

**MISUSE OF PUBLIC RESOURCES  
FOR ELECTION PURPOSES AMID  
THE COVID PANDEMIC**



**GEORGIAN  
YOUNG  
LAWYERS'  
ASSOCIATION**

Georgian Young Lawyers' Association

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**The publication supervised by:** SULKHAN SALADZE  
VAKHUSHTI MENABDE

**Authors:**

**Lead researcher:** TAMAR KHUKHIA  
**Researchers:** NANA CHANTURIA  
GVANTSA JIKIA

**Editor:** KHATUNA KVIRALASHVILI

**Tech. Editor:** IRAKLI SVANIDZE

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J. Kakhidze street #15, Tbilisi, Georgia  
(+995 32) 295 23 53, 293 61 01  
[www.gyla.ge](http://www.gyla.ge)

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## 1. INTRODUCTION

The pandemic created additional problems in terms of misuse of human resources for election purposes before the elections. The COVID-19-caused crisis was reflected on economic situation as well. The living conditions of the population have deteriorated, and the share of state support programs has increased.<sup>1</sup> What was expected as mitigation of crisis results is an obligation of the state, inter alia, through development and implementation of social programs.

In general, the increase of social services in the pre-election period is an established negative trend.<sup>2</sup> The existing situation increased the motivation of the ruling party to make appropriate decisions for such a strategy. If the massive spread of the virus or post-pandemic period coincides with the pre-election period, the risk of its politicization increases. This is a “golden opportunity” for the ruling party to direct the policy in such a way to increase its chances of winning the elections.<sup>3</sup> And this is when the equality of political parties is the essence and foundation of any democratic system.<sup>4</sup> The misuse of public resources for electioneering puts candidates in an unequal condition, which often brings a decisive influence on the subsequent results.

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<sup>1</sup> Social economy and the COVID-19 Crisis: Current and Future Roles, 2020 წელი, OECD webpage, available at: <https://bit.ly/3j1yQWR>, updated at: 26.09.2020.

<sup>2</sup> Latsabidze M., Kiguradze K., Jikia G., Cnahturia N., the Interim report of the long-term mission of the parliamentary elections 2020, June-August, GYLA official web-page, available at: <https://bit.ly/3kL9tc8>, updated at: 26.09.2020.

<sup>3</sup> Karimi S., “Comparing the Politicization of COVID-19 and the Great Depression”, 2020, E-International Relation webpage available at: <https://bit.ly/3kLQHBH>, updated at: 23.09.2020.

<sup>4</sup> CASE OF BOWMAN v. THE UNITED KINGDOM (141/1996/760/961), 19 February 1998, par. 42 ECHR webpage available at: <https://bit.ly/302fcCy>, updated at: 24.09.2020.

## 2. PURPOSE AND METHODOLOGY

The purpose of this document is to study the misuse of public resources in the pre-election period during the pandemic and, to define the principles which the ruling party should be guided by during the election period. This will help to avoid using the budget funds for narrow political purposes during the COVID-19 pandemic, and avoid confusion between the state and the ruling party. It is important that the population does not have the feeling of receiving anti-crisis support from any political party when, in reality, the support is provided by the state.

This survey is based on documents of the Venice Commission, OSCE and IFES, which provide guiding recommendations in terms of the prevention of misuse of state resources for party purposes.

In part of the countries selected for international review:

1. The elections are held/were held during the pandemic;
2. The Ruling party increased social assistances, therefore used public resources for election purposes;

In other countries, the elections have not coincided with the pandemic, however:

1. The legislative framework sets high standards for preventing the misuse of public resources for election purposes;
2. The election legislation regulates the prohibition of public resources for election purposes, rather than other legal acts.<sup>5</sup>

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<sup>5</sup> Considering the fact that amid the pandemic there were no legal acts developed prohibiting the misuse of public resources in pre-election period, this issue is also regulated by general acts.

