

October 01, 2021

MONITORING OF PRE-ELECTION PERIOD

KEY FINDINGS OF HRC

Introduction

The information paper presents the key findings of HRC on the various electoral violations identified in the pre-election period of the local government elections of October 2, 2021 in the regions of Georgia: Imereti, Kvemo Kartli, and Kakheti. The pre-election monitoring by HRC covered the period from July 15 to September 30. The paper is based on information obtained by long-term observers from HRC in the regions.

In the pre-election period of the October 2 elections of the local self-government bodies, an alarming trend was the alleged pressure on and intimidation of opposition candidates across the whole country. According to the information from the Public Defender of Georgia, during the pre-election period, 59 opposition candidates were allegedly pressured to withdraw their candidacies, including through threats of physical violence, threatening the security of their family members and relatives, and firing from jobs. The candidates avoid talking about these facts in public, which allegedly indicates the real danger of execution of the threats against them¹. There have also been widespread allegations of dismissal and harassment on alleged political grounds for affiliation with the opposition political party founded by the former Prime Minister Giorgi Gakharia². Job pressures were mainly directed against those employed in the public agencies, which, like the trends in previous years, still represents the problem of erasing the line between the state and the ruling party and equating the state institutions with the ruling party.

With the elections approaching, violent incidents also have increased. It was an alarming fact that two supporters of the political party United National Movement were wounded in Kvemo Kartli, Dmanisi Municipality³. The fact of beating a member of United National Movement in Rustavi was also alarming⁴.

¹ Statement of the Public Defender of Georgia regarding human rights violations during the pre-election period: <https://www.ombudsman.ge/geo/akhali-ambebi/sakartvelos-sakhalkho-damtsvelis-gantskhadeba-tsinasarchevno-periodshi-adamianis-uflebebis-darghvevebtan-dakavshirebit>

² Ibid.

³ "Two people were wounded with a cold weapon during the confrontation in Dmanisi:" <https://1tv.ge/news/dmanisshi-dapirispirebisas-ori-piri-civi-iaraghit-dachres/>

⁴ See information: <https://1tv.ge/news/davit-kirkidze-ackhadebs-rom-rustavshi-nacionaluri-modzraobis-wevrs-ivane-gvelesians-scemes/>

As in previous years, there are still frequent cases of the usage of the administrative resources namely that of the civil servants and employees of public schools for electoral purposes, as well as the cases of violations of the rules of pre-election campaigning and electioneering in favor of the ruling party. Some violations were also observed in the process of staffing the district election commissions. This paper provides detailed information on such facts.

HRC carried out monitoring of the pre-election period within the projects (Monitoring of 2021 Municipal Elections in the regions of Georgia and Monitoring of 2021 Municipal Elections in Georgia) with the financial support of the Black Sea Trust for Regional Cooperation and the Open Society Georgia Foundation.

Incumbent mayors as mayoral candidates

During the pre-election period, there were several cases when the incumbent mayors simultaneously were the mayoral candidates. The work carried out by the mayor's office of the municipalities during the pre-election period was actively covered through the information/communication means, official websites, and social networks intended for the mayor's office. For example, the official Facebook page of the Mayor's Office of Terjola Municipality often posted information about ongoing infrastructure projects, urban renewal projects, construction-rehabilitation, and social assistance projects ongoing in the municipality. When posting information related to such works, Lasha Gogiashvili, the incumbent mayor of Terjola, who is a mayoral candidate at the same time, was tagged on the Facebook page administered by the mayor's office⁵. Such activities left the impression that they aimed at gaining support among the voters towards the particular electoral subject – mayoral candidate. Accordingly, they took the form of a pre-election campaign. Another case was the activities of the current mayor of Kutaisi, Ioseb Khakhaleishvili. Particularly, his visits to the ongoing infrastructural projects in the city and posting information about this on the official website of the City Hall⁶.

Interestingly, the Georgian legislation does not prohibit incumbent mayors from being the mayor candidates at the same time. According to the Code of Local Self-Government of Georgia, the ground for termination of the mayor's authority is to run as a candidate in presidential or representative body elections. However, mayoral elections do not belong to any of these types of elections. Further, we have to mention the Law on Civil Service, according to which the grounds for suspending the official authority of a civil servant are the nomination of the civil servant as a

⁵ Official Facebook page of the Mayor's Office of Terjola Municipality:

<https://www.facebook.com/terjolismeria>

⁶ "Kutaisi Mayor Ioseb Khakhaleishvili continues site visits to infrastructure projects carried out in the city":

http://www.kutaisi.gov.ge/open_news/760

candidate in the elections of the President of Georgia, a representative body, or a mayor of a municipality. However, a mayor is a political official and not a civil servant. Accordingly, the requirements of suspension of the civil servants' authority do not apply to mayors in case of participation in the elections as a candidate.

