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COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT
(COMMISSION DE VENISE)

in co-operation with
THE MINISTRY OF JUSTICE,
THE PARLIAMENT AND THE NATIONAL AUDIT OFFICE OF FINLAND

en coopération avec
LE MINISTERE DE LA JUSTICE,
LE PARLEMENT ET LA COUR DES COMPTES DE FINLANDE

**11th EUROPEAN CONFERENCE
OF ELECTORAL MANAGEMENT BODIES
“COMBATING THE MISUSE OF ADMINISTRATIVE
RESOURCES DURING ELECTORAL PROCESSES”**

**11^e CONFERENCE EUROPEENNE
DES ADMINISTRATIONS ELECTORALES
« LUTTER CONTRE L'ABUS
DE RESSOURCES ADMINISTRATIVES
PENDANT LES PROCESSUS ELECTORAUX »**

Helsinki, Finland/Finlande, 26-27 June/juin 2014

**REPORTS OF THE CONFERENCE /
RAPPORTS DE LA CONFERENCE**

Renforcer la réforme démocratique dans les pays du voisinage méridional



LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG

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I. Programme of the Conference

Thursday, 26 June 2014

08:45-09:30 Registration of participants

09:30-10:00 **Opening session**

Moderated by Ms Kirsi Pimiä, Director, Unit for Democracy, Language Affairs and Fundamental Rights, [Ministry of Justice](#), Finland

- Address by Ms Anna-Maja Henriksson, Minister of Justice, Finland
- Address by Ms Tuija Brax, Member of the [Parliament](#), Chairperson of the Parliament Audit Committee, Finland
- Address by Mr Gaël Martin-Micallef, Legal Officer, [Venice Commission](#) of the Council of Europe

10:00-12:00 **I. First plenary session: Defining administrative resources: Legal environment, self-regulation and financing political parties and campaigns**

Moderated by Mr Lauri Tarasti, Former Justice of the Supreme Administrative Court, Expert on electoral legislation, Finland

- *The 2008-2010 reform of the Finnish legislation on political party funding in Finland – Overview*, Ms Tuija Brax, Member of the Parliament, Chairperson of the [Parliament](#) Audit Committee, Finland
- *Administrative resources, public resources, public funds: the need for a common definition of administrative resources during electoral processes – Presentation of the [Report on the misuse of administrative resources during electoral processes](#)*, Mr Manuel Gonzalez Oropeza, Justice, [Electoral Court of the Federal Judiciary](#), substitute member of the [Venice Commission](#), Mexico
- *The State subsidies for political parties in Finland*, Ms Auni-Marja Vilavaara, Director General, [Prime Minister's Office](#), Finland

10:45-11:15 Coffee break

- *The Swedish legislation from 2014 on political party funding*, Mr Johan Hirschfeldt, Former President of the [Svea Court of Appeal](#), Substitute Member of the [Venice Commission](#), Sweden

12:00-13:00 **I. Working groups**

I. 1) *Administrative resources in context: Legal environment addressing use of administrative resources*, Mr Manuel Gonzalez Oropeza, Justice, [Electoral Tribunal of the Federal Judiciary](#), substitute member of the [Venice Commission](#), Mexico

I. 2) *Administrative resources in context: Self-regulation, institutional, administrative and political environments, the role of the civil society, addressing misuse of administrative resources*, Mr Lauri Tarasti (*moderator*), Former Justice of the [Supreme Administrative Court](#), Expert on electoral legislation, Finland

I. 3) *Modalities of financing the political parties and the campaigns and their supervision*, Mr Robert Krimmer, Senior Research Fellow, Coordinator of Governance Studies and Research, Tallinn University of Technology, Estonia

13:00-14:00 Lunch break (*hosted by the organisers*)

14:00-15:00 **II. Second plenary session: Practice – Recurring cases of misuses of administrative resources during electoral processes – Assessing the damages**

Moderated by Mr Andreas Kiefer, Secretary General of the Council of Europe's [Congress of Local and Regional Authorities](#)

- [For more democratic elections](#), Mr Jean-Charles Gardetto, Attorney at Law, Member and former President of the [Monaco Bar Association](#), former Member of the [National Council](#) (Parliament) of Monaco, former Head of the Delegations of Monaco to the [Parliamentary Assembly](#) of the Council of Europe and to the OSCE [Parliamentary Assembly](#) and former Vice-President of both Assemblies, Monaco
- *OSCE/ODIHR observation and reporting on misuse of administrative resources in elections*, Ms Tatyana Bogussevich, Senior Election Advisor, [Office for Democratic Institutions and Human Rights](#) of the OSCE (OSCE/ODIHR)
- *OAS Electoral Observation Missions' work on political financing: Assessing the misuse of administrative resources*, Mr Sebastián Molano, Specialist of the Department of Electoral Co-operation and Observation (DECO), [Organization of American States](#)

15:00-15:30 Coffee break

15:30-17:00 **II. Working groups**

II. 1) *Recurring cases*, Mr Johan Hirschfeldt (*moderator*), Former President of the [Svea Court of Appeal](#), Substitute Member of the [Venice Commission](#), Sweden

II. 2) *The initial causes*, Mr Jean-Charles Gardetto (*moderator*), Attorney at Law, Member and former President of the [Monaco Bar Association](#), Monaco

II. 3) *Good practices in the use of administrative resources*, Mr Oliver Kask (*moderator*), Judge, Tallinn Court of Appeal, Member of the [Venice Commission](#), Estonia

17:00-17:45 **Feedback from the working groups and closing remarks of the first day**

17:45-19:00 Evening reception hosted by National Audit Office of Finland (*Auditor General, LL.D. Mr Tuomas Pöysti*)

Friday, 27 June 2014

09:00-10:30 **III. Third plenary session: Preventing and combating the misuse of administrative resources, a key issue to reinforce confidence in democratic electoral processes**

Moderated by Mr Thomas Markert, Director, Secretary of the [Venice Commission](#)

- *Opening address – The supervision of political funding in Finland*, by Mr Tuomas Pöysti, Auditor General, [National Audit Office](#), Finland
- *External/Internal audit/controls: detecting the misuses of administrative resources*, Mr Yves-Marie Doublet, Deputy Director, Secretariat General, [National Assembly](#) of France, Scientific Expert to [GRECO](#), France
- *Combating the misuse of administrative resources during electoral processes: Russian and international practice in view of the recommendations of the Venice Commission and GRECO*, Mr Sergey Danilenko, Member, [Central Election Commission](#), Russian Federation
- *Monitoring of political party funding in Serbia: legal framework and experience of the 2014 early parliamentary elections in Serbia*, Mr Vladan Joksimović, Deputy Director, [Anti-Corruption Agency](#), Serbia

- *Monitoring the use of public funds by political parties: overview in Estonia*, Mr Kert Karus, Member, [Political Parties Financing Surveillance Committee](#), Estonia

10:30-11:00 Coffee break

11:00-12:30 **III. Working groups**

III. 1) Preventing misuses of administrative resources: Accountability as a key element, Ms Catharina Groop (*moderator*), Anti-corruption expert, [Department of Criminal Policy](#), Ministry of Justice, Finland

- *The Tunisian experience following the Jasmin Revolution in light of the first democratic elections of October 2011*, Mr Chafik Sarsar, President of the [Independent High Authority for Elections](#), Tunisia

III. 2) Combating misuses of administrative resources: sanctioning corruption cases, Mr Sebastián Molano (*moderator*), Specialist of the Department of Electoral Co-operation and Observation (DECO), [Organization of American States](#)

III. 3) Which independent bodies competent for dealing with/monitoring misuses of administrative resources?, Mr Peter Wardle (*moderator*), Chief Executive, [Electoral Commission](#), United Kingdom

12:30-13:00 **Debriefing session with the working groups**

13:00-14:00 Lunch break (*hosted by the organisers*)

14:00-15:15 **Closing session: Towards guidelines – Good practice, sanctions and looking for operational solutions aimed at improving law, self-regulation and practice**

