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TRANSPARENCY INTERNATIONAL GEORGIA

PRE-ELECTION PERIOD MONITORING RESULTS

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Introduction

The 1 October 2012 parliamentary elections will be a significant milestone for Georgia, as the country shifts to the mixed governing system and the role of the legislative body will be significantly enhanced. In addition, the current political landscape suggests that these elections are likely to be one of the most competitive in the nation's history. The monitoring of the pre-election environment is therefore of especially vital importance.

This report updates our previous publication, which analyzed the pre-election environment from October 1, 2011 to August 1, 2012. It focuses on the official pre-election period and in particular on the situation between August 1, 2012 and September 28, 2012.

This report consists of four chapters. The **first** chapter examines the use of state legal resources for political and electoral purposes. The **second** chapter reviews evidence of the use of coercion and pressure for political ends. The **third** chapter examines the misuse of state institutional resources for party political and electoral objectives, and the **fourth** chapter analyses cases of vote buying.

I. The Use of State Legal Resources for Political and Electoral Purposes

State legal resources are among the most powerful means of undermining fair political competition and consolidating the dominant position of the ruling party. This includes any use of state legislative, executive and judicial powers for political and electoral purposes, for instance amendments to the law which are detrimental only to certain political groups, selective or inconsistent enforcement of the law, and unjust judicial decision-making.

The pre-election period has revealed numerous instances when legislation and legal regulations were applied in favor of the ruling party or against its political opponents. Some of these actions can be attributed to the executive as well as to the judicial authorities, with several problems also remaining at the legislative level.

1. Improper decisions and actions of the executive authorities

The executive authorities had a hand in the majority of the cases of biased and improper use of legal resources. The State Audit Office (SAO) was once again notorious in this respect. In addition, the Central Election Commission took several disputed decisions. In certain cases the Inter-Agency Taskforce, functioning with the National Security Council, also acted far from impartially.

1.1. Selection of the Polling Day

Transparency International Georgia has often pointed out the significance of the timely selection of the polling day.¹ It is important that the entities involved in the election process have sufficient time to plan the pre-election campaign properly. While the President enjoys full discretion in choosing the date, only the ruling party is able to fully plan its pre-election activities. Local NGOs have suggested numerous times that the pre-election period should be longer than 60 days.² In reality, political entities launch their pre-election campaigns much earlier than this, but before the announcement of the election day relevant regulations are not in effect, which include limitations on the use of administrative resources, as well as benefits for political parties with regard to election advertising.

Designating a concrete day for the election is important. According to the election legislation, a polling day may be scheduled on any day of the week, which shall then be declared a public holiday.³ In recent years, the elections were always held on Sunday, which was positive. Although the legislation allows selecting any day, it is preferable to hold the election on Sunday. Notwithstanding the above, the President of Georgia scheduled this polling day on 1 October 2012 – Monday – which should be regarded as a detrimental act. Although this day is designated as a public holiday, it is expected that on October 1 many enterprises and organizations will nevertheless still be working, which may have an adverse effect on voter turnout. In addition, the polling day is a holiday only in the territory of Georgia, which will create additional problems for voters abroad.

¹ See the report of Transparency International – Georgia on 30 May 2010 self-government elections “Use of Administrative Resources for Pre-Election Campaign”. 2010წ.

http://transparency.ge/sites/default/files/post_attachments/Final%20Report%20on%20AAR_GEO.pdf

² See the package of legislative amendments of the campaign “This Affects You Too” <http://esshengekheba.ge/?menuid=9&lang=1&id=456>

³ The Organic Law of Georgia “The Election Code of Georgia” (hereinafter the “Election Code”). N5636-RS. 27.12.2011. Web page of Legislative Herald of Georgia, 10.01.2012. Article 6.

1.2. “More Benefits to People” - a governmental program in the service of the ruling party

In July, the Government of Georgia unveiled a new government program, ‘More Benefits to People’, which aimed to generate jobs, and increase social assistance. Several governmental advertising campaigns and events funded from the state budget were dedicated to promoting this program.

Despite the fact that this program was the product of the Government of Georgia, the ruling political party has built its entire election campaign on the very slogan ‘More Benefits to People’, and has named its political block (electoral entity) ‘United National Movement – More Benefits to People’ for the purposes of upcoming elections.

According to the Paragraphs 2 and 2(1) of Article 25 of the “Law of Georgia on the Political Unions of Citizens,” any material or immaterial value gratuitously issued to a political party, or for its benefit, shall be regarded as a donation.

Owing to the fact that the electoral entity ‘United National Movement – More Benefits to People’ employed the name of a governmental program, which is also the key motto and slogan of the Government, it became almost impossible for the voters to clearly distinguish the Government from the ruling party

Due to this, the advertising and events organized by the Government of Georgia to promote the governmental program ‘More Benefits to People’ should be viewed as an immaterial value received gratuitously by the United National Movement party from the Government, which is prohibited under the Subparagraph (b) of Paragraph 1 of Article 26 of the “Law of Georgia on the Political Unions of Citizens”.

It is extremely difficult to view this as a classical case of receipt of illegal donation, as a donation must be accompanied by the so-called voluntary element from the contributor, i.e. the contributor should be having a possibility to decide whether to undertake such action or not. This is absent in this instance.

However, although this is not a typical case, we believe that in view of its essence and intention, and the objective of the above-mentioned laws, this action still qualifies as an acceptance of a donation by the ruling party.

In this case, the meaning of the law must be interpreted in light of its objectives and desired outcome. The objective of the law is to ensure an equal and fair environment for the political parties, while the prohibition of receipts by any party of all kinds of donations from the state aims primarily to ensure equal treatment of all parties by the government. Hence, no party must be allowed to use state resources to discriminate against other parties.

It is obvious that the law cannot exhaustively regulate every possible eventuality. Accordingly, in order to prevent political parties or other entities from undertaking actions through various means that would contradict the objectives of the law through exploiting loopholes, the legislation (in Paragraph 6 of Article 27) also contains a general prohibition against ‘otherwise by-passing the limitations established by law’. This once again emphasizes the desire of the legislator to interpret respective norms in view of the objective purpose of the law, and to ensure an equal and fair environment for competition between political parties.

Thus, we believe that the above-described action of the ruling party has clearly breached the objectives of the “Law on the Political Unions of Citizens”.

1.3. Use of investigative bodies against political opponents

In September 2012 the law-enforcement bodies published certain investigative audio and video material. Part of this material was obtained through the relationship between the Georgian and French law-enforcement agencies. Remarkably, the French Ministry of Foreign Affairs has expressed unhappiness about the disclosure

of these materials, because the Georgian side had disclosed the investigation materials without obtaining due consent from the French side.⁴

Public disclosure of investigative materials during the pre-election period, in order to accuse political opponents of certain actions (when in fact the criminal cases are not initiated, and these people have not been indicted), may be aimed at creating a negative attitude towards these opponents among voters.

Using investigative operative materials against the political opponents during such period, without initiating concrete criminal cases and bringing charges, is unreasonable and may be qualified as an abuse of legal resources. It does not fight crime and is focused only on influencing the voters' attitude. This suspicion is further upheld by the fact that a similar practice – production and publication of audio and video materials during the pre-election period in order to discredit representatives of the political opposition– was applied frequently in the past ahead of previous elections.

1.4. Improper actions of the Central Election Commission

Since August 1, 2012, the election administration became the chief executive body of the election legislation, which is often charged with the function of interpreting these laws. Several biased actions by the Central Election Commission (CEC) were reported during the pre-election period.

1.4.1. Refusal to grant the desired election number

On August 20, the CEC refused to grant to the election entity 'Bidzina Ivanishvili – Georgian Dream'⁵ their desired number, 7, by which it has significantly damaged this coalition.⁶ This case can be viewed as the use of legal resources for electoral purposes.

