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Political Party/Campaign Finances and Use of Administrative Resources in Georgia

Country Report

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¹ Disclaimer: The views and opinions expressed in this report are those of the author and do not necessarily reflect the official policy or position of SAOG, Council of Europe, International IDEA, IFES, NIMD, OSCE-ODIHR.

ABSTRACT

In October 2016, the Parliamentary Elections were held in Georgia. Among many issues, political finances and misuse of administrative resources deserved a special interest. This country progress paper aims to analyze current state of play and progress of Georgia during 2016-2017 in the mentioned two issues. The study is heavily based on publications of TI Georgia, GRECO and OSCE-ODIHR. According to the Sunlight Foundation's influential rating on regulating political party finances, Georgia holds the first position amongst 55 countries. However, certain problems in legislation/policy as well as in practice remain. Among those problems are the allocation of free TV advertisement time to all qualified political parties and vagueness of the formula used for calculation of direct state funding. Another challenge is a significant difference between financial capabilities of political parties. Despite high standards of financial transparency and addressing violations by the SAOG, completing financial reports of the political parties remains a significant problem. The vast majority of declarations are incomplete and contradictory. There has not been much progress in implementing the GRECO's recommendations concerning political finances since 2015. As for the misuse of administrative resources, the Georgian legislation provides a narrow definition of it frequently leaving a number of issues beyond regulation. Misuse of administrative resources for 2016 Parliamentary Elections has not reached the scale to have a significant impact on overall election environment. In order to tackle the mentioned problems Georgia should fully comply with the recommendations given in the latest reports of GRECO, OSCE-ODIHR and TI Georgia.

BACKGROUND INFORMATION

The latest general elections in Georgia were the Parliamentary Elections held in October 2016. Three political groups could pass the 5 per cent threshold and get parliamentary seats. Many issues are connected to electoral processes. Political finances and misuse of administrative resources are among them. This country progress paper aims to analyze current state of play and progress of Georgia during 2016-2017 in mentioned two issues. The study is heavily based on publications² of Transparency International Georgia (TI Georgia) and country reports of the Group of State against Corruption (GRECO)³ and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE-ODIHR)⁴.

Since competitive environment among the political parties is one of the pillars of democracy, it is important for the public to have a choice between various political groups in order to avoid autocratic rule. The strength and popularity of political parties largely depend on their financial capabilities. In transitional countries like Georgia opposition parties frequently have to struggle to obtain funding while ruling political parties enjoy greater advantages in this regard. This leads to weakening of competition between the political parties, which, in turn, threatens to undermine democratic development of the country. Therefore, financing of political parties is a matter of concern for the public.

In terms of regulating political party finances, Georgia is one of the leaders worldwide; According to the Sunlight Foundation's influential rating on political party financing, Georgia holds the first position amongst 55 countries.⁵

Political finances are regulated by the following legislative acts in Georgia: the Organic Laws on **Political Unions of Citizens** and the **Election Code**, as well as by the **Law on the State Audit Office**, the **General Administrative Code**, the **Code of Administrative Offences** and by the orders of the General Auditor of the State Audit Office of Georgia (SAOG).

According to the Georgian legislation, the SAOG holds the mandate of monitoring the transparency and legality of political finances. The SAOG conducts monitoring of the financial dealings of political unions as stipulated by the Law on Political Unions of Citizens and the Election Code. The SAOG has a right to conduct audits, to confiscate public assets of natural and legal persons, and to formulate an administrative offense protocol.

Misuse of administrative resources is another key factor bearing a significant impact on election

² Election Campaign Finances in Georgia: 2016 Parliamentary Elections, *Transparency International Georgia*, March 31, 2017: <https://goo.gl/Xuzdvi>

³ *Transparency of political party finances, 3rd round of assessment*, 2nd report on implementation, GRECO, 11 August 2016: <https://goo.gl/k8Ro9n>

⁴ Final report on 2016 parliamentary elections, OSCE, February 3, 2017: <https://goo.gl/rL7nkg>

⁵ <https://data.moneypoliticalstransparency.org/>

environment. In fact, the severity of the impact can be as great as to define ultimate outcomes of the elections. Therefore, restricting misuse of administrative resources is an area of utmost importance.

