of the United National Movement who was running in municipal elections through the party list in Kobuleti.

On the 25th of April, during the rally organized to protect against the resignation of Davit Kevkhishvili, Kvareli municipality governor, the police detained Kevkhishvili and his 17 supporters for petty hooliganism. The court ordered administrative fines to the detainees. The same day, the Kvareli municipality council removed Kevkhishvili out of the office.

Outstandingly, during the last three months, in the Kvareli municipality:

- Otar Adomlishvili, Kevkhishvili's deputy was detained for corruption charges;¹¹
- The district Prosecutor's Office started investigation about facts of possible abuse of power in Kvareli municipality.¹²

Based on the statement made by Bakur Sesiashvili, a member of the ruling coalition *Georgian Dream*, the district Prosecutor's Office brought charges against Davit Kevkhishvili for physical assault. It motioned for 2 000 GEL bail and dismissal from the office. The district court denied the Prosecutor's motions. The latter appealed the decision in the Court of Appeals; however, the Court did not repeal the decision of the district court.¹³

During this period, Kevkhishvili and other staff of the municipality have been arguing that members of the municipality council were pressured to support the impeachment of the municipality governor, as Kevkhishvili was planning to rerun for municipality governor position.¹⁴

Recommendation:

- The law enforcement agencies must react promptly to any alleged instances of political coercion and timely provide the society with the information about the relevant ongoing investigation. Only the recommendations made by the Inter-agency Commission are not sufficient for easing tensions occurred during the electoral processes.

¹¹ http://rustavi2.com/news/includes/get_news_print.php?id_news=50721&ct=0

¹² <http://www.ick.ge/rubrics/politics/17528-i.html> (in Georgian)

¹³ <http://www.ick.ge/articles/17850-i.html> (in Georgian)

¹⁴ <http://www.youtube.com/watch?v=PSKmO1YKhy0#t=62>

III. The Misuse of Legal Administrative Resources during the Electoral Processes

Misuse of state legal resources could contribute to placing political opponents on an unequal footing and ensuring preferential treatment to a ruling party. Misuse of this type of resources encompasses use of legislative, executive and the judicial branch of the government for electoral purposes. These may include amending laws in order to disadvantage certain political groups, uneven application of the law, making unjust court decisions etc.

Misuse of this type of resources widely occurred during the 2012 Parliamentary elections, while only few such cases were reported in the 2013 Presidential elections.

In 2014, two of such cases are worth mentioning. . In addition, the Central Election Commission's incoherent decisions regarding deregistration of several election candidates might fall into the same category of misuse of administrative resources.

1. Restricting Independent Candidates to Run for Mayor and Municipality Governor Offices

Since the start of the work of the Inter-Faction Group of the Parliament (work aimed at improving the electoral law), various controversial reforms were undertaken. This included an amendment made to the Election Code in the spring of 2014 according to which initiative groups were deprived the right to nominate mayor/municipality governor candidates in local elections.

Beside the fact that the amendment's constitutionality is questionable, TI Georgia considers it not to be complying with the international electoral standards¹⁵. Therefore, it represents a case of misuse of legal administrative resources by the government.

As a result of the above-mentioned ban, all non-partisan individuals who might have had a good reputation and, therefore, a good chance of success have not been able to run in the local elections. Subsequently, it is clear that this restrained the necessary political competition that characterizes a fair election.

Recommendation:

- Candidates nominated by initiative groups must be allowed to run in elections on every level of local self-governance.

¹⁵ The document of 1990 OSCE Copenhagen Conference, section 7.5.: <http://www.osce.org/odihr/elections/14304>

2. Declaring Civil Servants of Local Municipalities as Interim Staff

In February, 2014, Article 134⁴ was added to the Law of Georgia on “Public Service” whereby all civil servants would be declared as interim servants after the 2014 local elections. Consequently, they would remain in office until their positions are filled through a new competitive recruitment process.