On August 20, the CEC released a statement, which said that the procedure for using the list number of an election entity, and the number of an election bloc, was to be determined by its charter. All parties within the bloc must have participated in the last parliamentary election.⁷

According to the Election Code of Georgia (Paragraph 5 of Article 119) 'if for election purposes the election bloc is established by parties that participated in the last parliamentary election, in the charter of the bloc they shall indicate which party list number they will they use'. In this wording it is not obvious that all parties within the bloc must have participated in the last parliamentary election. Indeed, former decisions of the CEC also attest to this. In particular, in 2010 the list numbers were granted to the bloc 'Giorgi Targamadze, Inga Grigolia - Christian Democratic Union' and the bloc 'Alliance for Georgia' based on this very norm.⁸ There were newly created parties within the bloc. The Election Code (Paragraph 3 of Article 7 and Paragraph 1(a) of Article 14) specifies that the CEC is obliged to ensure the consistent application of the Georgian election legislation, and therefore to respect the introduced practice. The memorandum between the CEC and NGOs was executed for this very purpose. Notably, the Georgian Dream often stated prior to the announcement of elections that it intended to use the list number of one of the member parties of the bloc, and has borne the financial costs of preparing the campaign materials based on this assumption. The intention to use number 7 was publicly known quite a while ago, and the very consistent approach has triggered such actions. The CEC should aim to promote a fair electoral process, and it could have at least indicated that the party should not use the list

⁴ <http://www.diplomatie.gouv.fr/fr/pays-zones-geo/georgie/la-france-et-la-georgie/evenements-21285/article/georgie-divulgateur-d-informations>

⁵ Political unions within the bloc are: Georgian Dream – Democratic Georgia, Republican Party of Georgia, Free Democrats, National Forum, Conservative Party and Industry Will Save Georgia.

⁶ http://cec.gov.ge/index.php?lang_id=GEO&sec_id=13&info_id=9350

⁷ http://cec.gov.ge/index.php?lang_id=GEO&sec_id=13&info_id=9344
http://cec.gov.ge/index.php?lang_id=ENG&sec_id=13&info_id=9349

⁸ http://www.cesko.ge/index.php?lang_id=GEO&sec_id=13&info_id=6011

number of one of the political unions, and should not mobilize serious financial resources to this end, beforehand.

1.4.2. Limitation of photo and video recording on the polling day

In accordance with the Election Code of Georgia (Article 30 of the Organic Law of Georgia), 'a resolution of the CEC is a sub-statutory normative act, which shall be adopted in cases directly stipulated by law'. On September 24, 2012, the CEC adopted the Resolution N42/2012 'on the Determination of Several Election Procedures', by which it has substantially limited the right of those people authorized to be present in the polling station to carry out photography and video recording.

Firstly, it must be noted that the CEC was not authorized to issue such a resolution. The Election Code of Georgia does not provide a clear indication that the CEC is authorized to determine the right of people authorized to be present in the polling station on the polling day to carry out photography and video recording. The Election Code (Paragraph 25 of Article 8) clearly stipulates that 'persons authorized to be present in the polling station, apart from the polling booth, can carry out photography and video recording without obstructing the election process'. This directly determines those people eligible to carry out photography and video recording, as well as the rules for recording. Nowhere does the Election Code provide for the possibility for issuing a normative act for clarifying this rule.

Not only was the CEC not authorized to adopt the described resolution, but also certain norms of the resolution itself contradict the Election Code of Georgia, and in particular Paragraph 25 of Article 8, which entitles all persons authorized to be present in the polling station to photography and video recording. Video recording should be carried out so that the recording does not occur in the polling booth and the election process is not undermined. If the election commission believes that a person obstructs the election process through video recording, based on Paragraph 15 of Article 8 of the Election Code the commission can discuss this collectively and expel the offending person. Regulating this issue through a normative act so that persons authorized to be present in the polling building are unable to record the violation immediately, represents a breach of the Election Code, as well as the Constitution of Georgia, which secures the right to receive and disseminate information. The Resolution #42/2012 of the CEC, which limits the right to receive-disseminate information on the polling day, is in the breach of as the Organic Law of Georgia, the Election Code of Georgia, as well as Article 24 of the Constitution of Georgia, and undermines holding the election in a fair, transparent and competitive environment. The purpose for which the resolution was adopted - securing the secrecy of voting - is not in any case connected to the means provided in the resolution, as recording the polling booth is prohibited by law already, and the relevant sanctions are available in the Criminal Code as well.

This resolution of the CEC limits access to information and severely undermines the transparency of the election process. Specifically, the resolution introduces a rule that recording can only be done from a designated place as allocated by the chairperson, from which the election process should be seen. Allocation of the place is entirely at the chairperson's discretion. 'The minimum distance for any person for video recording must be not less than 3 meters away from the subject/object of recording'. Video recording from 3 meters away may not be in itself a problem (as technically it is possible to bring the picture closer), but the restriction of recording to a specially designated place represents the danger that from this place and distance it may be difficult to report a violation and record it on a camera or video recorder as evidence. The resolution indicates that the distance of 3 meters is minimal, which means that the place selected by the chairperson may be even further away than this, which could make obtaining evidence impossible.

Limitations imposed under the resolution affect any person authorized to be present in the polling building, including the media and observers. As such it may become almost impossible for the observers to obtain evidence. When reporting a violation, the observer is required to make a video recording so that his/her arguments are supported by relevant evidence. If the violator was the chairperson of the commission, it is obvious that the observer will fail in obtaining the evidence.

The provision of the resolution, according to which ‘in cases when a person authorized to be present in the polling building moves with a camera or leaves the polling building, she/he shall lose the right to carry out video recording’, is also in substantial contradiction with existing law. The right to be present in the polling building includes entering, exiting, and other types of movement at any time in the polling station. It is unacceptable to limit the right to carry out video recording which would undermine this right. The right to carry out photography and video recording is also granted to these persons by Paragraph 25 of Article 8 of the Election Code.

It must also be emphasized that the resolution was adopted only 7 days prior to the election. Numerous recommendations of international and local NGOs contained the requirement not to amend the election legislation shortly before the election, and especially if this concerns changes to the rules of holding the election, polling procedures, etc., as it then becomes impossible to adequately familiarize interested parties with these regulations, and dispute them in case of contradiction with the law.

Adoption of the resolution limiting the right to carry out photography and video recording in this form, and within such a short period before the election, is one clear example of the use of regulatory resources for electoral purposes.

1.5. Inconsistent approach of the State Audit Office

Just as in the period before August 1, the State Audit Office (SAO) was notorious for its unfair decisions during the immediate pre-election period as well, which is another example of the use of legal resources for electoral purposes.

1.5.1. Introducing the obligation to pay the costs of election advertising in advance

On August 6, 2012, the SAO issued Order №137/37, which obligated the election entities to purchase the broadcasting air and/or newspaper space for election advertising through advance payments.

Additional limitations were imposed by this order on election entities and the providers of advertising services, which were not foreseen under the “Law of Georgia on the Political Unions of Citizens”. This order was inconsistent with the law and disproportionate to achieving the stated public political objective as stipulated in the law.

a. Inconsistence with the law

According to Paragraph 9 of Article 7 of the Law of Georgia on the Normative Acts, a sub-statutory normative act may be issued only for the fulfillment of a statutory act. Section 2 of Article 5 of the General Administrative Code of Georgia defines that issuance of an act by the administrative agency which restricts the rights or freedoms of a person, shall be possible only based on the law or a sub-statutory act issued on its basis (principle of legality).

Article 32² and Paragraph 1 of Article 34¹ of the “Law of Georgia on the Political Unions of Citizens” does not authorize the SAO to impose additional restrictions on the political entities and the providers of advertising services.

Sub-Paragraph e of Paragraph 2 of Article 34¹ of the Law authorizes the SAO to ‘ensure the transparency of a party’s funding’, but this provision does not even hint at giving the SAO the authority to impose additional restrictions.

Hence, the above-described order was illegal, as it has restricted the right to pursue free entrepreneurship and political activities, without having a respective legislative basis.

b. Principle of proportionality

The principle of proportionality requires that a restrictive measure introduced by the state is applied only to the intensity and degree which is necessary for achieving the concrete public objective. Achieving the public objective at the expense of excessive restriction of the right shall be prohibited.⁹

Imposing the above-described additional restriction for ensuring the transparency of parties' funding was totally unnecessary. The SAO could have easily requested the concluded agreements on the provision of advertising services, and in view of the payment terms provided therein it could have easily established potential violations, thus ensuring the transparency of the parties' funding.

Payment terms are of crucial importance for running a business, including advertising businesses. Often the success of a potential deal or a concrete piece of business depends on the ability of providers to accept down payments for the provided goods or services. Accordingly, the requirement to pay the costs of political advertising in advance may have caused significant damages to the media outlets.

As a result of amendments made to the "Law of Georgia on the Political Unions of Citizens" new restrictions were introduced on election funding conditions and by issuing the above mentioned order SAO has made it even more difficult to conduct election campaigns.