Co-moderated by Mr Markku Suksi, Professor of Public Law, Department of Law, [Åbo Akademi University](#), Finland

and Mr Thomas Markert, Director of the [Venice Commission](#)

- *Combating the misuse of administrative resources and the A-WEB role in the process*, Mr Kim Jeong-Gon, Director General, [Association of World Election Bodies](#) (A-WEB)

Discussion and adoption of the 11th EMB Conference conclusions

15:15-15:45 Coffee break

FIRST PLENARY SESSION: DEFINING ADMINISTRATIVE RESOURCES: LEGAL ENVIRONMENT, SELF-REGULATION AND FINANCING POLITICAL PARTIES AND CAMPAIGNS

II. Misuse of administrative resources by Mr Manuel Gonzalez Oropeza, Justice, Electoral Tribunal of the Federal Judiciary, Substitute member of the Venice Commission, Mexico

1. Definition

The Report on the Misuse of administrative resources during electoral processes¹, adopted during the 97th Plenary Session of the Venice Commission defines them as “human, financial, material, *in natura* and other immaterial resources enjoyed by both incumbents and civil servants in elections, deriving from their control over public sector staff, finances and allocations, access to public facilities as well as resources enjoyed in the form of prestige or public presence that stem from their position as elected or public officers and which may turn into political endorsements or other forms of support.”

This definition includes three elements:

- First, it includes both material and immaterial resources. The definition pretends to be broad enough to capture different legal and political realities, and that is why it ranges from very concrete resources, such as money, public facilities or *in natura* resources like goods and in kind benefits, to less tangible ones, like those in the form of the status of being in office. The latter is clearer for elected officials who are well known by the public, but the purpose of including public officers in general is to stress the nature of the responsibility of holding public office and the immaterial resources that this entails.
- Second, these resources are under control of incumbents and civil servants, even those without political affiliation. Their nature is that they stem from the public sector. The report does not deal with the broader problem of political finance, which includes private donations to campaigns and candidates.
- Third, these resources are used during all stages of the electoral process. These go beyond campaigns, to include preliminary steps such as the recruitment of election officials, internal elections within political parties, the registration of candidates or lists of candidates. This also allows for a conceptual starting point for comparative purposes, regardless the many differences in the legislation – and even the lack of it.

2. Distinction between use and misuse

With this broad definition in mind, it is important to stress the distinction between the use and misuse of these resources during electoral processes. Rapporteurs and commentators establish that in order to hold elections, there is a need for infrastructure and that intense activity within the public sector has to be deployed to organize them.

¹ Available online at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)033-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)033-e). Consulted on June 15 2014.

However, the law and good practice should clearly draw a line between the use of these resources for the proper functioning of institutions, and their allocation in support or against a given political party or candidate. If equipment (including phones, vehicles, meeting rooms, and other public facilities), human resources (i.e. civil servants, officials), or other goods (such as benefits in social programs), which are administered by ministries and public institutions are aimed at unbalancing the level playing field of electoral processes, these resources are being misused. Such abuses lead to inequality between candidates, particularly between incumbents and other political parties or candidates and even more for those having no public representation.²

3. Applicability of the analysis

It is important to point out that this definition of administrative resources and their misuse, can be traced both to parliamentary and presidential systems. Even though the report focuses on member states of the Venice Commission, during the research period we also looked at other countries in order to have a broader reference of how this problem is dealt with in different legal and political environments. For instance, in Latin America, where presidential systems prevail, we found that there are provisions on the issue at the constitutional level (as in Bolivia, El Salvador or Uruguay), and in electoral and political party laws (such as Argentina, Brazil or Chile). Some of these legal stipulations have also been thoroughly discussed and used by the judiciary (as in the case of Colombia).³

Moreover, International IDEA's Political Finance Database⁴ shows that 86 per cent of countries for which data is available (100 countries out of 116) ban donations of state resources to political parties or candidates (excluding public funding) in order to counteract the abuse of administrative resources. This percentage increases to 93% (118 out of 127) when the question is "are there bans on state resources being used in favor or against a political party or candidate?" and these bans include specific prohibitions on bias in state controlled media, public officials campaigning while on duty or the use of government vehicles while in election campaigns.

This shows that the misuse of administrative resources during electoral processes is a problem with different expressions and solutions worldwide, regardless of the electoral system.

4. Nature and origin of the report

That is the origin and nature of the report published by the Venice Commission: despite many improvements in the field of electoral legislation and practice, the practical implementation of provisions regarding financing of political parties, candidates and electoral processes, remains problematic. One of the most crucial, structural and recurrent challenges, is precisely the misuse of administrative resources during electoral processes, even in countries with a long-standing tradition of democratic elections.

² On a dissenting opinion based on article 187, last paragraph, of the Organic Law of the Federal Judiciary and article 5 of the Internal Regulations of the Electoral Tribunal of the Federal Judiciary, Justices Pedro Esteban PENAGOS LÓPEZ and Manuel GONZÁLEZ OROPEZA, in the appeal SUP-RAP-52/2014 AND SUP-RAP-54/2014, they discuss thoroughly this blurred distinction. See full case online in Spanish at http://www.te.gob.mx/Informacion_judiccial/sesion_publica/ejecutoria/sentencias/SUP-RAP-0052-2014.pdf, consulted on 1 September 2014. A version in English of the dissenting opinion is also available at request (alberto.guevara@te.gob.mx).

³ In Latin America, at least 20 countries provide regulations on the misuse of administrative resources during campaigns.

⁴ Available online at <http://www.idea.int/political-finance/>. Consulted on 15 June 2014.

The report signals that the misuse of administrative resources during electoral processes can threaten some of the basic requirements of a constitutional state. These democratic foundations refer to international law and regulations –some of them directly quoted in the report, such as the Council of Europe, Venice Commission and OSCE/ODIHR Guidelines on Political Party Regulation, the Codes of Good Practices in Electoral Matters and in the Field of Political Parties, the OSCE Copenhagen Document and the Convention for the Protection of Human Rights and Fundamental Freedoms. However, other documents such as the United Nations Convention against Corruption (article 19) or instruments like the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Commonwealth of Independent States, also enshrine shared democratic values and principles and specific provisions against misuse of administrative resources.

Specific regulation and its enforcement at the national and local levels, involves not only sound parliamentary techniques to achieve clear laws with foreseeable results, but also a responsible and transparent exercise of power, and a professional and impartial performance by the judiciary or independent relevant agencies and bodies. As the report also points out, the implementation of sanctions against abuse of administrative power is possible only if the investigation, auditing, prosecution and justice systems are independent from the ruling political power.

Bearing in mind the importance of laws that allow for a shared understanding of the responsibility that entails the management of administrative resources, as well as the prevention and sanction of their misuse, rapporteurs and commentators organized legal provisions into six categories:

- In the first category, the law does not distinguish between material and human resources. Albania, Georgia, Turkey and Ukraine for instance prohibit the misuse of administrative resources while the Russian Federation imposes several restrictions in order to avoid the use of public means in favor of any political party that contends for elections.
- The second category emphasizes particular types of resources. Cases include, inter alia, Armenia, Georgia, Kazakhstan, Moldova and Montenegro. In the case of Moldova and Montenegro, the legal provisions on the prohibition of the misuse of administrative resources target candidates instead of public servants. In Kazakhstan, for instance, the relevant regulations deal with the misuse of public real estate properties. Regarding the misuse of human resources, most regulations focus on public servants taking advantage of their positions and develop very detailed hypothesis of possible misconduct.
- A third category focuses on provisions forbidding any kind of intervention by public servants in favor of a candidate. This is notably the case in Greece, Ireland, the Kyrgyz Republic, Portugal and Spain, where public servants cannot campaign while in office or only during their workdays, as in the case of Albania, Armenia, Kyrgyz Republic and Ukraine.
- A fourth group includes countries with rules that focus on the preservation of free suffrage against possible influence of public servants through gifts, donations or promises. Such prohibition is explicitly stipulated in the electoral laws of Belgium, France, Luxembourg and Monaco.
- The fifth cluster includes laws in which media coverage is considered as a possible misuse of public funds, as in the case of the electoral codes of Armenia and Georgia.
- The sixth and last category mentions states that have no explicit provisions on the misuse of administrative resources during electoral processes but implicit rules, which may be intended at dealing with this issue.