This article created a risk of direct or indirect coercion of the local civil servants. Specifically, they were threatened that if they did not support the ruling party in the local elections, they would not pass the competitions after the elections, leaving them unemployed. The fact that such a regulation is not really needed strengthens the suspicion of misuse of legal administrative resources. In addition, issues related to this regulation are worth to note. First, this amendment was adopted in violation of the Georgian Parliament’s Rule of Procedure as this article appeared only during the third reading of the law at the Parliament’s plenary session instead of being introduced during the first reading. This initiative infringed labour rights of individuals guaranteed under the Georgian Constitution and went against the spirit of the Law on “Public Service” (i.e. the stability of the public service).

The Parliament abolished this amendment in May. However, it was suggested that all civil servants would be required to take a test after the elections. Consequently, TI Georgia believes that this requirement can still be used to influence civil servants and therefore represents an instance of misuse of legal administrative resource by the ruling party.

Recommendation:

- In the pre-election period, the government must refrain from implementing such policies that can be perceived as coercion on civil servants or as attempt to get them involved in election processes.

3. De-registration of Candidates due to Residence Census

In the reporting period, there were three famous cases when the CEC considered the issue of de-registration of election candidates. The main question was if the mayor and municipality governor candidates in question met the requirement of continuous residence for at least 2 years in the country, as specified by the Election Code. Due to the fact that the law does not define “continuous residence”, the cases of several candidates in different constituencies have been debated because such individuals did not reside in Georgia for a certain period.

The first case concerns de-registration by the CEC of Irakli Okruashvili from the mayoral candidacy in Gori on the 20th of April. De-registration was grounded on the fact that Okruashvili had not been living in the country for the last two years. Transparency International – Georgia agreed with the CEC’s decision,¹⁶ as it is a well-known fact that a criminal case was brought against him and that he could therefore not enter the country.

In the second case, the discussion related to Davit Jikia, mayoral candidate in Rustavi from the *Georgian Dream* and to Irakli Kakulia, mayoral candidate in Poti from the same Coalition. They have been abroad for study and business purposes. On the 20th of May, the CEC did not de-register them,

¹⁶ <http://transparency.ge/en/blog/cec-makes-right-decisions-registration-mayor-nominees>

which we also welcomed.¹⁷ However, it was peculiar that, on a similar case, the same CEC approved the de-registration of Akmamed Imamkulyev, candidate in Marneuli from *United National Movement*. TI Georgia considers that such case proves an inconsistent behaviour of the CEC and could be considered as an instance of misuse of legal administrative resources, aimed at removing an opposition party candidate from the electoral race. Nevertheless, the court rejected the CEC's decision and restored Imamkulyev registration.

Recommendation:

- TI Georgia believes that the last two-year residence requirement of mayoral and municipality governor candidates does not add anything positive to the electoral processes. On the contrary, it can disqualify many strong candidates which, in turn, weakens the fair competition environment of elections. The organization thinks that this provision of the law should be revoked.

¹⁷ Ibid

IV. The Misuse of Institutional Administrative Resources during the Electoral Processes

The misuse of state institutional resources for political purposes includes the misuse of office equipment, means of transportation, premises, subordinate civil servants as well as the misuse of other material and human resources financed by the state in order to organize and conduct election campaigns. However, as TI Georgia has already noted, there is no strictly formulated definition of such phenomenon and the misuse of institutional resources might also encompass other activities.

In the 2013 Presidential elections, compared with other resources, the institutional resources were most often misused for electoral purposes. Particularly, there have been frequent cases of civil servants illegally participating in the election campaign.

Concerning the period covered by this report i.e. the pre-election period up until the 2014 municipal elections, there has been effectively no case of illegal participation of civil servants in the election campaign. However, compared with 2013, there have been a high number of instances where government official were informally nominated as candidates much in advance, and where such individuals offered various gifts to the population – gifts that were purchased by state resources.

1. Informal nomination of current governmental officials as candidates very early in the electoral period

Article 136 of the Election Code provides the list of positions where the office is terminated if he/she gets nominated as a candidate for a municipal council, mayor or municipal governor. However, this regulation does not apply to officials of local municipalities. Consequently, an individual can register as a candidate while still working as a civil servant in a local municipality. This significantly increases risks of using institutional administrative resources for political purposes. In this way, the candidate has direct access to administrative resources. For the voters, the boundary between the individual official capacity and his/her status as a candidate is blurred.