1.5.2. Misinterpretation of Article 164¹ of the Criminal Code

According to a statement released by the Ministry of Internal Affairs (MIA) on July 17, 2012, the Executive Secretary of the Conservative Party (within the Georgian Dream coalition), M. Kachakhidze, has transferred GEL 7,000 in cash to the Mtatsminda district organization, which was distributed among six people identified in advance. Through sham transactions, these people have transferred the amount back to the account of the Conservative Party as a membership fee. These people were arrested in connection with these circumstances, and 'will be charged under Article 164¹ of the Criminal Code – for concluding a sham transaction to avoid restrictions imposed by the law'.¹⁰

On August 27, in the process of examining the legality of amounts donated to the United National Movement, the SAO found that, in the case of donation by one person, signs of a sham transaction were evident. The case was transferred to the Chief Prosecutor's Office of Georgia, as in the opinion of the SAO the conclusion of such transaction qualified as the action stipulated in Article 164¹ of the Criminal Code.

Article 164¹ of the Criminal Code concerns vote buying, which is reflected in the title of Article 164¹ - "Vote Buying. It implies the transfer/promise of money or some other property/advantage or the receipt of such for electoral purposes, and/or the conclusion of a sham transaction in order to avoid restrictions imposed by the law.

Accordingly, the last sentence of this Article – conclusion of a sham transaction to avoid restrictions imposed by the law – does not include all sham transactions within the scope of this norm, and it applies only to the sham transactions concluded for vote buying purposes.

The "plain meaning rule" or the grammatical interpretation (understanding the norm directly based on its content) of Article 164¹ of the Criminal Code alone is sufficient for establishing that the scope of its application is only vote buying, and not making donations to a party, even through sham or any other transactions. Yet, the interpretation of this norm by any method straightforwardly indicates that the provisions of this Article (including the wording in the last sentence) concern only vote buying:

⁹ 26 June 2012 decision №3/1/512 of the Constitutional Court of Georgia on the case *Danish citizen Heike Kronquist vs. the Parliament of Georgia*.

¹⁰ <http://www.police.ge/index.php?m=8&newsid=3447>

- **Objective-teleological: interpretation of the norm in view of its objective** – the objective of Article 164¹ is to prevent and punish the direct bribing of voters, whereby a person directly offers proprietary benefit to a voter in exchange for a vote, as well as the cases of buying voters with money or other property benefits through concluding sham transactions, and thus to ensure a bribery-free, equal and competitive electoral environment. Accordingly, it cannot be applied to all sham transactions concluded with the purpose of avoiding the law. Otherwise, even the sham transaction by which the property is sold in order to protect such property from the creditor's claims will be qualified as vote buying and will be punished under Article 164¹, which is obviously a legal nonsense.

To establish the objective and scope of application of this Article we should look at the Article's title: 'Vote Buying'. If the law aimed to criminalize not only vote buying but other illegal donations as well, its title or text would have mentioned illegal donation as well.

- **Historical interpretation: a) in light of the legislator's will, taking into account the preparatory works preceding its adoption (Travaux préparatoires); and b) interpreting the norm in view of existing practice of case law:**

a) In May 2012, when discussing the amendments to Article 164¹ in the Parliament, members of the parliamentary majority have stressed the need to interpret this article in the narrow context, whereby it should only be applicable to vote buying.¹¹ Hence, Article 164¹ cannot be applied to the cases of donations.

b) Although under Georgian law the court precedents do not have legal force, the existing practice of case law still can be used as the source of interpretation of legal norms.

Prior to July 17, 2012, numerous sanctions were applied against various persons for making donations and by-passing the law,¹² but this was taking place only based on the legislation on administrative offences, and not the Criminal Code. Accordingly, in view of the existing practice of case law, only an administrative fine should have been applied against the members of the Conservative Party, and the person who donated to the United National Movement.

- **Systemic or contextual: interpreting the text of the norm in light of the legislative system or in respect of other legislative documents or norms** – making illegal donations through concluding sham transactions to avoid the law, as well as through another person, is rather exhaustively regulated under the Organic Law of Georgia on the Political Unions of Citizens. Thus, such action is not a criminal but an administrative offence, and it is subject to the exclusive competence of the SAO and not the criminal prosecution bodies.

Based on the above analysis, even if we assume that the members of the Georgian Dream coalition or the person donating to the United National Movement have indeed concluded sham transactions, holding them liable under Article 164¹ of the Criminal Code is unacceptable, as they had not bought the voters but transferred the donation to the party's account.

Based on the factual circumstances indicated in the statements of the MIA and the SAO, we are dealing with the breach of the "Law of Georgia on Political Unions of Citizens". In particular, according to Paragraph 4 of Article 26¹ of this Law, 'the liability foreseen under this Law shall extend to any action and person which aims to avoid the restrictions imposed by this Law, including sham transactions', while according to Article 33¹ of

¹¹ <http://netgazeti.ge/GE/105/law/10822/>

¹² Pursuant to the 8 July 2012 resolution of the Administrative Panel of the Tbilisi City Court issued a week before arresting the members of the Conservative Party, based on the protocols of administrative offences of the Audit Office, the court has fined Davit Batsikadze, Zaal Gogsadze, Givi Ramazashvili and others, as, according to the resolution, they have made donations by by-passing the restrictions imposed by the Law on the "Political Unions of Citizens". The Tbilisi Appellate Court has upheld this resolution by its resolution dated 13 July 2012; in addition, the Audit Office has established on 12 March 2012 that the Cartu Bank has carried out the financial transaction by avoiding the law in order to donate to the "Georgian Dream" and it was fined only through the administrative procedure.

the Law all such transactions are void, and result in fining five times the amount of transaction in accordance with Paragraph 7 of Article 34² of the Law.

Accordingly, if we interpret this Article the way state structures have interpreted it in the cases of people donating to the Conservative Party and the United National Movement, then making donations in a party's favor through sham transactions is subject to both the administrative and criminal punishment.

Paragraph 4 of Article 42 of the Constitution of Georgia states that, 'no one shall be convicted twice for the same crime'. Double conviction (Double Jeopardy) is also prohibited by Article 4(1) of Protocol 7 of the European Convention on Human Rights¹³: 'No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State'.¹⁴

There are two approaches when interpreting these articles. According to the first approach, it must apply to cases of both the penal and administrative offences, which means that if a person is held liable for a committed offence through penal procedure, she/he must not be held liable for an administrative offence for the same action.

According to the second approach, the above-mentioned articles apply to penal cases only, which means that if a person is held liable for a committed offence through penal procedure, she/he can also be held liable for an administrative offence, if his/her action at the same time is an administrative violation, and this will not be regarded as a breach of the Constitution or the European Convention.

If we apply Article 164¹ of the Criminal Code to the cases of both penal and administrative violations, then persons convicted under Article 164¹ of the Criminal Code for concluding sham transactions in order to make illegal donations cannot be fined in accordance with Paragraph 7 of Article 34² of the "Law on the Political Unions of Citizens". This would mean that Paragraph 4 of Article 26¹, Paragraph 7 of Article 34² and Article 33¹ of the Law are preposterous norms and their existence has no meaning whatsoever.

If we choose the second approach and interpret the above-described articles of the Constitution and Conventions in view of the text of their contents, meaning that the prohibition of double conviction applies to the criminal law only, and if by one action a person commits a criminal offence as well as an administrative violation, then the prosecutor's office will have to initiate criminal prosecution against this person, while the administrative body would impose an administrative sanction on this person.

Here, the problem lies in the fact that if an administrative body does not violate the domestic legislation and imposes on people convicted under Article 164¹ of the Criminal Code (for concluding sham transactions in order to make illegal donations a fine foreseen under Paragraph 7 of Article 34² of the Law on the Political Unions of Citizens, which is five times the amount of made donation), then the European Convention on Human Rights will be breached. Under the system of this Convention, imposing a fine of five times the amount of made donation on a person will be qualified as a penal sanction, thus resulting in the double conviction prohibited under Article 4(1) of Protocol 7 of the Convention.

The ECHR system employs the autonomous criteria for attributing a concrete case to either criminal or administrative law, which have originated from the *Engel* case.¹⁵ There are three alternatives, the so-called "Engel Criteria":

¹³ European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe in 1950.

¹⁴ Similar to the ECHR, the double conviction is prohibited also by Article 14(7) of the "International Covenant for Civil and Political Rights" (adopted by the UN General Assembly in 1966).

¹⁵ Case of *Engel and others v. the Netherlands*, Application no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72; Judgment of 8 June 1976.

- Qualification of a concrete case under domestic legislation
- Nature of a concrete action (offence)
- Degree and severity of punishment foreseen for an offence

Accordingly, if after the application of the described criteria it is established that the concrete case is of penal nature, the European Court of Human Rights will apply to this case the high standard requirements set for the criminal cases, including the prohibition of double conviction under Article 4(1) of Protocol of the Convention.