There is no commonly accepted definition of an administrative resource and its usage for electoral purposes either in Georgian or in international law. However, a wide range of international documents related to the given issue attempt to establish a common approach to the above-mentioned phenomena. Based on the analysis of these documents and opinions expressed by scientists, we can identify the following types of administrative resources⁶:

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

The Georgian legislation provides a narrow definition for the misuse of administrative resources during electoral processes, frequently leaving a number of issues beyond regulation. In particular, an administrative body may carry out a series of activities that, although in compliance with the law, might provide goods and services to electorate in a way to bear a significant impact on voters' behavior. In such cases, it is difficult to draw a line between the state and a political party that represents a requirement under the 1990 OSCE Copenhagen Conference Document⁷.

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

According to the Georgian legislation, the Central Election Commission (CEC) and District Election Commissions (DECs) hold the primary mandate of monitoring the misuse of administrative resources during

⁶ How to Monitor and Report on the Abuse of State Resources – an Introduction, *Dr. Magnus Ohman, April 14, 2014*

⁷ <http://www.osce.org/odihr/elections/14304>

the election period. They can formulate an administrative offense protocol. To prevent civil servants from misusing administrative resources in election year the Interagency Task Force on Free and Fair Elections (IATF) is created under the Ministry of Justice of Georgia. The IATF can only issue legally nonbinding recommendations.

LEGISLATION AND POLICY ANALYSIS

1. Political Finances

As it has already been noted, a number of legislative acts regulate the political party finances in Georgia. In May 2016, the Constitutional Court of Georgia satisfied the claim of political parties Free Georgia and the New Rights ruled the first clause of Article 51 (5) of the Election Code as unconstitutional.

The disputed provision defined rule for allocation of free TV advertisement time among election subjects in the pre-election period. State funding including the free TV advertisement time was granted only to those election subjects that secured no less than 4 or 3 percent of votes in the Parliamentary or local self-government elections, respectively. If the election subject was an electoral bloc, according to this rule, free TV advertisement time was allocated only to number one on the bloc list of parties. The Court ruled that the provision was unreasonably discriminatory towards the other parties of the bloc and annulled this regulation.

The given decision of the Constitutional Court prompted the Parliament of Georgia to adopt new legislative amendments, which would impose new rules on allocation of free advertisement time. A small group of ruling party's MPs prepared the draft law. In fact, the rest of political spectrum was disengaged from the process. Since the issue had direct impact on their work, all leading political parties should have been engaged in the preparation of the draft law.

On June 22, 2016, the Parliament adopted new amendments, which aimed to eradicate the discriminatory approach towards members of the election blocs. According to the new regulation, free political advertisement time is allocated equally to all political parties that have secured, individually or within an election bloc, no less than 4% through proportional vote during the previous parliamentary elections, or no less than 3% - during the previous local self-government elections.

TI Georgia – the main local CSO focused on political finances - has repeatedly highlighted shortcomings of the new rule. Most problematic is the fact that it contains the risk of political parties artificially joining the blocs to take avail of more free advertisement time. Such actions would undermine value of the given instrument, as parties would get too short advertisement time. Exactly that happened after 2016 parliamentary elections; the country came up with 20 qualified parties, which means that in future, limited free advertisement time will be equally distributed among all qualified 20 parties.

Another part of state funding also remains problematic. According to TI Georgia, the formula that calculates the amount of money that should go directly to political parties is vague and it was inappropriately used for political purposes during 2016 Parliamentary Elections.