Moreover, election candidates (both mayor/municipal governor) should respect the deadline to register their candidacies no later than 30 days prior to the polling day. Consequent to that, the candidates could have stayed as informal candidates until the 16 May, despite the fact that they had already publicly announced their political goals. For example, in all five self-governing cities, the mayoral candidates occupied various civil service positions and none of them left office after publicly announcing his/her candidacy.

Davit Narmania was nominated as the *Georgian Dream* candidate for Tbilisi mayor's office in 2013,¹⁸ however, he resigned from the minister's position only on 14th of April, 2014. During this period, he was the Minister for Regional Development and Infrastructure.

The Prime Minister announced the candidacy of Davit Jikia from *Georgian Dream* for mayor's office of Rustavi on 26 April. He officially registered his candidacy on 16th of May. He occupies the position

¹⁸ <http://www.civil.ge/eng/article.php?id=26719&search=>

of interim mayor of Rustavi up until today. However, we received information from the mayor's office noting that he was on vacation from May 2 till 16th of June.

Giorgi Ermakovi was considered mayoral candidate of the *Georgian Dream* in Batumi months before his official nomination. He was appointed vice-mayor of Batumi on 30 January and in February – as the interim mayor. He stayed in this position until 15th of May, when he officially registered his candidacy. However, his candidacy was publicly announced by the Prime Minister on April 26.

Shota Murgulia, mayoral candidate of the *Georgian Dream* in Kutaisi, has been an interim mayor of Kutaisi since November 2013. Similar to other candidates, his candidacy was also announced on 26th of April. Similar to the Rustavi mayor, Murgulia also was on vacation until the 15th of June and has not resigned from the office.

Irakli Kakulia, mayoral candidate of the *Georgian Dream* in Poti has been the interim vice-mayor of the city. Similar to other candidates, he was not nominated for the candidacy until the deadline and registered in the relevant district commission on the 16th of May.

The nomination of Nikanor Melia was a similar case: the United National Movement nominated him as a candidate for the mayor's office on the 12th of March. At the time, he was municipality governor of the Mtatsminda district and has remained so until his official registration.

These facts demonstrate that mayoral candidates, as a rule, remain in office even after their public nomination as candidates. As mentioned before, this creates favourable conditions for misusing administrative resources. For instance, Davit Jikia, the mayoral candidate in Rustavi from *Georgian Dream*, on the 24th of April, when he was already considered as a mayoral candidate (he was formally nominated by the Prime Minister two days later), introduced an initiative to create discount cards for students to cover travel fare on Rustavi-Tbilisi route.¹⁹ Jikia proposed this initiative as a civil servant and as the mayor of the city, but it could also be perceived as a promise made by an electoral candidate.

Recommendation:

- There is no simple way to resolve this issue. However, if the campaign period was extended from 2 to 4 months, and the deadline to register candidacy set before that, TI Georgia believes that there would be less opportunity for civil servants to misuse administrative resources.

2. Providing Gifts and other Assistance for Electoral Purpose by Civil Servants

Providing gifts and social assistance to citizens is repeatedly occurring during the pre-election periods. In the reporting period, civil servants who were also considered as future candidates showed such behaviour, which is to be considered as misuse of administrative resources. The following instances have to be particularly mentioned:

¹⁹ <http://goo.gl/nQPG7G> (in Georgian)