Imposition on a person of a fine of five times the amount of donation, as foreseen under the legislation of Georgia, leads the issue to be examined under the third Engel criterion.

When establishing the 3rd criterion, attention should be drawn to two qualities of a sanction:¹⁶

a) The public nature of the sanction, i.e. can all members of the society become its subjects or it is designated for a narrow circle only

b) Is the objective of a sanction to compensate the inflicted damage only or to give an exemplary punishment, which also has the function of preventing or deterring other offences (special quality of a penal punishment)

With the use of the described criteria, tax sanctions foreseen by Swedish legislation, the volume of which constituted 40% of overdue payment, were qualified as having the criminal nature.¹⁷

The fine stipulated in Paragraph 7 of Article 34² of the Law - five times the amount of a donation (500%) - fully meets the above-described criteria. Accordingly, for the purposes of the European Convention this fine is of a criminal nature due to its severity. This means that if an administrative body acts in compliance with the legislation of Georgia and imposes on a person convicted under Article 164¹ of the Criminal Code for concluding sham transactions in order to make illegal donations a fine foreseen under Paragraph 7 of Article 34², for the purposes of the European Convention this will be regarded as a double conviction, which is the violation of Article 4(1) of Protocol 7 of the Convention, and there is a high probability that the country loses should the case be brought before the European Court of Human Rights.

In addition, it is unclear why the illegal donation carried out through a sham transaction is punished through the penal procedure, while the illegal donation carried out directly is punished only through the administrative procedure, as the result and purpose are the same in both instances.

Based on all of these facts, we believe that Article 164¹ of the Criminal Code must be interpreted narrowly, and should be applied only to the cases of vote buying.

1.5.3. Groundless imposition of fines

The SAO stated on August 8 that Bidzina Ivanishvili and Kakhi Kaladze have withdrawn from their accounts several millions of GEL during 2012, without indicating the purpose, and urged them to return the money.¹⁸ As both had refused to return the amounts, fines were imposed on them on August 9 and 10.

The prevention of violations must indeed be the function of the SAO and it is necessary to achieve transparency in political funding, but all state agencies must rely on available evidence and not assumptions. In the given case, there was no evidence that Bidzina Ivanishvili or Kakhi Kaladze had spent their own money illegally, as this was only an assumption of the SAO. It is unacceptable for the offender and not the state agency, which believes that violation has occurred, to carry the burden of proof. Evidence must be evaluated

¹⁶ Case of Janosevic v. Sweden, Application no. 34619/97, Judgment of 23 July 2002

¹⁷ Ibid.

¹⁸ http://sao.ge/?action=news_f&npid=249&lang=geo

through a comprehensive, full and impartial examination.¹⁹ Furthermore, it is prohibited to acknowledge as an offence an action that has not been committed yet. The SAO has found such action an offence for the second time,²⁰ which is totally beyond the legal framework.

1.5.4. Selective reactions to offences

In our previous report, we talked about acts that the SAO had not examined sufficiently and where they had qualified the presumable vote buying as illegal donations.²¹ A similar case occurred on July 31 in Kakheti, when the political party Christian-Democratic Movement invited voters to a feast.²² It took the SAO over a month to investigate this incident, and at the end it once again adopted an ambiguous decision. This state agency failed to detect the signs of vote buying in this particular case as well, and fined the party the sum of only GEL 5,000, for breaking the deadline for providing information on donations.²³ However, it is totally unclear as to why this fact was qualified as a donation and not vote buying.

1.5.5. Ignoring cases of illegal donation

The statement Giga Nasaridze made on August 18 received a significant coverage in the mass media.²⁴ In it, he offered to provide free of charge the videos of political content in the name of the NGO Georgia's Not For Sale, to any interested political party. The United National Movement accepted this offer, and used the videos in its advertising campaign.²⁵ By this action the organization Georgia's Not For Sale and the United National Movement both violated Sub-Paragraph a¹ of Paragraph 1 of Article 26 of the Organic Law on the Political Unions of Citizens, according to which a political party is prohibited from receiving donations from legal entities.²⁶ In light of this fact, Transparency International Georgia addressed the SAO and demanded the application of measures provided for under the Organic Law on the Political Unions of Citizens to the parties in this deal, which implied the imposition of a fine five times the amount of the received/transferred property.²⁷

After filing a complaint in the SAO Giga Nasaridze stated that the donation was made not by the legal entity Georgia's Not For Sale, but by individuals - Giga Nasaridze and Irakli Lekvinadze - regardless of the fact that prior to this the press spokesman of the United National Movement and the party's web page had both confirmed that the donation was received from the legal entity.²⁸

Nevertheless, the SAO has found that the donation was indeed made by the individuals. However, according to its statement, the organization Georgia's Not For Sale also received this donation from Nasaridze and Lekvinadze,²⁹ and since this organization did not declare the received donation within 5 days, it was fined in the amount of GEL 5,000.³⁰

¹⁹ The Code of Administrative Offences of Georgia. The Presidium of the Supreme Council of the Georgian SSR, N161. 15.12.1984. Gazette of the Supreme Council of the Georgian SSR, N6, 29.06.1973. Article 237.

²⁰ See the report of "Transparency International - Georgia" "An Analysis of the Pre-Election Environment". 2012. <http://transparency.ge/post/report/new-ti-georgia-report-pre-election-environment-geo>

²¹ <http://transparency.ge/post/report/new-ti-georgia-report-pre-election-environment-geo>

²² <http://ick.ge/ka/articles/11778-2012-07-31-19-49-23.html>

²³ http://sao.ge/?action=news_f&npid=261&lang=geo

²⁴ <http://goo.gl/c4I35>

²⁵ <http://goo.gl/JVco7>

²⁶ Transparency International Georgia has released a statement on this fact earlier as well <http://transparency.ge/blog/sakartvelo-ar-iqideba-s-da-mmartveli-partiis-ukanono-garigeba>

²⁷ <http://goo.gl/ECulD>

²⁸ <http://www.itv.ge/?m=16&CID=24286>

²⁹ These videos had already been running in the name of this organization on several television channels, and as Nasaridze and Lekvinadze were named the authors of the videos, by all means "Georgia's Not For Sale" was the recipient of the donation as the person listed in Paragraph 1 of Article 26¹ of the Law on the "Political Unions of Citizens".

³⁰ <http://goo.gl/vjYHO>

1.6. Inter-Agency Commission for Free and Fair Elections

In accordance with the Election Code of Georgia (Article 48), the inter-agency commission was created on July 1, and operates under the National Security Council to prevent violations of electoral legislation and react to such violations. The Commission existed also during the 2008 and 2010 elections, but in these cases there was no legislative text obligating its creation.

This amendment has to be welcomed, and it is important that the Commission's activities are vigorous, transparent and focused on partnership. The Commission's role is especially important in the prevention of offences, for which numerous statements and recommendations were made addressing relevant state or local government authorities.³¹ A number of violations were identified and responded to, as recommended by and through direct involvement of the Commission.³²

However, it has to be noted that the Inter-agency Commission usually does not act proactively and reacts only in cases when someone informs it about instances of violation. The Commission often avoids stating the specific facts and evidence about certain violations, and instead limits itself to general statements. For instance, on September 10 the Commission released a statement on the use of print materials developed through budgetary resources for campaigning purposes and stated that 'the Commission became aware of the fact that certain local authorities use the agencies' web pages for covering the election campaign of the ruling party and posting the party symbols. The Commission was also notified that one of the election entities was a subject of the agency's advertising posted in the state institution.'³³ The Commission called on the state and local government authorities to examine the print materials developed through their own funds, and to prevent violations, reminding them that such action represents the misuse of administrative resources. In accordance with Paragraph 4 of Article 49 of the Election Code of Georgia, such action is an example of the use of budgetary resources for party purposes, and it is subject to sanctions. The Inter-agency Commission has not verified the information made known to it, and according to its recommendation, respective agencies were not requested to react accordingly either, whilst the powers of the Inter-agency Commission are not limited to issuing only recommendations as preventive measures, but also include addressing relevant agencies with a demand to carry out respective measures in reasonable time-frames once the violation is detected.

2. Improper actions of the judiciaries and local authorities

Central bodies of the executive authorities were not the only entities marred by biased actions during the pre-election period. Similar developments occurred also at the level of local and judicial authorities.