### 3. MISUSE OF SOCIAL ASSISTANCES FOR ELECTION PURPOSES – PRACTICE ANALYSIS

To create the social assistance system at the local level is the obligation of the state, the implementation of which is of utmost importance in times of crisis. The financial and social assistances issued by the state during the pandemic globally has amounted to 28 trillion GEL.<sup>6</sup> In light of this situation, the main challenge for states in Europe and outside Europe is the misuse of public resources by state-affiliated parties for election purposes.<sup>7</sup> Similar practices are widespread in countries which have a particularly long-term tradition of holding democratic elections.<sup>8</sup> Both in European and Asian countries, the influence of the Government on existing political processes is tightly related to the spending of budget funds.<sup>9</sup> In number of states the procedures related to political funds (finances) (state funds, which are spent for election purposes) are developed in favor of a ruling party that is reflected in its superior access to administrative resources.<sup>10</sup>

Below are several examples of bad practices in this direction. In a number of cases this was confirmed, and in others created reasonable doubts that the ruling party used COVID-19 funds for political purposes:

- **South Africa** in 2021 the local self-government elections are to be held.<sup>11</sup> The local non-governmental and international organizations assessed the assistance provided to the population in relation to the COVID-19 as the “corruptive epidemic”. The reason was to reveal the acts of improper distribution of assistance from the COVID-19 fund.<sup>12</sup> However, notwithstanding the fact that the poverty rate is high in South Africa provinces, the assistances were

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<sup>6</sup> Monitoring Anti-corruption Efforts at the International Monetary Fund, Including during COVID-19, to Ensure Funds Reach those Most in Need, 2020, Transparency international webpage available at: <https://bit.ly/32ZQ9BX>, updated at: 24.09.2020.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Administrative Resources and Fair elections, a Practical Guide for Local and Regional Politicians and Public Officials, Congress of Local and Regional Authorities of the Council of Europe, Strasbourg, 2018, Council of Europe webpage available at: <https://bit.ly/3hZMPLw>, updated at: 24.09.2020.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

issued only for politically active groups, who were more likely to vote;<sup>13</sup>

- The COVID-19 funds were used for election purposes in one of the states of **Malaysia**, where the legislative assembly elections were held on July 4, 2020.<sup>14</sup> The population was issued the food with names and images of ruling party representatives on them;<sup>15</sup>
- The Needs Assessment Mission, which assessed the elections held in **Montenegro** on August 30, 2020, stated that the special budgetary fund established in the country to support the natural and legal persons affected by the pandemic, was used improperly.<sup>16</sup> It was unclear based on what criteria was it distributed.<sup>17</sup> Furthermore, neither the circle of recipients was open to public.

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<sup>13</sup> Tau P., S., Yende, Stone S., Khumalo J., Ngcukana L., Masuabi Q. and Erasmus D., Councillors Accused of Looting Food Parcels Meant for the Poor, 2020, News 24 webpage available at: <https://bit.ly/3hZoBkB>, updated at: 24.09.2020.

<sup>14</sup> Aman A., Elections in a Pandemic: Lessons From Asia, Mongolia, Malaysia, Japan, Singapore, and South Korea prove that COVID-19 Elections are Possible, but Difficult, 2020, The Diplomat webpage available at: <https://bit.ly/3mVmr9d>, updated at: 26.09.2020

<sup>15</sup> BERISH AND ADIL NETWORK, COVID-19 Gifts Raise Questions of Accountability and Power Abuse, available at: <https://bit.ly/307ZICw>, updated at: 24.09.2020.

<sup>16</sup> ODIHR Needs Assessment Mission, Montenegro Parliamentary Elections, 2020, page 8, OSCE webpage available at: <https://bit.ly/33QxDLO>, updated at: 23.09.2020.

<sup>17</sup> Ibid.