- On the 18th of April, **Gocha Kajaia**, interim Governor of Khobi municipality celebrated Easter holidays by offering 120 Easter gifts to beneficiaries of a shelter house.²⁰ He runs for Khobi municipality governor's office from *Georgian Dream* coalition;
- On the 18th of April, **Giorgi Mgebrishvili**, the Governor of Kvemo Kartli region and **Davit Jikia**, mayor of Rustavi were at the seniors' house – Xenon- in Rustavi municipality. They celebrated Easter with the seniors and gave holiday gifts.²¹ As mentioned above, eight days since this event, Davit Jikia announced his candidacy for the mayor's office of Rustavi.
- On the 22nd of April, **Zaza Oniani**, head of Gardabani municipality council and **Ambako Avaliani**, the interim municipality governor, visited therapy centres for children with special needs in Gardabani, a school for persons with disabilities in the village of Martkopi and the children's houses of Norio. They distributed Easter gifts. At that moment, Ambako Avaliani was fifth in the party list of the *Georgian Dream* in Gardabani. On the 30th of April, **Beka Baidauri**, interim municipality governor of Akhmeta municipality and **Mamuka Kholegashvili**, head of administration at the Akhmeta municipality, together with other representatives of the municipal body visited Dusheti. They gave Easter gift baskets and medical drugs to permanent residents of Dusheti.²² This fact was discussed at the Inter-agency Commission, as the government chancellery's Department on Relations with Regions and Local Municipalities stated that investigation of the facts revealed a violation of law. Therefore Mamuka Kholegashvili was dismissed from office.²³ At the request of the United National Movement, the facts were investigated by the CEC as well. It found that Mamuka Kholegashvili, during work hours, was pursuing the pre-election campaign. As a result, under the 13th of May administrative misconduct order,²⁴ Kholegashvili was fined by GEL 2 000. Despite the dismissal and fining, Mamuka Kholegashvili remained first in the party list of the *Georgian Dream* for the Akhmeta municipality council.
- On the 9th of May, **Zaza Guliashvili**, interim Governor of Kareli municipality, together with **Zaza Gachechiladze**, the head of social service department, visited 22 World War II veterans in Kareli and congratulated them on the victory day. Zaza Guliashvili gave each of them GEL 100.²⁵ Guliashvili is a candidate for Kareli municipality Governor's office from *Georgian Dream*.
- On 9th of May, **Zakaria Endeladze**, the Governor of Adigeni municipality gave GEL 50 in cash to veterans of the World War II as well as invited them to a dinner specially organized for them. In the meantime, **Levan Tsabadze**, the Governor of Aspindza municipality, congratulated them with champagne and chocolate. According to Tsabadze, he promised all the veterans to transfer GEL 250 to their pension cards. At this time, both Endeladze and Tsabadze had been registered as candidates in their municipalities.²⁶

²⁰ <http://goo.gl/tFYVr3> (in Georgian)

²¹ <http://rustavi.ge/?p=20961> (in Georgian)

²² <http://goo.gl/Frtvvz> (in Georgian)

²³ <http://goo.gl/PHGhBH> (in Georgian)

²⁴ <http://sachivrebi.cec.gov.ge/info.php?id=2251> (in Georgian)

²⁵ <http://goo.gl/Klph4r> (in Georgian)

²⁶ <http://sknews.ge/index.php?newsid=3642#.U8zXfmSxJ3> (in Georgian)

Recommendations:

- The civil servants considered as future candidates in elections must refrain from providing gifts to citizens within a certain period before the election day;
- The pre-election period must be increased from 2 to 4 months leading to such acts considered as misuse of administrative resources.

3. Misuse of Administrative Resources by Tbilisi Mayor and Government Chancellery

Activities of the press-service of the Tbilisi Mayor's Office during the reporting period also merit interest. It was actively sending information to the media about meetings and other activities of Nikanor Melia, a candidate for Tbilisi mayor's office. Some of this information concerned joint activities of Nikanor Melia and Gigi Ugulava, the head of election headquarters of the United National Movement. Regarding this fact, at the request of the Georgian Young Lawyers' Association, the CEC issued an order of administrative misconduct (violation of Article 48(1)(b) and 49(1)(a) of the Election Code of Georgia as enshrined in Article 88 of the same Code) which entails a fine of GEL 2 000.²⁷

On 16 May, the CEC issued an order of administrative misconduct also against the chancellery of the Government.²⁸ The case was related to the meeting held at the chancellery building at 14.00 o'clock on the 22nd of April. The meeting was attended by the members of the government which discussed candidates for mayor and municipality council candidates from *Georgian Dream* as well as the issue of forming the party list. On the same topic, live comments were made in the same building. Such actions are forbidden under the electoral law²⁹ and entail a GEL 1 000 fine.