One of main challenges also is a significant difference between financial capabilities of political parties in Georgia. For instance, in 2016 Parliamentary elections total income received by the Georgian Dream – the ruling party - was seven times as much as that of the United National Movement, which hold the 2nd position, and - twice as much as income received by all other qualified subjects taken together. The same is true in terms of political party expenditure.

The picture is especially grave if we look at private donations. Total donations received by the Georgia Dream during

the election period 19 times exceeded those of the Alliance of Patriots (second place) and 6 times of all the qualified subjects taken together. In addition, the question whether these donations are real or someone else stands behind them is still extremely relevant.

Although Georgia has introduced very high standards of transparency of political finances during last couple of years, the challenges remain. The Georgian legislation envisages the obligation of periodical reporting, as well as reporting on specific electoral processes. These declarations are electronically available. Despite the high standards of financial transparency and response to violations by the SAOG, fulfilling of the financial statements of the political parties/election subjects remains a significant problem. The vast majority of declarations are incomplete and inconsistent. In many fields of the reports, mandatory information is not specified. It seems that political parties do not know how to fill out the forms of declarations and what information and in what format they should indicate, or even deliberately do not fill it properly.

Each general election in Georgia is followed by assessment from OSCE-ODIHR and other international organizations; in their reports, they touch upon political party financing as well. In this regard, the GRECO merits particular attention, as compared to others; it conducts extensive research on the issue. The report⁸ prepared by GRECO on 15-19 June 2015 assessed fulfillment of the recommendations, which it had proposed in its earlier reports.

GRECO's recommendations are split into two groups. The first group concerns the criminalization of certain articles as per the Criminal Law Convention on Corruption, while the second one relates to transparency of political party finances and the election campaigns.

Given the fact that the Government of Georgia presented information on partially complied recommendations just on 1 August 2016, GRECO released additional report on 2 December 2016. The report highlights that the CEC and the SAOG are working on the package of amendments to the Organic Law of Georgia on Political Union of Citizens and the Election Code, which are in line with GRECO's previous recommendations. Overall, according to the report, with regard to implementation of recommendations concerning political finances, there has not been much progress since June 2015. According to GRECO, out of 10 recommendations of second group, three have been fully implemented while the remaining seven – just partially.

GRECO called upon the government to amend the effective legislation on political financing in order to form a single regulatory framework between the Election Code and Law on Political Union of Citizens. The aforementioned recommendation is partially fulfilled. First, expansion of the scope of the Law on Political Union of Citizens is the fact that merits attention. The given law regulates the activities of political parties; therefore, according to GRECO, its effect over other subjects is a controversial matter. Moreover, in spite of the amendments, the given laws still contain cross references on different issues, which is a source of confusion. GRECO stresses that in this regard there has been no tangible improvement and calls upon the government to speed up the amendment process.

According to GRECO's assessments, definition of a person with declared election aims remains ambiguous. Namely, the law classifies only natural persons as the persons with declared election aims, whereas legal persons are covered by the order of the SAOG. Moreover, the obligation to publish financial information in a non-election period for persons with declared election aims stems not from the law, but from the order of the SAOG. According to GRECO's recommendation, it would be advisable for the Government to pass the reform promptly, without any delay.

Failure to comply with GRECO recommendations is also stressed in OSCE-ODHIR final report, which was issued on

⁸ *Transparency of political party finances, 3rd round of assessment, 2nd report on implementation*, GRECO, 11 August 2016: <https://goo.gl/k8Ro9n>

February 3, 2017 and covered monitoring of the Parliamentary Elections on October 8 and 30, 2016.⁹ The report evaluates the election period, assesses environment and conditions before and after the elections, provides the mission's findings and recommendations on the financing of the election campaign.

According to the report, the legislative amendments implemented in the years 2013-2016 with respect to political finances only partly respond to GRECO's and other recommendations, including the establishment of a uniform legal framework, prevention of misuse of administrative resources and imposition of sanctions for all types of violation.