All the same, according to Article 48 of the Election Code of Georgia, during the pre-election campaigns, it is prohibited to use administrative resources, including the communication means and information services intended for state agencies. In order to assess the extent to which the above cases constituted the use of administrative resources for electoral purposes, it is important to distinguish between the public information campaign about the regular activities of the incumbent mayor and the election campaign-related activities of the same person. The use of information/communication means owned by the mayor's offices of Terjola and Kutaisi municipalities was intensified during the pre-election period in a way that it went beyond the need of informing the public about the performance of official duties and attained a character of a pre-election campaign related to specific electoral subjects. Accordingly, the given cases shall be considered as the use of administrative resources for electoral purposes.

Civil servants in district election commissions

Another significant problem identified by HRC during the pre-election period was the staffing of district election commissions in violation of the requirements of the applicable legislation.

In Kvemo Kartli region, the active employees of the Property Management and Logistical Services of Tetrtskaro Mayor's Office and that of the Agricultural and Economic Development Support Services of the same Mayor's Office were elected as professional members of District Election Commission N26 of Tetrtskaro Municipality. A similar problem was observed in District Election Commission N20 in Rustavi, where the current employees of Rustavi City Hall were elected as professional members of the commission.

Electing the current employees of the City Hall as professional members of the DEC contradicts Decree NN11/2017 of the Central Election Commission *determining the Issues related to Labor Relations, and that of Job Incompatibility of the Elected Members and the CEC and DEC.* In accordance with Article 22(2) of the Decree, ***"a member of the commission may not perform any paid work (other than scientific, pedagogical or creative activity), hold any other position in any public institution or legal entity under private law or be a member of a representative body of any level, or perform any paid work or hold any position in any body or institution in another country. A member of the commission may perform compatible paid work only in the system of the election administration."***

In connection with the above-mentioned issue, HRC applied to the CEC and demanded the termination of the authority for the members of DEC N20 and DEC N26 who were at the same

time active employees of the mayor's office. According to the response received from the CEC, the official inquiries revealed that the facts stated in the application by HRC could not be the basis for terminating the authority of the persons temporarily elected at Rustavi DEC N20 and Tetrtskaro DEC N23. The response by the CEC to the extensive application of HRC was very brief. The CEC failed to specify what they had found from the official inquiries, and provide any reasoning due to which the facts provided by HRC would not serve as the grounds to terminate the authority of the professional members of the above DEC.

Violation of the rules for pre-election campaigning and electioneering

In June 2021, some amendments were made to the Georgian legislation in order to reform the electoral system, which was one of the main conditions of the agreement reached on April 19 between the ruling party and part of the opposition parties, mediated by the President of the European Council, Charles Michel. The political crisis in Georgia began precisely in the light of electoral violations related to the Parliamentary Elections of October 31, 2020. Therefore, in order to improve the electoral process and to facilitate the elections being conducted in a fairer and more equitable environment, the issue of reforming the electoral system has been the subject of particular public attention.

The amendments to the Georgian legislation made of June 2020 envisage the introduction of new rules in the electoral system, namely in the process of the pre-election campaigning and electioneering, and staffing of election administrations. One of the important novelties of the Election Code was Article 48(1)(d) according to which: it was prohibited during the pre-election campaigning and electioneering: ***“to gather civil servants, employees of legal entities under public law, employees of non-profit (non-commercial) legal entities established by the State or a municipality, principals, caregivers, teachers and other persons employed at pre-school and school institutions established by the State or a municipality, on account of their professional occupation.”***

This legal ban is an important step forward. In the last years, during every election held in Georgia the issue of compulsory engagement of civil servants and employees of public schools in the pre-election campaigning and electioneering process was especially alarming. The statutory regulations applicable before did not provide sufficient guarantees to react to and prevent such cases.