4. Social Advertising

In the pre-election period of the 2012 elections, social advertisements financed by the government were aired for months. They were manifestly politically motivated. Such a phenomenon was covered by Transparency International Georgia multiple times.

Regarding the 2014 elections, TI Georgia assessed the content of two social advertisements as being suspicious as they showed some campaign motives. Specifically, in April, advertisements about the Municipal Development Fund were widely aired.³⁰ TI Georgia believes that showing these videos is in reality political advertising, which represents a misuse of administrative resources for political purposes and which is forbidden by the law.

These videos, by their content, were not social advertisements, as is defined under the Law on "Advertising" as "ad to support the common good or charity which is neither commercial nor campaign-related and does not contain advertising of an entity of private law, governmental agency

²⁷ <http://goo.gl/XLKMgg> (In Georgian)

²⁸ <http://goo.gl/h10NOX> (In Georgian)

²⁹ Article 45(5)(a) of the Organic Law of Georgia "Election Code"

³⁰ See the ad videos: 1. <http://goo.gl/rpzSQr> 2. <http://goo.gl/uegU3f>

or their services.” In the videos, the main emphasis was placed on the infrastructural projects implemented under the Fund, which aimed at advertising the Fund’s activities.

The Municipal Development Fund is a legal entity under public law, which undertakes infrastructural projects, including projects financed by state budgetary resources. The Fund is therefore responsible before the Ministry of Regional Development and Infrastructure. For that reason, promoting the work of the Fund equals to promoting the government itself. Such behaviour is to be considered as an instance of illegal use of administrative resources. This is particularly problematic in the pre-election period when a fair and equal competitive environment is a keystone to democratic elections. TI Georgia has been reporting about similar problems during the 2012 elections,³¹ when apart from the so-called “corporate advertising,” social advertising was used to make political publicity. Back then, the Inter-agency Commission urged the governmental and local agencies to refrain from such acts. No cases of such behaviour were reported during the 2013 Presidential elections.

Recommendations:

- The state institutions must fully follow the regulations regarding the social advertising so that the boundary between social and political advertising is not blurred;
- The Georgian National Communication Commission must pay closer attention to the issue of social advertising and must strictly control its compliance with the law.

³¹ <http://transparency.ge/en/blog/social-advertising-service-ruling-party>

V. The Misuse of Financial Administrative Resources during the Electoral Processes

Georgian electoral laws forbid the increase of funding of budgetary programs or to launch new ones in a pre-election period. Consequently, from the day where the elections date is determined up to the announcement of the elections results, amendments to budgetary program are not allowed.

Nevertheless, the law does not ban implementing of already planned programs. For this reason, the government generally finds it easy to bypass legal requirements, for instance, by planning ahead certain programs and only implementing them in the pre-election period. For that reason, TI Georgia does not only examine the budgetary programs that do not comply with the relevant legislation, but also the programs implemented during the pre-election period that might have a serious effect on the outcomes of the election. In particular, TI Georgia refers to electorally motivated spending of state resources, for instance those programs that are initiated one or two months before the elections and that are not in line in the long-term interests of the country. Besides, the organization also refers to social state programs that lead to the direct transfer of social goods to a large amount of the population (such as increasing social assistance benefits or other allowances. It is crucial that such programs are not initiated in the period prior to the election, as the ruling party/candidate might gain a significant electoral advantage from the introduction of those programs. Such behaviour might have a crucial impact on the fairness of the elections.

1. The increase of the Local Municipality Budget before Elections

During the 2013 Presidential race, there was practically no instance of misuse of financial administrative resources. However, financing some of the state programs is to be considered similar to such a misuse.

As for the 2014 municipal elections, one case concerned the increase of the budget of a municipality in the pre-election period, thus violating the Electoral laws. This case is described below.

The 2014 budget of Dusheti municipality was amended on the 4th of June, which led to increasing the funds for infrastructural construction, rehabilitation and exploitation from GEL 3.42 million to GEL 4 million. The grants were raised from GEL 5.42 million to GEL 6 million. Transfers from the funds were raised from GEL 2.09 million to GEL 2.75 million.