In countries where specific provisions on the topic have not been adopted, constitutional courts or equivalent bodies have given a judicial interpretation of constitutional principles about equality in electoral processes, contributing to ensure neutrality of government authorities in electoral processes. The report is not blind to this and mentions several topical decisions of the European Court of Human Rights.

The assessment provided by the report shows that many countries have adopted laws against the misuse of administrative resources – in coincidence with the high percentages provided by International IDEA's Political Finance Database on the same topic. However, as electoral observation reports and specialized documents published by organizations such as the International Foundation for Electoral Systems, the Christian Michelsen Institute, Transparency International and Human Rights Watch show, their effective implementation remains problematic.⁵ That is why a shared understanding on the importance of democratic constitutional values and a sense of responsibility are required among all political stakeholders, including legislators, public officers, auditors, political party leaders, candidates, prosecutors and judges. Their integrity is instrumental for the reliability of electoral processes and, in this sense, all regulations – including soft law such as codes of good practice and ethical standards with regard electoral administration and electoral dispute resolution – should be thoroughly disseminated and readily available, particularly but not exclusively to public servants. Moreover, a widespread respect for the role of the opposition in parliament and certainty about fair conditions during all stages of the electoral process is key in combating the misuse of administrative resources during electoral processes.

5. Guidelines

The report suggests recommendations to make it more difficult to misuse administrative resources for political purposes. These include self-regulation; the adoption of legislation against bribery and corruption; specific provisions in electoral and political party acts, as well as in criminal codes; a correct and effective implementation of legislation; freedom of information and transparency; and an appropriate allocation of resources to political parties, in order to level the playing field in electoral processes. All of this in line with basic principles of equality of opportunity in political competitions, transparency in the administration of resources and neutrality in the exercise of public office.

In order to take these guidelines a step further and discuss them during this conference, I will conclude my remarks with the following proposed guidelines:

In general:

- Clear criteria to distinguish illegitimate from legitimate campaign activities should be established and these should be applied consistently.
- Internal guidelines for Ministers and their departments need to be developed to promote ethical, i.e. non- partisan, conduct within the executive branch.
- National, state and municipal authorities should be subject to the obligation that they proactively ensure that official public events during the campaign period are not used in any way for campaign purposes.

⁵ See Ohman, Magnus, *Abuse of state resources. A brief introduction to what it is, how to regulate against it and how to implement such regulations resources*, July 2011, IFES. Speck, Bruno and Fontana, Alessandra, *Milking the system: fighting abuse of public resources for re-election*. February 2011, CMI. Also see the Human Rights Watch Report 2014: Armenia, available at <http://www.hrw.org/world-report/2014/country-chapters/armenia>.

- The principle of neutrality should apply to civil servants while performing their professional duties as well as to public and semi-public bodies. References can be found in legislation and in relevant judicial decisions.⁶
- During electoral processes, officials in public positions who are standing for election should not use their opportunities as officials when they campaign and act as candidates.
- Electoral authorities and judges should be guaranteed independence in their decisions when solving controversies regarding political finance, both in their training, technical capabilities, appropriate staffing and other work conditions.

With regard the legal framework:

Creating formal rules is a necessary step to set down what is acceptable behavior in the use of administrative resources. Legislation that provides measures for tackling the misuse of administrative resources during electoral processes must be proportionate, clear and foreseeable for all contestants. Without rules of this kind, there will technically (formally) be no violations for the political finance regulator to detect and enforce. Such laws should:

- Explicitly require all public entities (or entities with a public connection) to act impartially. Such a regulation should establish the impartiality, independence and professionalism of civic service.
- Ban public entities (or entities with a public connection) from engaging in specific listed activities that intentionally or unintentionally favor or disfavor any political actor. This includes ensuring equal access to resources. This can relate to specific funds (such as forbidding campaign expenditures to be met by the State or local government budgets), but it can also relate to institutional resources (such as the use of public servants in campaigning, the use of vehicles or infrastructure). One way of reducing the temptation of people with access to public funds to use this access in running for elected office is to require some or all public servants to resign from their position before standing for elected office.
- There is also a need to regulate the behavior of institutions that have a close connection to the state. Recommendations include banning donations from state enterprises, enterprises under state control or firms which provide goods or services to the public administration sector, and to make senior management positions in public companies incompatible with the direct involvement in politics.
- Ban political actors from receiving favor from public entities (or entities with a public connection). The purpose of this type of regulation is to penalize also the recipient of banned funding, and by the threat of sanctions thereby help to alter their incentive structure.
- Regulate the provision of public funding to political parties and/or election campaigns to ensure a formal process that does not unduly benefit any political party or candidate. In addition, political parties (and candidates) should be required to report on the origin and destiny of their finances (on-going and in relation to elections), to facilitate the detection of abuse of administrative resources and to ensure that once elected they do not unduly favor their donors.

⁶ For instance, decision VberfGE 44, 125 by the Second Courtroom of the German Constitutional Court adopted on 2 March 1977, regarding decision 2 BvE 1/76, in which it was established that “as the performance of state authorities has an influential effect in the opinion and will of voters, they are forbidden from influencing to influence, in their capacity as public servants, in shaping the will of the people during electoral processes by implementing special additional measures to preserve or change current governmental power in State bodies. They are forbidden, according to the constitution, that in their capacity as authorities of the State they identify themselves with political parties or candidates during elections and use public resources to support or defeat them, particularly through advertising destined to influence the voters’ decision” (free translation from German).

In addition to legislation, charters of ethics or agreements agreed upon by political parties could be appropriate steps to tackle the misuse of administrative resources during electoral processes. Publicity, the thorough dissemination of these instruments, and the adoption of benchmarks or performance indicators, are crucial to increase their effectiveness.

Related to auditing and sanctions:

- An independent audit office plays an important role by supervising the use of administrative resources, including the public funding of political parties and electoral campaigns. An independent body, established according to the law, could be in charge of tackling all issues related to the misuse of administrative resources, including non-financial ones, as long as it is provided with enough resources and adequate rules to fulfil this task.
- Competent bodies in charge of tackling the misuse of administrative resources should use preventive measures to stop unlawful activities as soon as possible before the elections.
- Political parties, candidates, public media and public officials who misuse administrative resources should be subject to sanctions.
- In this respect, an independent judiciary is a sine qua non condition for sanctioning the misuse of administrative resources. Due to the nature of controversies related to this topic, a specialized jurisdictional authority is more likely to correctly address the particular challenges that arise from electoral conflicts.
- Ensuring the integrity of the police, prosecutors, judges as well as auditors of political forces is of crucial importance. Concrete legislative measures should address the issue of integrity so as to assure the neutrality of these persons vis-à-vis the entire electoral processes.

Finally, even though the role of media has not been addressed by the report, it is acknowledged that it has become increasingly important in campaigning in many countries, and where publically owned media has a strong position, its neutrality will be a necessity for credible elections. Unbiased journalism in government-controlled media is also difficult to enforce through rules and regulations. An alternative approach is to strengthen the independent media, giving citizens access to more diversified sources of information. Oversight by civil society can support the implementation of such rules.

6. Conclusions

The pervasive problem that inspired this report of the Venice Commission is not exclusive to new or old democracies, parliamentary or presidential systems. In that sense, recommendations are aimed at providing elements for discussion and perhaps joint action by all stakeholders in improving the protection of administrative resources during electoral processes in different and changing contexts, preserving the same underlying principles for making all necessary decisions with regard law and policy making.

III. Description of the recurring cases of misuses of administrative resources by Mr Johan Hirschfeldt, Former President of the Svea Court of Appeal, Sweden

1. Introduction

A Government has its political will and shall have a power to implement its political programme according to the constitution. It is of course legitimate for the Government to use its administrative (or public or state) resources for purposes decided in a proper democratic decision-making process. Correct and loyal implementation of the law with equal-treatment must here be a leading principle.