The report notes that there is substantial mismatch in donations received by the political parties and independent candidates. The fact that independent candidates, in contrast to parties / blocs, cannot receive state funding even if they win the elections is negatively assessed since it contradicts the international practice.

OSCE - ODIHR mission also assessed the work of the SAOG. While studying submitted reports, the SAOG focused only on the income part (but still published all reports on its website every three weeks to ensure greater transparency). This was caused by the fact that the SAOG had limited human resources to investigate and oversee both income and expenditure. Furthermore, the law neither sets deadlines for the SAOG to scrutinize the reports nor obliges it to publish its oversight conclusions, which is contrary to international good practice.

According to the report, effective functioning of the SAOG was further weakened by the new procedure, whereby this Office is obliged to get the court's permission for getting some personal information in order to start an investigation. Slow pace of the investigation process was further caused by delayed provision of information requested from other institutions.

1. Misuse of Administrative Resources

As we defined in the introductory part, four types of administrative resources can be misused during electoral processes. In 2016, TI Georgia published two reports on the results of monitoring. The monitoring conducted by TI Georgia for the period between 8 June and 30 November 2016 revealed that misuse of administrative resources for parliamentary elections has not reached the scale to have a significant impact on overall election environment.¹⁰

Misuse of enforcement administrative resources

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

Personal video and audio recordings of various political party leaders that were disseminated via Internet have adversely affected the election process. It is noteworthy that the law enforcement authorities could not succeed in investigating any of these facts and the authors or distributors of the tapes remain unknown.

The period between the first and second rounds of elections have been characterized with one of most alarming trends of using enforcement administrative resources. During a week prior to the runoff elections, over ten cases of

⁹ Final report on 2016 parliamentary elections, OSCE, February 3, 2017: <https://goo.gl/rL7nkg>

¹⁰ Misuse of Administrative Resources during Electoral Processes: 2016 Parliamentary Elections in Georgia, *Transparency International Georgia*, December 12, 2016: <https://goo.gl/YNQJk1>

intimidation on political grounds have been detected. Despite high frequency of such allegations, law enforcement bodies have not taken sufficient measures to investigate them.

After the first round of elections, the leaders of some political parties have been speaking of intimidation and bribery of their members appointed in election commissions. However, law-enforcement bodies have not started investigation of these facts as well.

Misuse of legislative administrative resources for election purposes

TI Georgia observed no serious cases concerning misuse of legal administrative resources for election purposes. Nevertheless, some administrative agencies made some unfair or legally disputable decisions. In this light, the new rule adopted by the Parliament on distribution of free advertising time, two decrees of the CEC and one decree of the Chairperson of CEC on state funding are worth mentioning.

Misuse of institutional administrative resources for election purposes

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

Misuse of financial administrative resources for election purposes

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

During the reporting period, no amendments have been made to the central or local budgets; otherwise, it would be viewed as violation of the above-mentioned regulation.

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

OSCE-ODIHR also analyzed misuse of administrative resources in its reports. However, the organization uses this term quite narrowly and mainly focused on institutional and financial resources. According to OSCE-ODIHR, consideration should be given to removing legal loopholes and strengthening provisions prohibiting the misuse of administrative resources and campaigning by public officials.