Moreover, TI Georgia found it peculiar that the financing of budgetary programs in many municipalities increased just a day or two before the official launch of the election campaign. Such behavior is not a violation of law, but denotes the weaknesses of the regulation mentioned above. The budgets of the following municipalities were raised just several days before the campaign period:

- **Vani Municipality** - On the 15th of April, the budgetary expenses were increased from GEL 5.58 million to GEL 6 million, which will be mainly used for infrastructural projects: road repair works in Mtisdziri community's Chagan-Chkvishi Settlement of Adjarians financed

with GEL 11 000; black asphalt-concrete surface will be arranged in the city of Vani, on Baratashvili str. - GEL 173.4 thousand; black asphalt-concrete surface will be arranged on Zeda Vani-Mere road - GEL 284.7 thousand GEL; black asphalt-concrete surface will be arranged on the road to Dzulukhi community from the highway of Isriti-Sulori - GEL 269.9 thousand; full repair of #1 kindergarten in the city of Vani - GEL 34.1 thousand. The financing of sports and art association increases from GEL 320 thousand to GEL 368 thousand.

- **Kharagauli Municipality** - In line with the amendments made on 15 April, non-financial assets of Kharagauli municipality were increased from GEL 4.41 million to GEL 4.69 million: Construction-repairing and maintenance of communal infrastructure - from GEL 483.6 thousand to GEL 557.8 thousand; arranging, repairing and using the lights on streets - from GEL 129.4 thousand to GEL 203.6 thousand; lights will also be installed on the 4 kilometre road of Kharagauli-Sakarikedi, 1 kilometre road of Islari-Partskhnali and the road of Boriti-Makatubani, which were not planned before; education - from GEL 1.35 million to GEL 1.55 million; pre-school education - from GEL 1.17 million to GEL 1.37 million. Also, repair works will be conducted in the buildings of kindergartens of Boriti and Zvari, which were not planned before. Moreover, assistance of families registered in the municipality was increased: before the 15th of April, GEL 100 was given to families having a child. After 15 April, GEL 100 was given for the first and the second child and GEL 300 - for the third child, for the fourth - GEL 400, for the fifth - GEL 500 and every other - GEL 800.

In addition, on 14 April, budgets of the following municipalities were increased:

- Bolnisi municipal budgetary expenses were increased from GEL 10.52 million to GEL 11 million;
- Chiatura municipal budgetary expenses - GEL 8.24 million to GEL 9.1 million;
- Ozurgeti municipal budgetary expenses - from GEL 19.4 million to GEL 23.48 million;
- Kaspi municipal budgetary expenses - from GEL 8.2 million to GEL 9 million;
- Khashuri municipal budgetary expenses - from GEL 8.7 million to GEL 11.82 million;
- Zestaponi municipal budgetary expenses - from GEL 8.63 million to GEL 12.24 million;
- Telavi municipal budgetary expenses - from GEL 10.22 million to GEL 10.56 million;
- Ambrolauri municipal budgetary expenses - from GEL 4.2 million to GEL 4.205 million;
- Oni municipal non-financial assets - from GEL 2.6 million to GEL 3.2 million;
- Khobi municipal budgetary expenses - from GEL 6 million to GEL 6.1 million;
- Mtskheta municipal budgetary expenses - from GEL 10.65 million to GEL 10.82 million, non-financial assets were increased from GEL 3.98 million to GEL 6.52 million.

2. Expanding the Number of Social Assistance Beneficiaries

Apart from the increases in the local budgetary expenses, the number of social assistance beneficiaries was also expanded at local or central level. This will require to make additional amendments to the budget after the elections (this may entail redistribution along the articles or codes of the budget, or an increase in expenses). Such behaviour should also be considered as motivated by electoral purposes. More specifically, on the 16th of April 2014 in Sachkhere, Bolnisi and Khoni, and on 7 May - in Lanchkhuti municipality, the list of beneficiaries of budgetary social assistance was expanded:

- **Sachkhere Municipality** - Before the 16th of April, assistance was provided from the municipal budget to the severely sick members of extremely socially vulnerable families, once a year, for certain categories of diseases. Such individuals received a yearly amount of GEL 200. After the amendments made on April 16, the same assistance is provided to any sick member of extremely socially vulnerable families.
- **Bolnisi Municipality** - Before April 16, a certain category of well-performing students had been receiving a monthly stipend of GEL 70 from February 1 to August 1 2014 and from September 1 to December 31 in Bolnisi. After changes made on 16th of April, the same assistance is provided now to the same category of students regardless of their performance – and from April 1 to December 31. Whereas, the well-performing students (rating points from 80 to 100) receive a monthly stipend of GEL 100 from April 1 to August 1, 2014 and September 1 to December 31.
- **Khoni Municipality** - On the 16th of April, the resolution regulating the provision of social assistance from Khoni budget was amended. After the 16th of April, any person with disabilities becomes a beneficiary of monetary social assistance. In addition, the following categories of beneficiaries were added to the previous list: soldiers participating in the war for the freedom and territorial integrity of Georgia (the amount of assistance is GEL 100), single mothers (GEL 200 for one child under 18 years). Additionally, GEL 100 was set as an allowance for individuals with mental development problems, cerebral palsy and leukaemia. Such an allowance did not exist before.
- **Lanchkhuti Municipality** - The rules of provision and of receiving social assistance from the Lanchkhuti budget were modified on the 7th of May. Specifically, a free transportation program was launched for war and military veterans covering Lanchkhuti municipal transport routes.

3. Electorally Motivated Initiatives of Central Government

Similar to the local municipal agencies, the central government also brought up many initiatives that can be regarded as motivated by electoral purposes. In the pre-election period, at least several initiatives were launched which, at least partially, seemed motivated by the upcoming elections.

TI Georgia used three criteria to assess these initiatives:

- Whether it can have a significant influence on voters during the pre-election campaign;
- Whether it serves for the country's long-term interests;
- How close to elections it is initiated and whether the timing is well-justified.

Considering these criteria, TI Georgia wished to highlight several state programs that might serve the long-term interests of the country but were introduced very close to the elections period. Therefore, it could have serious impact on voters' will and can be considered a misuse of administrative resources. Specifically:

- Starting from the 1st of June 2014, the Ministry of Labour, Health and Social Affairs have started two large-scale projects: First, in the regions where there is a negative demographic balance, monthly financial assistance was envisaged under the new program for every third and following child born after 1 June 2014. The assistance is provided to the children until the age of 2. For the regular regions, the amount of the assistance will be GEL 150 and for

the mountainous regions – GEL 200. Second, every pregnant woman who will require medicines containing iron and folium will be provided with them free of charge by the state.

- On the 1st of June, a massive state program was launched entitled *Produce in Georgia*.³² The program entails providing GEL 46 million to subsidize certain sectors of local industries.

These initiatives were included in the report of TI Georgia because there is no substantiated opinion on why they were launched specifically two weeks prior to the elections, and not relatively earlier or after the elections.

Recommendations:

- Both local and central government must refrain from increasing finances to social assistance and other similar programs in the pre-election period. In addition, it would be appropriate not to present massive projects just before elections.

³² <http://agenda.ge/article/1079/eng>

VI. An Assessment of State Bodies Working on Electoral Issues

1. Central Election Commission

The Central Election Commission played an important role in shaping the pre-election period in 2014: its June 3 resolution should be viewed as a positive step as it addressed the issue of the nullification of city council party lists. This initiative removed the danger faced by opposition candidates to have their proportional lists cancelled in several municipalities. However, there was an instance when the CEC did not show consistency - de-registration of Akmamed Imamkulyev, a candidate for Marneuli municipality governor office.