Several constitutional or other checks and balances shall always secure the legality and the accountability of the responsible actors (politicians and civil servants) for the use of resources.

However these checks and balances may be too weak and such resources could be misused especially during electoral campaign for pure political purposes in the interest of incumbent party(ies). Also during a campaign administrative resources (on national, regional or local level) must of course be possible to use for its legitimate purposes. But this competence to use resources could especially during electoral campaigns be abused either through criminal actions or using other activities that can be categorized as unfair or unethical or otherwise conflicting the principle of equal-treatment.

There are here both a demand side (incumbent politicians abusing administrative resources) and a supply side (the public administration system with its civil servants that supply such resources). Both sides are responsible for its actions or omissions. As in ordinary cases of corruption the question here is: From where and from who is the money/resources coming, what are they spent on and who is favoured?

Misuse of this kind could threaten the democratic order, especially when the abuse take place during electoral campaigns and are carried out by or for incumbent political forces. But the electoral process must be understood in broader sense than as concerning only the period of the campaign. It starts with nomination and registration of candidates and electoral lists, the formation of electoral commissions etc. We must be aware of the varieties of misuse due to the existence of several different stages of the electoral process, each of them with different conditions where different kinds of misuse may occur.

Hence in the Copenhagen Document⁷ “a clear separation between the State and political parties” has been underlined as an essential element of justice. Para. 5.4 of the document stresses in particular that “political parties will not be merged with the State”. So there is a strong need for a clear distinction between the state and the ruling party(ies). A line needs to be drawn between official governmental capacities and political campaigning and between legitimate use and unacceptable misuse of administrative resources during the electoral process.

⁷ Document of the Copenhagen meeting of the conference on the human dimension of the CSCE (the Conference on Security and Co-operation in Europe), 29 June 1990.

2. A definition of misuse of administrative resources

Here the following definition presented by the Venice Commission⁸ will be used:

Administrative resources are human, financial, material, in natura and other immaterial resources enjoyed by both incumbents and civil servants in elections, deriving from their control over public sector staff, finances and allocations, access to public facilities as well as resources enjoyed in the form of prestige or public presence that stem from their position as elected or public officers and which may turn into political endorsements or other forms of support.

3. Different types of administrative resources

In several documents⁹ different types of administrative resources are presented. Here the following categories are used:

- 1) Legislative resources
- 2) Regulatory resources
- 3) Institutional resources
- 4) Enforcement (coercive) resources
- 5) Financial resources
- 6) Public media resources

The list of resources is in principle neutral and the different kinds of resources are sometimes intertwined. The resources are at the disposal of the Government. They should be used correctly under the law. But they can also be misused.

4. Misuse of administrative resources in general

There are presentations of or short references to recurring cases of misuse from different countries in publications from international organizations but also in scientific studies. Such information and references will be found especially in reports from election monitoring missions or in more general opinions by or other documents conference-papers from international organizations.

In this paper I will not give specific references to different cases of misuse from certain countries. Such more detailed information that can be found in different documents and would not serve our common purpose here. Instead I will present a typology of misuse of administrative resources that may serve as a framework for our discussion.

We have to bear in mind that the different categories of misuse usually cannot be separated from each other. The typical cases of misuse is often mixed or intertwined. A specific misuse could often be sorted under more than one category and has to be studied from different angles. Misuse of financial resources gives here a good example of this parallelism.

⁸ Report on the misuse of administrative resources during electoral processes, CDL-AD(2013)033.

⁹ See e.g. The fourth Eastern partnership facility seminar on the “use of administrative resources during electoral campaigns”, CDL-EL(2013)007, “Milking the system”: Fighting the abuse of public resources for re-election by Bruno Seck and Alessandra Fontana, U4Issue, February v2011, No7, Abuse of state resources – A brief introduction to what it is, how to regulate against it and how to implement such resources, Magnus Ohman, July 2011, USAID and different documents presented by Transparency International.

5. Typical recurring cases of misuse

Here misuse of administrative resources mainly by the incumbent party(ies) or abuse of power by civil servants or similar personnel in support of incumbent party(ies) will be listed in different categories:

5.1 Legislative resources

The legislative power in Parliament lay in the hands of the majority. The incumbent parties may misuse that power in order to pass electoral laws with provisions that somehow favour its own political interests. Examples that have been mentioned here are legal provisions resulting in a) limitations hindering the participation of independent candidates who are not nominated by political parties to participate in elections, b) a formation of the electoral commissions that could favour the incumbent party and c) an unequal public funding of political parties that benefits the incumbent party. Of importance are of course also deficiencies, intentional or unintentional, in e.g. criminal laws and laws on the state budget and on the conduct of civil servants within the public administration.

5.2 Regulatory resources

Here the problem is abuse through biased implementation of laws and regulations by public decisions-makers that gives benefit to incumbent parties (misuse of discretionary power causing non-equal treatment). Examples that may be mentioned are an electoral commission that unregisters an unwanted opposition candidate, threats to withdraw a broadcasting licence or other biased decisions of an electoral commission or a court.

See also under Institutional resources and Enforcement (coercive) resources.

5.3 Institutional resources

Incumbent parties and politicians may use the institutional resources of the public authorities to promote their electoral interests. This could include the use of public premises, office equipment and public employees as campaign staff. Such actions by public authorities could have an influence on voters. Therefore such authorities and their civil servants and other personnel have been forbidden with regard to their public function to identify themselves with political parties or candidates during elections and to use administrative resources in favour of or against them.

This is a broad area with a lot of examples of misuse and where it is difficult to compare different systems while the organization and tasks of public institutional domain differs so much from country to country and during different parts of the electoral process. It seems impossible to draw a clear line between misuse of regulatory resources and of institutional resources that could be generally applicable. Still, the principle of equal-treatment is a common instrument and there seems to be possible to develop a common understanding of the concept misuse of institutional resources. A useful preliminary definition of misuse of institutional resources could be the following:

Misuse of material resources from the public domain consist of misuse during the electoral process of official buildings, meeting-rooms, facilities, equipment, stationery, vehicles and other travel facilities, communication equipment, mailing, printing, telephones, machinery, travels and other infrastructure. Misuse of human resources in the public domain consists of abuse during the electoral process through biased actions or omissions by civil servants and other officials or employees in ministries and public institutions on state, regional or

local level or by personnel in semi-public bodies such as state-owned enterprises, semi-public institutions or their involvement in electoral campaigning when they are in public service or during their spare time.

Common examples of misuse of institutional resources have been classified under different headings in the on-going discussion. I will list some examples in the following.

5.3.1 Campaign announcements and advertising and other organizational measures with the involvement of public authorities in support of a party or a candidate

Through advertising, leaflets, official communication, web sites and official policy presentations or statements, interviews and P.R.-actions etc. the voter's decision can be influenced. If public authorities and civil servants are involved in such activities this could constitute a misuse of institutional resources. Another kind of misuse is to accept that campaign material and party flags are placed in public institutions (administrative buildings, hospitals, schools etc.). Organization of campaign events with involvement of public authorities or attendance of civil servants such as meetings with voters or appearances in the media could also constitute misuse. Production and use of official reports on public office-related activities in a way that is designed to benefit a particular party/candidate is here another example.

5.3.2 Engagement of state employees in campaign activities during business hours or in their spare time.

The use of human resources concerns the use of the administration during business hours for election purposes but also hiring, dismissing from work, release, movement and transfer of duty if certain personnel is not motivated. Here are also examples of pressure, intimidation or threats of loss of employment, e.g. for schoolteachers and medical personnel to vote in favour of ruling political forces. Pressure or intimidation on civil servants to vote in favour of ruling political forces is another example. Another misuse is to request civil servants to list a certain number of voters who would vote for the ruling party intimidating and threatening them with the loss of their jobs if they do not comply with these requests or with offering them promotion or other incentives if they willingly take part. This creates the perception that employees are obligated to work for, attend rallies on behalf of and campaign for and vote for the government candidates for fear for their employment or for benefits.

Vote buying among voters directly or indirectly (providing benefits or services for them or their communities) orchestrated by various public administrations is here another example.