2.1. Refusal to allocate territory for meeting with the voters

On August 6 the Georgian Dream coalition addressed the local government of Rustavi City with a request to allocate a place on August 19 for holding an assembly. The Rustavi City Hall refused to allocate three different locations indicated by Georgian Dream for various reasons, including the prevention of transport movement, while refusing to hold the rally in the Shartava Square in Rustavi.

The Law of Georgia on 'Assemblies and Manifestations' provides only two grounds for refusal: 'a) An assembly or manifestation creates a real threat to normal functioning of enterprises, institutions and organizations; b) Another rally (warning about which was submitted in the executive body of local self-government earlier) is planned at the same time and location'.³⁴ In all other instances the local government accepts the warning and

³¹ <http://www.nsc.gov.ge/geo/news.php?id=6199>

³² <http://www.nsc.gov.ge/geo/news.php?id=6204>; <http://www.nsc.gov.ge/geo/news.php?id=6211>

³³ <http://www.nsc.gov.ge/geo/news.php?id=6207>

³⁴ Law of Georgia on "Assemblies and Manifestations". N763. 12.06.1997. Gazette of the Parliament of Georgia, N33, 31.07.1997. Article 10.

is obligated to secure the safety of an assembly.³⁵ Obligation to submit a warning ensures that the local authority finds an alternative route for the transport and avoids the interruption of transport. Refusal on this ground was therefore clearly a violation and an unjustified interpretation of the law.

2.2. Court reaction to the use of administrative resources

According to the Election Code (Article 93), the CEC and persons authorized by the CEC and respective District Election Commissions draw up the protocols of administrative violations on the evidence of violation of pre-election campaigning rules and the use of administrative resources. Proceedings on such violations are carried out pursuant to the Code of Administrative Offences of Georgia.

An article was published on August 9 on www.humanrights.ge,³⁶ according to which the campaigning materials of the United National Movement were posted in the office of Mindia Aptsiauri, the Head of the Military Registration and Conscription Service of the Rustavi local government. The Rustavi District Election Commission addressed the court and requested to fine Mindia Aptsiauri in the amount of GEL 1,000, but the claim was rejected. According to the decision, 'the court has established that the framed photo-illustration with the text "National Movement – Democrats", numeral 5 and Mikheil Saakashvili's portrait were indeed posted in the office of Mindia Aptsiauri. The court has explained that the National Movement - Democrats is not an entity participating in the current election process. It is not registered and represents another entity, which participated in the 2004 parliamentary election. The National Movement and the Free Democrats united in 2004 into one party and participated in such form in the 2004 parliamentary election. This election bloc does not exist today. Accordingly, only the existence of numeral 5 on this poster does not mean that Mindia Aptsiauri has posted the campaigning material of the election entity registered under numeral 5 in the current elections and that he has been conducting the pre-election campaign in the area prohibited therefore".³⁷

Apart from the fact that the court proceedings have focused only on one piece of campaign material developed for the 2004 election and the court has ignored the other campaign materials, the approach of the court itself must be dubbed as one-sided and biased. According to the Election Code, campaigning by public servants during the discharging of official duties is prohibited, and the methods applied by servants for campaigning purposes are irrelevant for the purposes of the law. Materials depicting the political officials and at least one detail (numeral in this case) of an election entity, are sufficient for using for campaigning purposes, while posting such materials in the office is campaigning during the discharge of official duties. Further, since 2004 until today there were the names of various election entities under the numeral 5, but each of them was submitted by the United National Movement party, and accordingly the list number of the entity is clearly associated with the political party and the election entity registered by it.

3. Legislative problems

The use of legal resources for electoral purposes does not only imply the biased interpretation of legal norms, but the creation of such norms that give one political team an advantage over others. Several legislative problems are worth noting in this respect.

3.1. Election campaigning during state events

There were numerous occasions after the appointment of the polling day when the MP nominees participated in state events, carrying out active election campaigning. For instance, during the visit of the State Minister for Employment in Bolnisi, when he was getting familiar with the questionnairing process of job-seekers, he was

³⁵ Paragraph 6 of Article 45 of the Election Code.

³⁶ <http://www.humanrights.ge/index.php?a=main&pid=15348&lang=geo>

³⁷ <http://www.humanrights.ge/index.php?a=main&pid=15462&lang=geo>

accompanied by the single-seat MP nominee Koba Nakopia.³⁸ Such activities are perceived as party events for the voters, and this therefore represents the use of this resource for an electoral purpose.

Although election campaigning is not prohibited at budgetary events, by its essence it is still one of the types of use of an administrative resource, as a political party and the authorities are mixed, which is unacceptable in line with the 1990 Copenhagen Conference Document of the OSCE.³⁹ The election legislation of Georgia provides a possibility to use such resources without committing any violations. NGOs have stressed this issue several times, but the Election Code has not taken this into consideration.⁴⁰

3.2. Wide circle of a representative of election entity

The Election Code gives political parties the opportunity to have representatives in election administrations⁴¹ who enjoy the rights of observers, and extra benefits on certain occasions.

Notwithstanding the demand of non-governmental organizations,⁴² the law is insufficient in determining those people who cannot act as a representative. During the 2010 election the entity itself was appointed as a representative in one of the districts, while currently political officials are occupying this position in several districts.⁴³ Significantly, a representative has the right to be present at the election precinct on the polling day, which is a rather huge threat for the expression of free will. The absence of respective prohibition in the legislation was often abused by the ruling party, which is one of the examples of the use of legal resources.

3.3. Uncertainty of possibility to react to the use of budgetary funds

According to the Election Code of Georgia (Paragraph 3 of Article 49), 'from the day of appointment of the polling day until the summarization of election results it shall be prohibited to implement projects that were not included in the state local budget prior to that, as well as to increase budgetary programs that were included in the budget prior to the election, and to increase the non-planned transfers that were included in the budget prior to the election'. The second sentence of the same Paragraph, which provides for the prevention of such violation and the possibility to react to it, is problematic. It states that 'In case of violation of this rule the authorized person shall be entitled to address the court and request suspension of expenses'. Unfortunately, the Election Code does not elaborate on who is the authorized person. Articles 77 and 78 of the Election Code provide detail as to who is authorized to address the court or election administration in cases stipulated by law, and what the time-frames are in which the committed violations must be reacted to. The Code is silent on such procedures in case of the use of budgetary funds. The Election Code in effect before December 2011 provided in such cases the possibility of addressing the election administration, which would have imposed a sanction on an authorized person.

In view of the current text of the Election Code, it seems that there is a better regulation and response mechanism in cases of the use of budgetary funds, but due to non-determination of a specific procedure in the law, a general rule is applied, pursuant to which a normative act (as an amendment to the budget is a normative act) can be appealed in court within 3 months of inflicting damage to such act, and the court examination may take up to 5 months. Besides, it is necessary to prove in court the fact of damage inflicted on the claimant, which may become an additional hurdle and the court can refuse to examine the case should it fail to establish the direct and straightforward damage incurred by the claimant.

³⁸ <http://employment.gov.ge/index.php/ge/news/bolnisi>

³⁹ <http://www.osce.org/odihr/elections/14304>

⁴⁰ <http://esshengekheba.ge/?menuid=9&lang=1&id=456>

⁴¹ Article 42, the Election Code.

⁴² Joint recommendations of non-governmental organizations on the Election Code. 2011. http://www.isfed.ge/pdf/Joint_Recomendations_UEC.pdf

⁴³ <http://goo.gl/9hk84>

The existence of uncertain and ambiguous regulation in the law - which makes the timely, robust and effective reaction to instances of the use of financial administrative resources almost impossible - can be considered as a serious problem and the abuse of a legal resource.

II. Pressure on Political Grounds

Unprecedented increase in the instances of pressure on political grounds was reported during the pre-election period, and particularly at the end of September. This significantly undermines the peace and stability of the election environment, and increases tensions among political parties. After September 19, the administrative detentions, physical reprisals and threats against the activists of Georgian Dream have become frequent, turning into an alarming trend. Furthermore, there were cases when civil activists and one student were arrested for unknown reasons.

1. Detention/Arrest

Numerous instances of detention and arrest of supporters of the opposition political parties and their relatives were reported during the pre-election period, which may well have the political motivations. This suspicion is upheld by the fact that these detentions are not based on solid evidence.⁴⁴ Remarkably, dozens of activists of the Georgian Dream, and other people associated with the coalition, were arrested within just a few days. Identifying the exact number of detained persons is quite difficult, as due to the intensified frequency of such cases it is impossible to verify them all and draw a definite conclusion. The Georgian Dream has reported up to 60 cases of detentions on political grounds in the recent days, while according to the Secretary of the Security Council Giga Bokeria, there are total of about 30 persons detained through administrative procedure.⁴⁵ Such suspicious detentions, occurring over a short period of time, give raise to the assumption that politically active citizens are being deliberately disconnected from the current election processes. Several of mentioned cases deserve particular attention.