## 4. IDENTIFICATION AND PREVENTIVE MEASURES

### 4.1. Criteria developed by the Venice Commission

The Venice Commission has developed guidelines in order to prohibit the misuse of public resources for election purposes by the ruling party:<sup>18</sup>

- The legal framework should provide for a general prohibition of the misuse of administrative resources for electoral purposes;<sup>19</sup>
- The prohibition has to be established in a clear and predictable manner;<sup>20</sup>
- The election legislation in this regard should be stable;<sup>21</sup>
- The complaints should be considered by the independent and impartial tribunal;<sup>22</sup>
- The legal framework should ensure the transparency of the public resources.<sup>23</sup>

### 4.2. OSCE ODIHR recommendations

The ODIHR report outlines the key approaches, which are required to prevent the misuse of methods of fight against the pandemic for pre-election manipulation purposes by the ruling party:<sup>24</sup>

- When developing the social-economic stimulating plans, the state assistance should be allocated in such a way that will not create impression of improving the position of the ruling political party;<sup>25</sup>

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<sup>18</sup> Venice Commission, OSCE, Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Process, 2016, webpage of the Venice Commission, available at: <https://bit.ly/339yW9w>, updated at: 27.09.2020.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> OSCE, Human Dimension Commitments and State Responses to the COVID-19 Pandemic, 2020, page 79-81, OSCE webpage available at: <https://bit.ly/2RPbqIp>, updated at: 23.09.2020.

<sup>25</sup> Ibid. page 86.

- The beneficiaries should be identified based on clear, fair and objective criteria.<sup>26</sup>

### 4.3. Experience of separate states

Some states seek to regulate the issue of misuse of public resources by the legislation in such way that will prevent the possibility of politicization.

**In Mexico** in order to identify the facts of misuse of public resources during pre-election period, the following factors are considered:<sup>27</sup>

- **Time** – social assistances, infrastructural projects, increase of salaries and pensions should be planned in the beginning of the year;<sup>28</sup>
- **Quantity** – the total amount of expenses of the state allocated for such assistances during election period should not exceed the total amount of funds used in non-election period.<sup>29</sup>

**In the United Kingdom** the focus<sup>30</sup> is made on **perception of the** society. The executive government bodies shall fulfill the public function in such a way that will not be perceived as the party activity.<sup>31</sup>

**In the United States of America**, the issuance of social assistance by the state during the election period and misuse of other public resources is assessed by **necessity** criteria.<sup>32</sup> It is forbidden to implement the support programs when the allowances can be issued post-election. However, significant difference between the achieved results should be excluded. As an exception can be considered the case when there

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<sup>26</sup> Ibid.

<sup>27</sup> Venice Commission, Comments on the Use of Public Funding for Election Purposes the Practice in Mexico, 2010, webpage of the Venice Commission, available at: <https://bit.ly/2Gccq6H>, updated at: 27.09.2020.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> the 1988 and the revised 2013 Codes of Recommended Practice on Local Authority Practice on Publicity Respectivel, webpage of the Government of Scotland, available at: <https://bit.ly/2G3BMDJ>, updated at: 27.09.2020.

<sup>31</sup> Ibid.

<sup>32</sup> Substitute house bill 2106, Chapter 7, Laws of 2017 65th Legislature 2017 Regular Session Legislators Ethics- election year restrictions effective, date 31.03.2017.

is urgent need of it, for instance, if regarding the state security, state healthcare and proper functioning of the state institutions.

In response to COVID-19 challenges, the allowances were established in the US, which envisages compensation for persons left unemployed and certain tax benefits.<sup>33</sup>

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<sup>33</sup> Claims under the Federal Employees' Compensation Act due to the 2019 Novel Coronavirus (COVID-19), U.S. Department of labor webpage available at: <https://bit.ly/3jdmonb>, updated at: 24.09.2020.

## 5. CONCLUSION

The information provided above has demonstrated that the responses to the pandemic carry certain risks in terms of misuse of public resources for electioneering purposes. In order to mitigate these risks, certain mechanisms should be in place that will assess whether the anti-crisis plan and subsequent measures are actually required, or are dictated by electoral motives.

States which conduct elections during pandemics should use all available measures to avoid the abovementioned risks. For this purpose, it is recommended for social and economic programs being carried out during the pre-election period:

- to be developed transparently and with the full engagement of stakeholders;
- to critically assess their utility by the criterion of necessity;
- to be delivered to the public with clear distinction between state support and party initiatives. It should be clear that the development of social programs is an obligation of the state, and not good the initiative of the ruling party up for re-election.

It is important for the facts of misuse of public resources for electoral purposes to be studied by relevant bodies.