Officials or superiors could order or otherwise mobilize personnel and citizens to take part in campaigning events. Here also could be included when ceremonies to open roads, hospitals or plants etc. are organised during the election campaign by authorities with public servants, students and schoolchildren etc. participating voluntarily or under coercion. Another example is schoolteachers, pupils and even their parents that by the ruling party actively are involved in campaign events including during school hours.

Other activities under this heading are civil servants:

- working as members of a campaign staff for a political party/candidate
- developing electoral materials
- conducting electoral research on behalf of a candidate/party
- preparing and distributing campaign materials

- smearing or defamatory campaigns against a party or a candidate conducted by a public authority or civil servant.

Also biased engagement by civil servants for a certain party during their spare time could be regarded as a not accepted behaviour.

5.3.3 Misuse of public premises for campaign purposes

When other parties or candidates than the ones in power do not have equal access to the use of public premises for campaign purposes this constitutes misuse. This could be about public premises used for staff office of a party, for meetings with voters, for rallies and for storage of campaign materials.

5.3.4 Misuse of public office facilities and equipment

When the facilities and equipment, or with other words the logistical infrastructure, of public offices are utilized by the incumbent party where other parties do not have access to the same facilities or equipment this constitutes misuse. This could concern facilities or equipment such as: general office equipment, computers, telephones and other electronic equipment and access to Internet, networks and databases. Postal and other communication facilities are also included here.

5.3.5 Misuse of public vehicle resources and other resources for transportation

When the incumbent party utilizes these resources free of charge or at discount rates where other parties do not have access to the same facilities on equal footing this constitutes misuse. This could concern activities such as: candidates' travels, campaign staff members' travels, transportation of campaign materials, transportation of citizens to meetings and rallies and transportation of citizens to elections.

5.3.6 Engagement in electoral campaigns by other parts of the public domain (semi-public bodies such as state-owned enterprises, semi-public institutions including think tanks and state supported non-profit organizations)

It is important to notice that the public domain could be organized and controlled differently in different countries. Therefore this heading is important and could have a vast applicability. A lot of the examples presented under the former headings could of course be relevant also under this heading.

Examples here are the different non-governmental bodies in the public domain or their personnel conducting electoral research for one particular party/candidate, polling for one particular party/candidate, developing campaign materials, publishing campaign materials, distributing campaign materials.

5.4 *Enforcement (coercive) resources*

Here examples of misuse are the use of law enforcement (police, security), tax authorities and customs and other agencies for the purpose of intimidation, creating all sorts of difficulties and obstacles or even elimination of opponents.

A state authority can misuse its powers in order to influence (disturb or promote) an election by taking an illegal or improper action or not taking a necessary or appropriate action within its responsibility. For example a public board with the task to inspect banks,

insurance companies or other financial institutions takes an inappropriate action against a bank in some way connected with representatives of the political opposition or does not take action against a bank risking failure to favour the incumbent party. Another example: The tax authorities perform an unscheduled inspection of the activities of an opposition party and gives opportunity to illegal or improper use of the obtained information.

Several other types of violations by public enforcements authorities against the principles for public administration (transparency, public accountability, independence and high professional standards, clear separation of the state and the business sector, high and correct standards of public service delivery) could also be sorted under this heading.

5.5 *Financial resources*

Financial resources are often a prerequisite for misuse of other types or are used in combination with other misused resources.

Here examples are:

Unauthorized funding of certain institutions or overspending of election or other budget items.

To utilize monetary assets through state and/or local budgets or through publically owned and/or managed institutions in the interest of one political party to pay its election campaigning or even for “material incentives” to get votes from certain groups of voters using for example sudden increase of certain salaries, payments or grants or discounts on different services.

To use resources to influence voters by giving gifts, services, donations or promises, including promises for public jobs, distribution of free medicine etc.

To use public resources for gifts bearing the names of political leaders, food and sundry items.

To threaten the citizens with loss of their pensions or social services if they do not support certain parties or candidates.

To inaugurate public buildings, to establish new programmes and actions with budgetary impact during elections that not have been included in advance in ordinary plans.

5.6 *Public media resources*

Free elections are inconceivable without the free circulation of political opinions and information. The state is the ultimate guarantor of pluralism and in performing that role the State is under an obligation to adopt positive measures to organise democratic elections under conditions that will ensure the free expression of the opinion of the people in the choice of the legislature. Unequal media coverage of electoral campaign in public media is therefore not acceptable. Examples are: censoring campaign news items, not providing equal advertising time or space, disproportionate publicity favouring a certain party or candidate or negative or biased coverage of a certain party or candidate.

Here finally it is also relevant to mention abuse and misuse that could occur concerning the area of both public and private media: Such as undue pressure or threats from public institutions (employers in public media or others from other institutions) that violates their right to cover events related to the electoral process and to give them access to relevant documents, See also under 5.4.

IV. Modalities of financing the political parties and the campaigns and their supervision by Ms Barbara Jouan, Senior campaign finance Expert, France's National Commission for Campaign Accounts and Political Financing (CNCCFP), France

The Recommendation 1516 (2001) of the Council of Europe states that: *"in order to maintain and increase the confidence of citizens in their political systems, Council of Europe member states must adopt rules governing the financing of political parties and electoral campaigns."*

The existence of money in the political field is likely to entail risks for corruption. Money is needed to level the playing field between political contestants and at the same time can be used to skew the competition between contestants in the favour of the wealthiest candidate/ political party.

For decades many countries had no legislation governing the financing of political life, which implies that the state took no interest in such matters, leaving each party or candidate entirely free to raise the funds necessary to its functioning, without being too scrupulous about the methods employed.¹⁰

The interest in the issue of political financing is a relatively recent phenomenon, and its importance has increased in the last few years. Different international or regional organizations have developed over the last two decades principles/norms pertaining to the matter which are not legally and technically binding for the member / participating States.

I. International standards

The international standards and good practices applicable in this field are those summarized in the Guidelines on Political Party Regulation by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR) and the Venice Commission¹¹. These measures include:

- restrictions and limits on private contributions;
- balance between private and public funding;
- restrictions on the use of state resources;
- fair criteria for the allocation of public financial support;
- spending limits for campaigns;
- requirements that increase transparency of party funding and credibility of financial reporting;
- independent regulatory mechanisms and appropriate sanctions for legal violations.

¹⁰ In France, for example, since there were no rules and therefore no limits on income or expenditure, parties and candidates threw themselves into a frantic race to find contributors, and thus put themselves in a situation of dependence vis-à-vis wealthy contributors who were keen to take advantage of this position of strength to promote their interests. This situation was reflected in some famous affairs of corruption involving French politicians and political parties in the 1980s. According to certain estimates, more than 600 politico-financial scandals and cases of embezzlement of public funds and corruption involving elected representatives had occurred up to the mid-1990s. This practice was quite widespread among western European countries, especially in those where the border between politics and business was very thin.

¹¹ Guidelines on political party regulation by OSCE/ODIHR and Venice Commission adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010) - p.34.

Article 8 of Recommendation (2003) 4 states that *“the rules regarding funding of political parties should apply mutatis mutandis to the funding of electoral campaigns of candidates for elections.”*

Thus, rules relating to political party financing apply to campaign financing.

The main pieces of legislation/texts in the field of international standards on political party and campaign financing are:

- The general comment No. 25 of the United Nations Commission for Human Rights, July 1996;
- The United Nations Convention against Corruption;
- The Convention on Standards of Democratic Elections (Commonwealth of Independent States);
- The African Union Convention on Preventing and Combating Corruption;
- The SADC (Southern Africa Development Community), Norms and standards in the SADC Region;
- The EISA (Electoral Institute for Sustainable Democracy in Africa) – Electoral Commissions Forum of SADC, PEMMO;
- Recommendation 1516(2001) of the Council of Europe Parliamentary Assembly on the financing of political parties;
- Recommendation (2003)4 of the Committee of Ministers of the Council of Europe to member states on common rules against corruption in the funding of political parties and electoral campaigns;
- Guidelines for Reviewing a Legal Framework for Elections by OSCE/ODIHR;
- Existing commitments for democratic elections in OSCE participating states;
- Code of Good Practice in Electoral Matters by the Venice Commission of the Council of Europe (European Commission for Democracy through Law) (CDL-AD(2002)023, October 2002);
- Code of Good Practice in the field of Political Parties by the Venice Commission (CDL-AD(2009)021, March 2009);
- Guidelines on Political Party regulations by OSCE/ODIHR and Venice Commission (CDL-AD(2010)024, October 2010);
- Opinion on the Need for a Code of Good Practice in the field of Electoral Campaign funding by the Venice Commission (CDL-AD(2011)020, June 2011);
- Political financing: GRECO’s first 22 evaluations, third evaluation round, May 2010.