Four people – **Davit Patsatsia**, **Zurab Meskhia**, **Shota Bazerashvili** and **Constantine Labartkava** – were detained on September 21 in Tbilisi for committing an administrative offence. The police have charged all four detainees under Article 173 of the Code of Administrative Offences.⁴⁶ Patsatsia and Meskhia were placed in the 40-day administrative detention.

On September 22 the Ministry of Internal Affairs of Georgia detained civil activists **Dachi Tsaguria** and **Bekar Aladoshvili**. They were placed in the 10-day administrative detention. In light of the developments in Georgia and the fact that Tsaguria was actively involved in the organization of protest rallies of the youth, his detention raises additional doubts. We believe such action during the pre-election period was clearly politically motivated.

The representative of the Georgian Dream in the Mestia Election District **Kapiton (Kakha) Zhorzholiani** was detained on September 23. He was detained based on the complaint of the CEC representative Archil Sopromadze, according to who Zhorzholiani had provoked a fight on September 20, and obstructed the work of the commission. However, according to the information provided by the four members of the commission and some eye-witnesses, a fight or hooliganism had not occurred. According to them, only a heated verbal exchange and loud arguing had taken place. The basis for administrative detention was Article 166 of the Code of Administrative Offences of Georgia regarding petty hooliganism, which foresees a fine in the amount of GEL 100, or an administrative detention for up to 90 days for the offence. The Zugdidi District Court has put Zhorzholiani in the 40-day administrative detention. However, in such cases, which affect the activities of the election administration, the Election Code of Georgia contains respective measures, including the eviction of a person obstructing the process or violating the order from the session based on the collective decision of the commission (Election Code, Paragraphs 15 and 18 of Article 8). Accordingly, application of the Code of

⁴⁴ Which is also the requirement of Article 5 of the European Conventions for the Protection of Human Rights and Fundamental Freedoms, notwithstanding the criminal or administrative nature of detention.

⁴⁵ <http://www.nsc.gov.ge/geo/news.php?id=6213>

⁴⁶ Non-subordination to a lawful order or demand of a servant of law-enforcement body, a military servant, a staff member of the Special Service of State Protection or an enforcement police officer.

Administrative Offences is unacceptable, when the case is regulated by hierarchically superior and special law, such as the Organic Law – the Election Code.

21-year old student **Aleksandre Tsagareli** was detained at night on September 24 after the end of the protest rally by the Ivane Javakhishvili Tbilisi State University. According to eye-witnesses, three vehicles of a special squad were involved in Tsagareli's detention. As they had stated, Tsagareli was waiting for a taxi when he was detained. The Tbilisi City Court rejected the motion of Tsagareli's lawyer on questioning of witnesses and viewing the video material recorded by the street surveillance camera, and imposed on him a GEL 400 fine for resisting the police.

The Gori district coordinator of the Georgian Dream, **Zviad Sabanadze**, as well as **Giorgi Jankanidze** and **Petre Tavlishvili** were detained on September 23 for violating the public order and verbally insulting the resident of Shindisi Irma Papunashvili. Zviad Sabanadze, Giorgi Jankanidze and Petre Tavliashvili were charged under Article 166 of the Code of Administrative Offences. The court has fined Zviad Sabanadze in the amount of GEL 100, while Giorgi Jankanidze and Petre Tavliashvili were each placed in the 30-day detention.⁴⁷

An activist of the Georgian Dream **Noe Akhashvili** was detained in Bolnisi on August 22.⁴⁸ The police did not give information on the reason for his detention and the charges. In addition, the reason behind detaining Tskaltubo-based activists of the Georgian Dream **Giorgi Babunashvili** and **Beka Giorkhelidze**, who were detained on September 6 in Kutaisi after the concert of Bera Ivanishvili, is also unknown.⁴⁹

Transparency International Georgia released a statement concerning the recent detentions,⁵⁰ in which it has urged the respective bodies of Georgian authorities to take into account the current environment in Georgia and to resort to these measures only if solid evidence is available.

Furthermore, in relation to this trend, the influential organization Human Rights Watch has noted in its report that 'the government should immediately ensure all those deprived of liberty enjoy their full due process rights and receive a fair trial regardless of whether the charges against them are administrative or criminal. Anyone arrested for a misdemeanor offence is entitled to due process, and their basic rights in detention must be respected',⁵¹ while the Inter-Agency Taskforce for Free and Fair Elections has called on law-enforcement bodies to apply, where possible and reasonable, lighter sentences such as a fine.⁵²

2. Physical reprisals

Numerous cases of physical reprisals based on peoples political views and activities were reported during the pre-election period. Similarly, such cases of violence increased in the days leading up to the election, which further aggravating and polarizing the environment. It is difficult to provide the exact number of these types of incidents, as again there were many incidents in a short amount of time, making it impossible to verify them all. However, certain cases are notable.

On September 24 in Gardabani, strangers waited at the entrance of the residential house of an activist of the Georgian Dream, **Buba Dvali**, and splashed acid in his face.⁵³

Up to ten masked persons beat two activists of the Georgian Dream, **Giorgi Kakhashvili** and **Tariel Sujashvili**, with bats on September 24 in Gori.

On September 23, coalition activist **Gela Darchiashvili** was beaten for wearing the Georgian Dream T-shirt.⁵⁴

⁴⁷ <http://police.ge/index.php?m=222&newsid=3525>

⁴⁸ <http://info9.ge/?l=G&m=1000&id=3043>

⁴⁹ http://newpress.ge/index.php?page=1&news_id=576

⁵⁰ <http://transparency.ge/post/general-announcement/gantskhadeba-dakavebebis-shesakheb>

⁵¹ <http://www.hrw.org/news/2012/09/26/georgia-misuse-administrative-detention-violates-rights>

⁵² <http://www.nsc.gov.ge/geo/news.php?id=6213>

⁵³ <http://goo.gl/Qo4Hb>

A representative of the Kaspi youth wing of the Georgian Dream **Ilia Noniashvili** was abducted on September 23 by the SUV-type vehicle and beaten.⁵⁵ According to Ilia Nanobashvili, strangers have insulted him physically and verbally for wearing the Georgian Dream T-shirt. The police have questioned him as a witness.

On September 9, 2012, up to 30 people attacked **Angeli Bochasvili** and **Khizir Kushashvili** after the Telavi rally of the Georgian Dream, where they had presented Bidzina Ivanishvili with a white felt cloak.⁵⁶

Remarkably, not a single person has been detained as yet for physically harassing the activists of the Georgian Dream.

3. Obstructing of party activities

The campaigns of political parties during the pre-election period are conducted in a tense environment, and cases of obstruction of their activities are quite common.

Local authorities play an important role in holding the pre-election activities in the regions safely and peacefully, and therefore their involvement in political confrontations is totally unacceptable. Nevertheless, our previous report has identified numerous cases when party confrontations were directly instigated and organized by the representatives of local authorities. Similar acts have re-occurred during the pre-election period as well. As a rule, visits of the representatives of the Georgian Dream in the regions were accompanied with confrontations with the representatives of the United National Movement, in which the servants of local authorities played the most active roles.

The leader of the Georgian Dream, Bidzina Ivanishvili, visited Kakheti on September 25-26 and held the pre-election meetings in Akhmeta, Kvareli, Gurjaani, Signaghi, Lagodekhi and Dedoplistskaro. Instances of obstruction, organized by the representatives of the United National Movement and the local authorities, were reported during the meetings in all municipalities.⁵⁷ In particular:

During the meetings in Kvareli and Gurjaani on September 25, the activists of the United National Movement met Ivanishvili with protest shouts. During the meeting in Kvareli, the activists of the ruling party moved around honking and shouting. After the end of the meeting, the so-called corridor of shame was organized for the escort of Bidzina Ivanishvili at the exit from Kvareli. The trustee of the territorial body of the village Mtisdziri Malkhaz Kalaijishvili was in Kvareli, together with the activists of the United National Movement.⁵⁸

The activists of the United National Movement, including numerous pupils (according to the information of the Kakheti Information Center), waited for Bidzina Ivanishvili in Gurjaani at the Glory Memorial, with various types of protest banners. During the meeting, the activists of the United National Movement stood about 40 meters away from the stage, shouting: 'Betrayer, leave', 'Georgia without penguins', 'Misha, Misha'. **Tornike Sibashvili**, the son of the Deputy Head of the Gurjaani Police, **Giorgi Sibashvili**, the son of the patrol police staff member, **Davit Purtseladze** and the employees of the Gurjaani Municipality Gamgeoba **Otar Imerlishvili** and **Temur Butsashvili**, were especially active. They have organized the 'corrdior of shame' for Ivanishvili in Gurjaani as well.⁵⁹ Similar methods were applied during the pre-election meetings held by Bidzina Ivanishvili in Signaghi, Lagodekhi and Dedoplistskaro on September 26.