During the pre-election period of the local self-government elections of October 2, 2021, HRC identified a case in the region of Kvemo Kartli when the above-mentioned and other significant rules defined by the law and related to the pre-election campaigning and electioneering were violated. Namely, on September 1, in the village Kosalari of Tetrtskaro Municipality, the mayor candidate Giorgi Tsiklauri met the voters for pre-election campaigning purposes, together with the principal and teachers of the school of village Kosalari, who at the same time are the

chairperson and members of precinct election commission N23 of village Kosalari. As part of the pre-election monitoring, HRC obtained a photo depicting the meeting from the official Facebook page of Giorgi Tsiklauri.

One of HRC long-term observers filed a complaint on the fact with DEC N26 and requested to find the mayoral candidate, the chairperson, and the members of PEC N23 as administrative offenders as there was a clear violation of the rules of pre-election campaigning and electioneering under Article 45(4) (a) and Article 48(1)(d) of the Election Code of Georgia. In accordance with Article 45(4)(a) of the Election Code of Georgia, members of the election commission may not electioneer and participate in electioneering. Whereas, in accordance with Article 48(1)(d), persons entitled to participate in the pre-election electioneering are prohibited to use administrative resources during the pre-election period, in the course of a pre-election campaign or electioneering in support of or against any political party, candidate of electoral subject, or electoral subject, including gathering of teachers and other persons employed at pre-school and school institutions established by the State or a municipality, on account of their professional occupation.

The chairperson of DEC N26 rejected the claim of the observer of HRC. During the hearing of the complaint, the chairperson and the members of the PEC submitted explanatory statements reading that they were in the village at a funeral, from where they accidentally arrived at a gathering of people. According to them, they discovered all of a sudden that they were at a pre-election meeting and unexpectedly heard some electioneering speeches which is why they left the meeting soon. The DEC considered the explanatory statements by the chairperson and members of the PEC to be true, even though the statements failed to match with the photographs attached to the complaint as evidence.

HRC appealed to Tetrtskaro District Court against the decision of DEC N26. The judgment of Tetrtskaro District Court constituted a landmark decision⁷.

The court held that the chairperson and members of PEC N23 of village Kosalari had violated the prohibition to participate in electioneering as provided for in Article 45(1)(a) of the Election Code of Georgia. The court found the chairperson of the PEC to be much more liable due to the position he held and imposed on him a fine of GEL 2,000. The court gave verbal reprimands to the members of the commission, as their involvement in the meeting did not last long and they were not active at the meeting.

Regarding the issue of participation in the electioneering event by the members of the election commission, the court noted: **"The legislator has placed the members of the election commission in the first place in the list of persons not eligible to participate in the**

⁷ See the Press release by Human Rights Center: <http://www.hrc.ge/280/geo/>

electioneering process as the involvement of the commission members in this process is considered to be the most detrimental for the voting process, because these particular persons manage the polling process, they summarize the results and their decision is the basis for the final results. Therefore, the involvement of the election commission members in electioneering is absolutely inadmissible."

As for the issue of liability of Giorgi Tsiklauri, the mayoral candidate in Tetrtskaro Municipality, the court found that he violated Article 48(1)(d) of the Election Code. According to the assessment by the court, he has organized the meeting and he was the main source of electioneering there and, consequently, his responsibility was to ensure that the requirements of the Election Code of Georgia in the electioneering process were met, according to which: **it is inadmissible to gather principals and teachers of general education institutions for electioneering purposes on account of their official capacity**, which he failed to comply with allowing the involvement in the electioneering of not just one or two but 6 teachers of Kosalari public school. Moreover, the court found that this was not accidental but had an intentional and organized character.

According to the assessment by the court, when it comes to placing principals and teachers of schools to a special rank and distinguishing them in a certain way, the legislator here as well: **"believed that in order to ensure fair elections, taking into account the existing experience, the involvement in the electioneering process of these persons on account of their professional occupation is particularly damaging to the election process and [the legislator] ruled for the prevention of such gatherings at the statutory level."** The court emphasized that the two witnesses in the present case paid particular attention to the presence of the teachers at the meeting bearing a natural influence upon the people.

Tetrtskaro District Court found Giorgi Tsiklauri as an administrative offender under Article 88 of the Election Code of Georgia, according to which the use of administrative resources and official authorities during the pre-election campaigning and electioneering in violation of the requirements of the Election Code shall result in a fine in the amount of GEL 2,000. The court fined Giorgi Tsiklauri GEL 2,000.