II. Sources of financing

Most of Council of Europe’s member States use a mixed campaign finance system that allows for both public and private political and campaign financing, allocated by the State and given by individual/legal entities, respectively. These funds can be provided to political parties in order to help them to support financially their candidates or to candidates directly.

A. Public financing

Public financing is seen as a means by many countries to prevent corruption, to promote political pluralism and to avoid undue reliance on private donors.

Public financing includes both direct financing (grants allocated by the state to candidates/parties) and indirect financing (candidates/parties are provided some services for free or at a reduced rate, such as access to public media, use of state property for the purpose of campaigning, printing of electoral materials, or tax relief). These annual subsidies cover basically parties’ routine functioning and electoral or campaign subsidies

(aiming at reimbursing candidates and political parties for the purpose of covering the cost pertaining to the elections).

Recommendation (2003)⁴ states that *“The state should provide support to political parties. (...) Objective, fair and reasonable criteria should be applied regarding the distribution of state support.”*

In order to ensure the equality of opportunity for the different political forces, the allocation of public financing is typically based on objective criteria, such as parliamentary representation, number of votes cast (in order to allow non-parliamentary parties to be eligible for public funds) or the number of candidates put forward by the party in an election.¹² The allocation of public funding can be contingent on compliance with requirements for women’s participation.¹³

Public funding tends to be a widespread practice of political finance regulation. Thus, 90 % of European countries provide direct public funding to political parties according to International IDEA’s database on political finance regulations.¹⁴

However, public financing should not be the only source of income for a political party to avoid creating conditions for over-dependency on state support. The Council of Europe in its recommendation Recommendation(2003)⁴ clearly advises that “State support should be limited to reasonable contributions (...)States should ensure that any support from the state and/or citizens does not interfere with the independence of political parties.” That is why in many countries there are also some alternative ways of financing: political parties may receive private financial or in-kind donations, in order to avoid “the weakening of links between parties and their electorate” (CoE, Recommendation 1516(2001)).

B. Private financing

Private funding of political parties and candidates is a form of political participation. With the exception of sources of funding which are banned by relevant legislation, all individuals have the right to freely express their support of a political party or a candidate of their choice through financial and in-kind contributions.

Private financing consists includes financial and in-kind contributions from individuals and legal entities made directly to political parties and candidates to support their electoral campaign.

Qualitative limitations: Article 7 of Council of Europe’s Recommendation (2003)⁴ provides that *“States should specifically limit, prohibit or otherwise regulate donations from foreign donors.”* Some donations can be prohibited by States because of the source of the donation: foreign persons, company donations, donations from corporations with governmental contracts, Trade Unions donations,

¹² OSCE/ ODIHR Existing commitments for democratic elections in OSCE participating states *« Any public funding or other support for candidates, political parties, and their election campaigns must be provided in an equitable manner, based on objective criteria such as the candidate or party’s current supporter results in recent elections and the amount of funds needed to campaign effectively.”*

¹³ For instance, in some countries, campaign finance regulation sets out financial incentives, under the form of additional public funding for political parties that include a certain number or percentage of women candidates. In some others, a percentage of public funding is denied or withdrawn when political parties do not include a specified number of women candidates. Finally, funds can be earmarked for specific campaign activities related to gender equality.

¹⁴ <http://www.idea.int/political-finance/>

and anonymous donations. *Historically, those limitations on sources of private funding have aimed at limiting the ability of particular groups or wealthy contributors to gain political influence on candidates or political parties through monetary advantages.*

Quantitative limitations: Article 3 of Council of Europe's Recommendation (2003)4 provides that "*States should consider the possibility of introducing rules limiting the value of donations to political parties.*" Some states limit the amount of donations people can make. Limitations can consist of, for example, a maximum level for each contribution or donor. The existence of limitations on donations is linked to the political will to effectively minimize the possibility of corruption in the course of electoral campaigns and the routine life of political parties and of the purchasing of political influence.

Legislation regulating contribution limits has to be balanced between ensuring that there is no distortion in the political process in favour of wealthy interests and in encouraging political participation (through contributions to the parties of their choice).

III. Campaigning

The United Nations Human Rights Committee in General Comment No. 25¹⁵ states that "*reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.*"

Article 7 of the Recommendation (2003)4 states that "*States should consider adopting measures to prevent excessive funding needs of political parties, such as, establishing limits on expenditure on electoral campaigns.*" The Council of Europe is rather vague in its wording.

The limitation aiming at restricting the amount of money that political parties and/or candidates can spend for electoral purposes represents a common form of political finance regulation. The rationale behind such a ceiling on expenses is to level the playing field by reducing the gap between wealthy and poorer candidates and thus the advantage of the first ones over the second ones and for the State to establish a maximum spending cap in order to set up the legal conditions of equal opportunity for candidates and political parties running in elections.

However, such a cap must be reasonable and fully allow candidates and parties to make voters aware of their positions and views. It must be designed, for instance, against objective and relevant data such as inflation, population of each constituency. In its Guidelines on the Financing of Political Parties, the Council of Europe underlines that "*In order to ensure equality of opportunities for the different political forces, electoral campaign expenses shall be limited to a ceiling, appropriate to the situation in the country and fixed in proportion to the number of voters concerned.*"

To make the spending limit effective, it is important to define the electoral expense and the campaign period in order to enable candidates to prepare their campaigns by classifying

¹⁵ General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service, CCPR/C/21/Rev.1/Add.7, General Comment No. 25 adopted by the Committee at its 1510th meeting (fifty seventh session) on 12 July 1996.

the expenses that must be included in their financial report. Indeed, the inclusion in the financial statements of all expenses that resulted in a financial transaction and of all in kind benefits used by the candidate or the political party would guarantee the completeness of the financial reports and would be in line with a better transparency of the electoral campaign funding and to delimit the period within all expenses incurred for electoral purposes have to be reported on the financial statements lodged with the relevant control body.

Similarly, the spending limit is not likely to be effective if in-kind contributions are not accounted for their value at the market price for the calculation of the spending limit and that 'third parties' such as interest or support groups, trade unions and associations can spend unlimited amounts of money on behalf of or to oppose a particular political party or candidate.

IV. Use of administrative resources

The use of administrative resources, such as defined in the report on the misuse of administrative resources by the Council of Europe's Venice Commission,¹⁶ is not unlawful as long as the same resources are provided to all political forces engaged in an electoral process and as long as this equality of opportunity is not undermined by the monopolizing of such means by the governing parties for campaign purposes. On the other hand, the misuse of administrative resources – defined as the unlawful behavior of civil servants, incumbents, and ruling parties to use their official positions or connections to government institutions to influence the outcome of elections - should be sanctioned by law since it undermines the level playing field for candidates and parties and blurs the distinction between the state and the ruling party activities.