Many cases of confrontations between the parties were reported in August also.

⁵⁴ <http://info9.ge/?l=E&m=1000&id=5501>

⁵⁵ <http://qartli.ge/web/7837>

⁵⁶ http://www.youtube.com/watch?v=E563_PlkTpY&feature=player_embedded

⁵⁷ <http://ick.ge/ka/articles/12523-1-n-6.html>

⁵⁸ Ibid.

⁵⁹ Ibid.

On August 4, an incident took place between the members of the Georgian Dream and the United National Movement, who had visited the high mountainous resort of Adjara Beshumi on a public holiday.⁶⁰ Leader of the coalition Bidzina Ivanishvili visited Beshumi during the President's speech. Opposition members found the entrance of the resort blocked with vehicles and the supporters of the ruling party besieged them, followed by a squabble.

People wearing T-shirts in support of the United National Movement have obstructed the meeting of the Georgian Dream representative Davit Kevkhishvili with the public on August 6, in the village of Chantliskure in the Kvareli District.⁶¹

The pre-election meeting in Ducheti of the majoritarian MP nominee of the Georgian Dream Irakli Tripolski with the voters was disrupted on August 10.⁶² Employees of the Dusheti Municipality Gamgeoba **Irma Jangirashvili** and **Marina Mtiulishvili**, spouse of the trustee of village Odzisi, Director of the Odzisi Public School **Sopio Gabrielashvili**, Director of the Dusheti Boarding School **Darejan Tomadze**, Director of the Sports School **Niko Jikurauli**, specialist of the territorial body of village Mchadijvari **Medea Aratanashvili**, **Maguli Shaghashvili**, mother of the Gamgebeli Besik Shaghashvili, **Luda Dudaury**, mother-in-law of the trustee of a territorial body Shalva Inashvili and the member of the election headquarters of the United National Movement **Tina Saghirashvili** took part in disrupting the meeting.

In connection with a rally of the Georgian Dream to be held in Rustavi on August 19, no transport was available from the regions.⁶³ According to the staff of the Tetrtskaro District bus terminal, the representatives of local authorities have warned them not to allow any mini buses towards Tbilisi and Rustavi throughout the entire day. In addition, according to the population,⁶⁴ 'mamasakhlisebi' were instructed to warn the population with assistance from the 'doorway coordinators' not to join the meeting of the coalition.

On September 15, 2012, during a meeting of the majoritarian MP nominee of the Georgian Dream Mamuka Areshidze with the population of the village of Gamarjveba in the Gardabani District, one of the residents threw an unidentified object at Mr. Areshidze.⁶⁵ With participation of youths wearing the United National Movement T-shirts, who were also the Gamgeoba members and who were headed by the local coordinator of the ruling party **Niko Chanturidze**, the meeting ended in a squabble.

The United National Movement also alleged instances of the obstruction of party activities on behalf of the Georgian Dream. Press spokesman of the ruling party Chiora Taktakishvili made a statement on September 23, which detailed several cases of harassment of the supporters of the United National Movement.⁶⁶ The case of the Georgian Dream single-seat nominee for Lagodekhi, **Luka Kurtanidze**, is worth of special notice. Video and audio recordings were released, which purported to show that Kurtanidze threatened two public servants - supporters of the ruling party - and demands that they stop carrying out activities in favor of a political party.⁶⁷

4. Dismissal

Political dismissals were most likely the biggest category of political pressure between October 2011 and August 2012. However, since August 1 such cases have significantly reduced.

⁶⁰ http://www.youtube.com/watch?v=HbYs7wtGVwc&feature=player_embedded

⁶¹ <http://info9.ge/?l=G&m=1000&id=2251>

⁶² http://www.youtube.com/watch?v=1B7nBDst59A&feature=player_embedded

⁶³ <http://www.netgazeti.ge/GE/105/News/12224/>

⁶⁴ <http://kkpress.ge/index.php?do=fullmod/news&id=329&mid=3>

⁶⁵ <http://info9.ge/?l=G&m=1000&id=4799>

⁶⁶ <http://goo.gl/Bahlj>

⁶⁷ <http://www.youtube.com/watch?v=O3GeNOjWmEk>

On August 5, **Davit** and **Raul Chartolani**, former employees of the Mestia Unit of the Border Defense Department, related their dismissal⁶⁸ to the affiliation of their son-in-law Mamuka Girgvliani with the Georgian Dream coalition.

The terminated employment contract with the doctor of the Adigeni-based hospital 'Unimedi Samtskhe' and the ambulance crew member **Ina Kapanadze**, who is the member of the Georgian Dream, was no longer extended on August 17.⁶⁹ According to her, she attended a meeting of the Georgian Dream leaders with the local population, following which the Manager of the hospital **Lali Balakhashvili** told her to leave work, instructed by the General Director of insurance company Aldagi BCI, **Eka Shavgulidze**.

Ledi Natadze, A member of the N25 Precinct Election Commission of village Odzisi in the Dusheti District from the Georgian Dream, was dismissed from work on September 6, 2012. She taught Georgian language and literature in the public school.⁷⁰

⁶⁸ <http://info9.ge/?l=G&m=1000&id=2226>

⁶⁹ <http://sknews.ge/index.php?newsid=451#.UGBfnLlgcwv>

⁷⁰ <http://www.icmm.ge/ka/site/news/2442>

III. The Use of the State Institutional Resources for Political and Electoral Purposes

The use of the state institutional resources in the pre-election period is another variety of the misuse of administrative resources. This includes the use of office equipment, vehicles, facilities, junior civil servants, and other state-funded material or human resources to organize or support party events. This is not a strict definition and the illegal use of institutional resources may cover even a wider array of actions than this.

Several remarkable trends in the use of the state institutional resources for electoral purposes were identified in the pre-election period.

1. Campaigning materials used in public service

Article 46 of the Election Code regulates the rules on the use of campaigning materials. This norm also determines the regime for the use of campaigning banners and lists those building-constructions, on which posting the banners is prohibited. In the pre-election period many instances of posted election banners on the local self-government buildings were reported, which is prohibited under Section 2 of the above-mentioned article.

On August 13, election campaigning posters of the United National Movement were identified in Gurjaani in the office of the Chief Specialist of the Social Development Service of local self-government, Marine Chitinashvili.⁷¹

A similar violation took place on August 15 in the building of the territorial body of the village of Supsa in the Lanchkhuti Municipality, where the village trustee had posted the campaigning posters in the working office.⁷²

Campaigning posters of the United National Movement were identified on August 16 in the offices of the trustee and specialists of the territorial body of Chalaubani village in the Gurjaani Municipality, as well as the election number on the second floor and windows of the building.⁷³

In relation to these cases we addressed the Central Election Commission, which carried out the inquiry and drew up the protocols of administrative violations on the offenders, transferred later to the courts.⁷⁴

An identical violation was committed in Rustavi⁷⁵ by the Head of the Military Registration and Conscription Service Mindia Aptsiauri, who had posted in his office election posters of the United National Movement. Chapter 2 describes this case in more detail.

2. Illegal participation of public servants in election campaigning

Several cases were reported in the reporting period, when people employed in public service have illegally participated in the pre-election campaigning.

According to the Kakheti Information Center, the employees of the Kakheti Chief Regional Department of the Ministry of Internal Affairs and the Military Police have attended the convention of the United National Movement in Telavi on September 8. Namely, the employees of the Gurjaani police **Levan Maisuradze**, Deputy Head of the Police **Gocha Sibashvili**, Deputy Head of the Kakheti Chief Regional department of the MIA **Shota**

⁷¹ <http://www.youtube.com/watch?v=AU9tuJIHFQ0>

⁷² <http://tv9.ge/?m=6&id=4725>

⁷³ <http://ick.ge/ka/articles/11955-5-.html>

⁷⁴ http://cesko.ge/files/2012/Report_on_Complaints_01_08_2012_-_17_09_2012_GEO_Z.pdf; Pages 69, 70 and 84.