KEY FINDINGS

1. Political Finances

- Political finances are regulated by the following legislative acts in Georgia: the Organic Laws on Political Unions of Citizens and the Election Code, as well as by the Law on the State Audit Office, the General Administrative Code, the Code of Administrative Offences and by the orders of the General Auditor of the State Audit Office;
- In 2016, two issues were especially problematic in the legislation and these problems persist. One of them is related to equal allocation of free TV advertisement time to all qualified political parties and the other concerns vagueness of the formula used for calculation of direct state funding for political parties;
- Another challenge is a significant difference between financial capabilities of political parties in Georgia. For instance, in 2016 Parliamentary elections total income received by the Georgian Dream – the ruling party - was seven times as much as that of the United National Movement, which hold the second position, and - twice as much as income received by all other qualified subjects taken together. The same is true in terms of political party expenditure;
- The picture is especially grave if we look at private donations. Total Donations received by the Georgia Dream during the election period 19 times exceeded those of the Alliance of Patriots (second place) and 6 times of all the qualified subjects taken together. In addition, the question whether these donations are real or someone else stands behind them is still extremely relevant;
- Despite high standards of financial transparency and addressing violations by the SAOG, completing financial reports of the political parties remains a significant problem. The vast majority of declarations are incomplete and contradictory;
- According to the GRECO, there has not been much progress in implementing the recommendations concerning political finances since June 2015. Out of 10 recommendations of the second group, three have been fully fulfilled while the remaining seven – just partially.
- According to OSCE – ODIHR, while studying received reports, the SAOG focused only on the income part. It was caused by the fact that the SAOG had limited human resources to investigate and oversee both income and expenditure. Furthermore, the law neither sets deadlines for the SAOG to scrutinize the reports nor obliges it to publish its oversight conclusions, which is contrary to international good practice. Effective functioning of the SAOG was further weakened by the new procedure, whereby this Office is obliged to get the court's permission for getting some personal information in order to start an investigation. Slow pace of the investigation process was further caused by delayed provision of information requested from other institutions.

2. Misuse of Administrative Resources

- The Georgian legislation provides a narrow definition for the misuse of administrative resources during electoral processes, frequently leaving a number of issues beyond regulation. Hence, when referring to the misuse of administrative resources during the electoral processes, TI Georgia means not only violation of the Georgian legislation, but also acts against the spirits of the Copenhagen Document and universally accepted electoral principles;
- Misuse of administrative resources for 2016 Parliamentary Elections has not reached the scale to have a significant impact on overall election environment;
- In the run-up to elections, some political parties frequently made statements about the pressure being exerted on their election candidates and their supporters by the law enforcement agencies. However, it turned out rather difficult to verify/confirm most of the reported cases;
- Personal video and audio recordings of various political party leaders that were disseminated via Internet have adversely affected the election process. It is noteworthy that the law enforcement authorities could not succeed in investigating any of the facts and authors or distributors of the tapes remain unknown.
- OSCE-ODIHR also analyzed misuse of administrative resources in its reports. However, the organization uses this term quite narrowly and mainly focused on institutional and financial resources. According to OSCE-ODIHR, consideration should be given to removing legal loopholes and strengthening provisions prohibiting the misuse of administrative resources and campaigning by public officials.

Recommendations

- Georgia should fully comply with the recommendations given in the GRECO and OSCE-ODIHR latest reports;
- The rule for allocation of free advertisement time amongst political parties needs to be changed. Allocation of free advertisement time should be differentiated between parties that are part of election blocs and parties that individually participate in elections; preference should be given to the latter;
- It is necessary to improve the formula for calculating the amount that must be transferred directly to the party in such a way that no uncertainty remains;
- The SAOG should pay more attention to building the capacity of political parties in terms of filling out financial declarations. It should also go deeper into the contents of the declarations and, if necessary, take appropriate actions;
- The SAOG should pay more attention to the verification of high-risk private donations;
- Amend the law in a way to give independent candidates equal opportunities for financing election campaigns through state funding;
- To ensure efficient oversight and transparency of political finances, the SAOG's resources and capacity, including human resources, should be increased to be commensurate with its responsibilities;
- The legislation should clearly define timeframes for the SAOG to verify and address campaign finance violations. Timely access to relevant information and cooperation with other authorities should be clearly regulated to enable the SAOG to provide effective oversight.
- State investigative bodies should give more effort to properly investigate the cases of alleged intimidation on political grounds;
- Public officials should refrain from any form of campaigning during working hours, especially if such campaigning entails use of administrative resources;
- Both local and central authorities should refrain from increasing funding to assistance and similar programs in the pre-election period. Preferably, new large-scale initiatives should not be launched shortly before the elections.

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