The misuse of administrative resources during electoral processes can threaten some of the basic requirements of free and fair elections, i.e. equality of opportunity between electoral contestants, transparency of the campaign, and freedom of expression of opposition parties/ candidates at odds with Article 2-3 of the Venice Commission Code of Good Practice in electoral matters which states *"Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to the election campaign; coverage by the media, in particular by the publicly owned media; public funding of parties and campaigns."*

In its Guidelines for Reviewing a Legal Framework for Elections, OSCE/ODIHR states that *"the legal framework should ensure that state resources are not misused for campaign purposes and that they are used only with strict adherence to the applicable legal provisions (...)The legal framework should specifically provide that all state resources used for campaign purposes, such as state media, buildings, property, and other resources are made available to all electoral participants on the basis of equal treatment before the law."*

Different ways of regulating the issue might be considered, from banning civil servants from actively participating in campaign activities to requiring public servants to resign from

¹⁶ *"Administrative resources are human, financial, material, in natura and other immaterial resources enjoyed by both incumbents and civil servants in elections, deriving from their control over public sector staff, finances and allocations, access to public facilities as well as resources enjoyed in the form of prestige or public presence that stem from their position as elected or public officers and which may turn into political endorsements or other forms of support."*

their position before running in an election. Whatever the regulations, the principle of neutrality that guarantees a level playing field for all political contestants and that entails impartial behaviour by civil servants and authorities at all levels should prevail throughout the election campaign period. In 48 % of European countries, there are bans on state resources being used in favour or against a political party or candidate.

V. Enforcement and sanctions

The Venice Commission Code of good practice in the field of political parties, states that *“party funding must comply with the principles of accountability and transparency”*. The United Nations Convention against Corruption (Article 7-3) calls on State Parties *“to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.”*

Reporting and disclosure on campaign finance are important measures to inform the public of the financial support given to political parties and candidates, thereby promoting transparency and accountability in the campaign finance system.

1. Reporting rules are crucial for ensuring that political parties, candidates, and third parties comply with the campaign finance legislation. States should require political parties and candidates to maintain records and report on all direct and in-kind contributions given to them and on all campaign expenditures incurred during a campaign period.

2. Supervision: To ensure the effectiveness of political finance regulation rules, it is critical that supervision over political finances is given to an oversight body,¹⁷ which will be entrusted with competency to check financial reports against relevant data/ documents and which is endowed with power of sanctions or can turn to the relevant judge or the Prosecutor in case of serious/ criminal offences.

Article 14 of Recommendation (2003)4 states that: “States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns. The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication.”

Monitoring can be undertaken by a variety of different bodies, including a competent supervisory body or state financial body. Independence of this control body is of importance, so much so that effective measures should be taken to ensure that body's independence from political pressure and commitment to impartiality. The regulatory authority should be given the power to monitor accounts and conduct audits of financial reports submitted by parties and candidates. Financial reports on both campaign and routine political activity (gathering the records of all the direct and in-kind contributions and expenses) should be audited in a timely manner.¹⁸

3. Sanctions: Regulatory system is likely to be effective if implemented in practice. To back up political finance regulation, an arsenal of sanctions - which may be administrative, financial, electoral or criminal - of varying degrees of severity is to be set up. Sanctions

¹⁷ Article 13 of Recommendation (2003)4 states that “States should require political parties to present the accounts regularly, and at least annually, to (an) independent authority.”

¹⁸ Data from IDEA's political finance database are very informative: In European countries, 89 % of political parties have to report regularly on their finances and 66 % have to report on their finances in relation to election campaigns. As far as candidates' reporting requirement is concerned, candidates have to report on their campaign finances in 68 % of European countries.

must at all times be objective, enforceable, effective and proportionate to their specific purpose¹⁹ such as underlined in Article 16 of Recommendation (2003)4 which provides that *“States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions.”* Where sanctions are imposed, the party in question or candidate should have recourse to a fair hearing by an impartial tribunal. While regulatory authorities can determine sanctions, there should be the opportunity for a party to request that the final decision regarding sanctions should be made by the appropriate judicial body, in accordance with judicial principles. In any case, the principles of effective remedy and due process have to be strictly respected.

4. Disclosure implies the need for transparency towards the public regarding political spending, thereby promoting accountability of political stakeholders. Disclosure rules should clearly define who is subject to these requirements, what has to be disclosed to which authority, and within which timeframe. This information should be made public by the candidate or party and/or the oversight body, preferably on the internet.

¹⁹ In its Guidelines on the financing of political parties, the Council of Europe notes that *“Any irregularity in the financing of an electoral campaign shall entail, for the party or candidate at fault, sanctions proportionate to the severity of the offence that may consist of the loss or the total or partial reimbursement of the public contribution, the payment of a fine or another financial sanction or the annulment of the election.”*

SECOND PLENARY SESSION: PRACTICE – RECURRING CASES OF MISUSES OF ADMINISTRATIVE RESOURCES DURING ELECTORAL PROCESSES – ASSESSING THE DAMAGES

V. « Combattre l’abus de ressources administratives pendant les processus électoraux » par M. Jean-Charles Gardetto, Avocat au Barreau de Monaco, ancien Bâtonnier de l’Ordre, ancien Membre du Parlement de Monaco (Conseil National) et ancien Vice-Président de l’Assemblée Parlementaire du Conseil de l’Europe

Propos introductifs : l’évidence des progrès, la persistance d’un mal enraciné

Dans le cadre de mes fonctions de membre de l’Assemblée Parlementaire du Conseil de l’Europe de 2003 à 2013, j’ai participé pendant dix années aux travaux de l’Assemblée. Depuis 1989, elle a observé plus de 145 élections parlementaires et présidentielles dans des pays européens, et parfois même en dehors de l’Europe. Environ 2000 parlementaires, membres de l’Assemblée, ont été déployés à cette fin. Au titre de l’Assemblée j’ai observé 10 élections et j’ai eu l’honneur de présider quatre missions d’observation. J’ai également participé à plusieurs missions d’observation d’élections parlementaires et présidentielles avec l’Assemblée Parlementaire de l’Organisation pour la Sécurité et la Coopération en Europe.

Dans le cadre de mes fonctions au sein de l’APCE j’ai par ailleurs été conduit à présenter plusieurs rapports et résolutions visant à améliorer le fonctionnement démocratique des Etats, en particulier dans les pays en transition démocratique dans les Balkans et au Maghreb.

Le Conseil de l’Europe, à travers notamment l’Assemblée Parlementaire, la Commission de Venise et le Conseil des élections démocratiques, a largement contribué, aux côtés d’autres Organisation internationales, telle que de l’OSCE, au développement du patrimoine électoral européen.

Ma présentation repose sur le rapport que j’ai soumis à l’Assemblée Parlementaire du Conseil de l’Europe, en septembre 2012, intitulé « *Pour des élections plus démocratiques* » (Doc. 13021/14-09-2012/APCE). J’évoquerai ainsi les exemples qui m’ont paru les plus significatifs pour illustrer mes propos, sans prétendre à l’exhaustivité.

Les différentes missions d’observation des élections auxquelles j’ai pris part m’ont conduit à constater d’importants progrès accomplis, en 10 ans, en matière d’utilisation des ressources administratives, notamment s’agissant de la pénalisation de ces délits.

Toutefois, la pratique démontre que le phénomène est assez diffus et insaisissable, les cas d’abus de ressources administratives lors des campagnes électorales étant difficiles à mettre à jour, à prouver et surtout à sanctionner, en l’absence de volonté politique forte, au plus haut niveau.