⁷⁵ <http://www.humanrights.ge/index.php?a=main&pid=15348&lang=geo>

Bezhanishvili and the employee of the Military Police **Mamuka Sologhashvili**. They wore civilian clothes and were not discharging official duties.⁷⁶

According to Article 45 of the Election Code, the employees of the Ministries of Internal Affairs and Defense of Georgia, Prosecutor's Office, Intelligence Service and the Special Service of the State Protection are prohibited from conducting pre-election campaigning and participating in the campaigning process. The only exception from this rule is the presence of the police in order to ensure safety and order in the territories adjacent to similar meetings, which was not the case in this instance.

Furthermore, such action is prohibited by the Constitution of Georgia, the Law on the Police, the Law on the Public Service and other normative acts.

The same rules were breached in the resort Bakhmaro of the Chokhatauri Municipality on August 19, where the police officers moved around in T-shirts with the symbols of the United National Movement, which was perceived by the population as political campaigning.⁷⁷

A public servant has breached the Election Code on August 3 in village Dvabzu of the Ozurgeti Municipality, where the village trustee Vazha Samkharadze was personally handing out during business hours the campaign material of the United National Movement, which is qualified as illegal campaigning and a violation of the Code.⁷⁸

The CEC has found a case identified in Telavi as the abuse of an official position, where people in United National Movement T-shirts were handing out to the population assistance provided by the state, by where they were propagating in favor of this party.⁷⁹ Remarkably, in this particular case the CEC has fined the Deputy Gamgebeli of the Telavi Municipality, as he had organized the distribution of food products and therefore had illegally involved officially dependent persons in the campaigning process.⁸⁰

These and similar illegal actions by public servants blur the line between the state and the ruling party, and the voters have difficulties in distinguishing party events from state-funded projects. These cases also violate the 1990 Copenhagen Conference Document of the OSCE, obligating countries not to mix the parties with the state, and to ensure clear delimitation of the state from political parties.

3. The use of the state transport and communication resources for electoral purposes

The use of projects funded from local or state budgets in the party's favor is one of the widely distributed type of the use of state institutional resources for pre-election purposes. Several cases are worth examining:

On August 30, 2012, Transparency International Georgia identified on the web page of the Government of Georgia program 'More Benefits to People' (metisargebeli.ge) an advertising video of the United National Movement.⁸¹

This fact violates Sub-Paragraph b of Paragraph 1 of Article 48 of the Election Code of Georgia, according to which the use of the communication means, information means and various equipment belonging to the institutions of state authorities or local self-government bodies and organizations funded from the state budget of Georgia for or against any election entity shall be considered as illegal use of administrative resources and shall be subject under Article 88 to a fine in the amount of GEL 2,000.

⁷⁶ <http://ick.ge/ka/articles/12306-----photos.html>

⁷⁷ <http://goo.gl/QIZNb>

⁷⁸ <http://goo.gl/3SHCM>

⁷⁹ <http://ick.ge/ka/articles/12170-----photos-video.html>

⁸⁰ http://cesko.ge/files/2012/Report_on_Complaints_01.08.2012_-_20.09.2012_GEO.pdf; Page 89.

⁸¹ <http://transparency.ge/files/images/metisargebeli-screenshot.png>

Therefore, on August 30 Transparency International Georgia addressed⁸² the CEC in relation to this violation. A story about this incident was aired on the same day by TV company Maestro,⁸³ which clearly shows the political advertising posted on the web page of the government program.

We received a response from the CEC on September 4,⁸⁴ in which it stated that it was impossible to obtain any information from the Internet link provided by us and that the additional information was required.

As it turned out, unknown to us the web page www.metisargebeli.ge had stopped functioning after we had addressed the CEC with this letter, and accordingly it became impossible to verify the information by referring to it. However, the screen shot taken by us, and the story of the TV company Maestro clearly demonstrates the existence of the pre-election advertising of the United National Movement on the government program's web page as of August 30.

This was not the only case of the use of the state information resources for the party purposes. In the first half of September, based on the application of the CEC, the court found as administrative offenders the respective persons from the 14 local municipality self-governments, the internet pages of which had posted the pictures of single-seat MP nominees of the ruling party United National Movement, number 5 of that party, election agenda and election campaigning material. On separate occasions web pages were used for campaigning against the opposition unions.⁸⁵

The report released by Transparency International Georgia on September 12, which also covered the pre-election environment,⁸⁶ indicated numerous cases where public servants were mobilized to attend the regional meetings of President Saakashvili, with involvement of the administrative resources of the local governments.

A similar case took place on September 24 in Gurjaani,⁸⁷ where the public servants constituted a bulk of audience and the majority of them has stated that their transportation was paid from the budgetary funds. However, unlike previous meetings, this time the President was meeting with the population as part of the pre-election campaign, as the Chairperson of the United National Movement and not the President of the state. Hence, the material or immaterial funds used for organizing the meeting must be considered as administrative resources used for the benefit of the party, which violates Article 48 of the Election Code. Further, the violation of Article 49, which refers to involving the officially or otherwise dependent persons in the party propaganda, can also be detected.

⁸² <http://transparency.ge/files/docs/letter-to-cec.pdf>

⁸³ http://www.youtube.com/watch?v=mkGAL9WvtHo&feature=player_embedded#!

⁸⁴ <http://goo.gl/Aj3Xx>

⁸⁵ [http://cesko.ge/files/2012/Report_on_Complaints_01.08.2012 - 20.09.2012 GEO.pdf](http://cesko.ge/files/2012/Report_on_Complaints_01.08.2012_-_20.09.2012_GEO.pdf); Page 91.

⁸⁶ An Analysis of Pre-Election Environment <http://transparency.ge/post/report/new-ti-georgia-report-pre-election-environment-geo>

⁸⁷ www.youtube.com/watch?v=yCCqKActc1g

IV. Vote Buying

In addition to the use of state administrative resources, serious attention should be paid to issues such as vote-buying while monitoring pre-election processes. Vote-buying is a criminally liable action and its definition is provided in Article 164¹ of the Criminal Code of Georgia, as well as Article 47 of the Organic Law of Georgia the "Election Code of Georgia". Under the Criminal Code of Georgia:

‘Direct or indirect offer, pledge, transfer or render of money, securities (including financial instruments), other property, property rights, services or any other advantage for election purposes, or acceptance of such through previous knowledge, or concluding illusory, sham or other transactions for the purposes of avoiding restrictions prescribed by the law shall be punishable by imprisonment up to three years or a fine.’⁸⁸

Vote-buying has a significant impact on the freedom of choice of citizens and the process of the free expression of will, and therefore regulatory bodies and political parties should devote special attention to this issue.

During the reporting period, several cases were identified which show clear signs of vote-buying.

On 27 August 2012 the Mtskheta-Mtianeti Information Center disseminated information on alleged voter bribing by Zurab Otiashvili, the single-seat MP nominee for Dusheti.⁸⁹ On August 25 the Dusheti Municipality Sakrebulo, Gamgeoba and the administration of the state trustee - governor have organized the public holiday Vazhaoba. During this event, representative of the political union United National Movement Zurab Otiashvili assisted local resident Giorgi Basilashvili with GEL 500. Otiashvili himself⁹⁰ and witness do not deny this incident.⁹¹

According to the information disseminated on 31 August 2012, the single-seat MP nominee of the United National Movement for the Dusheti Election District will be Nino Khutsishvili and not Zurab Otiashvili, but nevertheless this does not change the qualification of offence committed on August 25, which clearly demonstrates the element of Article 164¹ of the Criminal Code - directly or indirectly transferring money to a person for election purposes, which is a crime punishable by imprisonment up to three years or a fine.

Similar violation was identified at the event of the United National Movement held on August 12 in relation to the Didgoroba⁹² festivity, where a mass festive feast was organized at the party's expense, attended by party activists and ordinary citizens. This action is relevant to Sub-Paragraph a of Paragraph 1 of Article 47 of the Election Code, pursuant to which the ‘transferring of gifts and other material values (despite their value)... providing or distributing the goods (apart from the campaigning materials foreseen by this law)... by election entities ... personally or through other persons ... to the citizens of Georgia’ is prohibited and qualifies as vote-buying.

⁸⁸ The Criminal Code of Georgia. Article 164¹.

⁸⁹ <http://www.youtube.com/watch?v=9LGnAfNjNZU>

⁹⁰ <http://goo.gl/zxvyF>

⁹¹ <http://maestro.ge/?address=uc&id=34482&page=3>

⁹² <http://tv9.ge/?m=6&id=4654>