2. State Audit Office

The State Audit Office monitoring of the financial activities of political parties can be positively assessed. Unlike 2012, the State Audit Office did not exhibit a different approach in its works with various political parties. On the 10th of June, the Office remarked the absence of the information required under the electoral law by three political parties. Consequently, the Office appealed to the City Court of Tbilisi to fine political parties *Way of Georgia*, *Conservative Party* and *Patriotic Alliance of Georgia*.³³

In addition, on the 9th of June, the State Audit Office informed about the violation of requirements for the submission of information by 160 independent election subjects. According to the Office, it has already appealed to the court to fine the subjects.³⁴

In addition, in spring 2014, the Office created a temporary consultative commission working on the legality of political financing and monitoring issues in order to ensure transparency. Its members include representatives of local and international organizations. The commission regularly receives information about the monitoring service of the financing of political parties.

3. Parliamentary Inter-Faction Group

In January 2014, the Inter-Faction Group created at the Parliament restarted its activities that mainly aimed to reform the election legislation. The group introduced a big number of legislative amendments; however, most of them were of technical nature. In spite of the involvement of political parties and NGOs, there have been no major changes to the electoral law. The most positive achievement of the group was to set up a 50% threshold to be reached by mayor and municipal governor candidates in order to win the electoral race, otherwise a second round has to take place. This was requested by political and civil groups active in election-related matters.

Overall, the Inter-Faction Group appeared unable to make important independent decisions. Compromises were made along with the Prime Minister's statements but not within the Working Group.

³³ <http://sao.ge/news/353> (In Georgian)

³⁴ <http://sao.ge/news/352> (In Georgian)

4. Inter-agency Commission for Free and Fair Elections

The format of the Inter-agency Commission is very important in a pre-election period as political parties and observer organizations had the opportunity to raise issues related to the electoral process and provide information about possible violations to the members of the Commission. Based on this information, the Commission makes recommendations, which if followed through, are crucial to the fairness of the electoral process in the country. The composition of the Commission, administered by the Ministry of Justice, was approved by the order of the Minister of Justice on the 3rd of April. The first session was held on the 11th of April. However, it should be noted that the Commission violated the law by commencing its work later than it was obliged to.

Since the launch of its operations, the Commission issued 18 recommendations that also covered the renewed recommendations from the previous year's Presidential elections, including one from the Prosecutor's Office. According to the latter, it is appropriate to refrain – until the end of the Election Day - from interrogating those individuals directly involved in the 2014 local election campaign, except for the case when there is urgency or a procedural deadline can be missed. In certain cases, recommendations and statements of the Commission have not been followed thoroughly. There has also been a serious difficulty with the inconsistent investigation by law enforcement agencies on the alleged cases of pressure put on candidates to withdraw from the electoral race.

VII. Recommendations

Out the conclusion drawn from the analysis TI Georgia wishes to make the following recommendations:

- The law enforcement agencies must react promptly to any alleged instances of political coercion and timely provide the society with the information about the relevant ongoing investigation. Only the recommendations made by the Inter-agency Commission are not sufficient for easing tensions occurred during the electoral processes;
- Candidates nominated by initiative groups must be allowed to run in elections on every level of local self-governance;
- In the pre-election period, the government must refrain from implementing such policies that can be perceived as coercion on civil servants or as attempt to get them involved in election processes;
- Last two-year residence requirement of mayoral and municipality governor candidates does not add anything positive to the electoral processes. On the contrary, it can disqualify many strong candidates which, in turn, weakens the fair competition environment of elections. This provision of the law should be revoked;
- If the campaign period was extended from 2 to 4 months, and the deadline to register candidacy set before that, there would be less opportunity for civil servants to misuse administrative resources;
- The civil servants considered as future candidates in elections must refrain from providing gifts to citizens within a certain period before the election day;
- The state institutions must fully follow the regulations regarding the social advertising so that the boundary between social and political advertising is not blurred;
- The Georgian National Communication Commission must pay closer attention to the issue of social advertising and must strictly control its compliance with the law;
- Both local and central government must refrain from increasing finances to social assistance and other similar programs in the pre-election period. In addition, it would be appropriate not to present massive projects just before elections.

Transparency International – Georgia will continue its work of restricting the misuse of administrative resources during the electoral processes. The organization will try to persuade the government to start organizing/reforming these issues well ahead before the upcoming elections in 2016 so that, with participation of interested parties, all problematic issues are addressed in a timely manner.