1) Mobilisation de ressources organisationnelles et financières

A. Détournement de fonctions ou d'événements officiels

- Lors des **élections présidentielles françaises** de 2012, un grand meeting de Nicolas Sarkozy, organisé et payé par la Présidence de la République, a été requalifié en meeting du candidat Sarkozy et imputé aux comptes de campagne de son parti politique, conduisant à un dépassement du plafond de dépenses fixé par la loi et à l'invalidation de ses comptes de campagne.
- Lors des élections **présidentielles ukrainiennes** du 17 janvier 2010, les observateurs internationaux avaient critiqué les candidats Timoshenko et Louchtchenko qui avaient utilisé des visites officielles liées à leurs fonctions pour mener leurs campagnes électorales (Doc. 12132 /25-01-2010/APCE).
- De même, l'Agence gouvernementale des pensions ukrainienne avait envoyé des lettres à tous les retraités en expliquant que le projet de loi parrainé par le Parti d'opposition ne permettrait pas d'augmenter les pensions. Les observateurs ont également relevé des cas de distribution de produits alimentaires aux personnes âgées (Doc. 12132 /25-01-2010/APCE).
- Dans un contexte similaire, l'élection présidentielle extraordinaire en **Géorgie** de 2008 a été marquée par l'usage de « *programmes de protection sociale à des fins de campagne et d'implication active d'agents de l'État à tous les échelons* ». Des problèmes du même type ont été identifiés lors des élections législatives, car « *la distribution de bons d'essence aurait, dans certaines régions, coïncidé avec les activités de campagne du parti au pouvoir* » (Doc. 11651/23-06-2008/APCE).
- Les élections législatives en **Fédération de Russie** du 4 décembre 2011 ont révélé que « *des affiches placardées sur certains panneaux déclaraient que les travaux de construction du métro étaient le fait de la branche locale de "Russie Unie". Les autres partis ont estimé qu'il s'agissait là d'un volet de la campagne électorale de "Russie Unie" financé par des fonds publics* » (Doc. 12833/23-01-2012/APCE).
- De même, certaines autorités régionales ont utilisé leurs fonctions au profit de la campagne électorale de « *Russie Unie* ». M. Denis Agachine, chef de l'administration municipale d'Ijevsk (chef-lieu de la région), a ainsi déclaré lors d'une rencontre avec les retraités locaux que le financement des programmes sociaux à l'intention des retraités dépendraient directement des résultats des votes pour Russie Unie aux législatives (Doc. 12833/23-01-2012/APCE).
- A l'occasion de l'élection présidentielle du 2 mars 2008 en **Fédération de Russie**, les observateurs ont également relevé que les autorités locales ont eu instruction de faire obstacle aux réunions de M. Ziouganov avec les électeurs dans la région d'Oulianovsk et, dans certains cas, les maisons d'édition ont refusé de publier le matériel électoral des candidats de l'opposition. Ces allégations graves n'ont pu être infirmées ni confirmées par les travaux des observateurs (Doc. 11536/17-03-2008/APCE).
- En **Arménie**, lors des élections législatives du 6 mai 2012, il a été constaté qu'une société appartenant au dirigeant d'Arménie prospère, M. Gagik Tsarukian, a distribué environ 500 tracteurs pendant la campagne, en contradiction avec le

Code électoral, mais la Commission électorale centrale (CEC) a estimé qu'il n'y avait pas eu de violation de la loi (Doc. 12937/24-05-2012/ APCE).

- A l'approche d'élections législatives, plusieurs Etats connaissent l'émergence de partis des autorités (« *authorities parties* ») qui reposent non sur l'idéologie mais sur la proximité avec les autorités et un accès facilité aux sources de financement.

B. Le contrôle gouvernemental sur les entités publiques et parapubliques

L'utilisation des lois en vigueur par les autorités en place peut se révéler particulièrement sélective à l'approche d'une élection et fort utile pour freiner une opposition gênante.

Je citerai par exemple le recours aux contrôles fiscaux, aux recherches de police, les arrestations plus ou moins arbitraires d'hommes d'affaires finançant un parti d'opposition, et après les élections, les suites réservées par les autorités compétentes aux recours déposés.

- En **Arménie**, lors des élections législatives du 6 mai 2012, 494 plaintes ont été déposées pour violation du Code électoral, mais aucune des personnes concernées n'a été mise en accusation et de nombreuses affaires ont été classées sans suite. A titre d'exemples, environ 30 plaintes ont été déposées avant le scrutin, principalement au sujet du non-respect des règles applicables à la campagne, notamment l'achat de voix, le fait de faire campagne dans les établissements scolaires et des violations concernant l'affichage (Doc. 12937/24-05-2012/ APCE).

Les autorités peuvent également être tentées de mobiliser les pensionnaires des prisons, des hôpitaux et des écoles publiques mais aussi les forces armées et les grands corps du service public au profit de la collecte de soutiens en amont de la campagne électorale. Ces entités offrent également un formidable réseau de relais d'opinion avant le scrutin ainsi que le jour même du vote, ces établissements étant régulièrement amenés à tenir lieu de bureau de vote.

- En **Géorgie**, lors de la campagne électorale présidentielle du 27 octobre 2013, le Premier ministre et le candidat de la coalition « *Rêve Géorgien* » ont déclaré que si ce dernier n'obtenait pas au moins 60 % des voix au premier tour de l'élection, il retirerait sa candidature. Pour l'opposition, certains représentants d'ONG et des médias, « *cette déclaration représentaient une pression (...) sur les représentants des autorités locales et les commissions électorales afin d'assurer que le chiffre déclaré serait atteint* » (Doc. 13359/21-11-2013/APCE).
- En **Arménie**, lors des élections législatives du 6 mai 2012, les observateurs ont constaté que le parti politique PRA a fait participer activement des enseignants et des élèves à des événements liés à la campagne, y compris pendant les heures de cours. Dans un cas, des enseignants et des autorités locales ont même demandé aux parents d'assister à une manifestation organisée par le PRA. Du matériel de campagne du PRA et des drapeaux du parti étaient présents dans plusieurs bâtiments scolaires (Doc. 12937/24-05-2012/ APCE).

2) La polarisation politique de l'administration électorale

Il est d'usage que les élections soient organisées par l'administration électorale et qu'elles soient supervisées par le pouvoir exécutif (Ministère de l'Intérieur ou de la Justice). C'est

le cas dans les pays de longue tradition démocratique où le niveau de confiance des citoyens dans l'administration électorale est élevé, comme en **France**, en **Suède** ou en **Norvège**.

Les pays qui ont connu des manipulations du processus électoral optent plus souvent pour un système prévoyant une commission électorale indépendante destinée à éviter l'influence du parti au pouvoir. La multiplication des commissions électorales formellement indépendantes en Europe centrale et orientale a été régulièrement saluée par les observateurs internationaux et la Commission de Venise.

Aujourd'hui, l'exécutif ne se présente plus ouvertement comme l'unique superviseur des opérations électorales. Il accepte le plus souvent la création de commissions électorales indépendantes mais il conserve le contrôle sur leur composition.

- Par exemple, en **Serbie**, lors des élections législatives et présidentielle de 2012, le fait de ne pas avoir prévu de niveau régional au sein de l'administration électorale a une fois de plus été relevé par les observateurs internationaux, qui ont estimé que cela expliquait la surcharge des commissions électorales locales (Doc.12938/24-05-2012/APCE).
- En **Géorgie**, la mission préélectorale de l'Assemblée Parlementaire du Conseil de l'Europe, relative à l'élection présidentielle du 27 octobre 2013, a constaté la présence presque exclusive, à tous les niveaux des commissions électorales, des représentants des deux formations dominantes – « *Rêve Géorgien* » et « *Mouvement national uni* » et demandé d'accroître la représentation des partis politiques au sein des dites commissions (Doc.13359/21-11-2013/APCE).
- En **Ukraine**, la forte politisation de la Commission électorale centrale qui favorise le gouvernement en place dans la composition des commissions électorales a été dénoncée en 2007 et en 2013 (Doc. 11469/19-12-2007/APCE).
- En **Russie**, lors de la campagne pour l'élection présidentielle du 4 mars 2012, la mission de l'APCE a été informée par les candidats rencontrés que la Commission électorale centrale avait procédé aux remplacements des membres des commissions électorales de manière à exclure les personnes qui avaient refusé de commettre des irrégularités en faveur de Russie Unie lors des élections à la Douma du 4 décembre 2011 (Doc. 12833/23-01-2012/APCE).

3) L'organisation du vote : inscription des électeurs et groupes minoritaires

A. Vote à l'étranger

Dans les pays occidentaux, il est souvent possible de voter par correspondance et par procuration, bien que les modalités diffèrent largement d'un pays à l'autre, afin de prévenir les risques de fraude. Le vote par procuration ne peut être autorisé que s'il est soumis à des règles très strictes, là aussi pour éviter la fraude.

Par exemple, en **République de Moldova**, dont les ressortissants expatriés n'ont la possibilité de voter que depuis les élections législatives de 2010, le manque de transparence des critères fixés pour l'ouverture de bureaux de vote à l'étranger et l'inadéquation entre la répartition de ces bureaux de vote et celle des citoyens en âge de voter ont été sévèrement critiqués. Les partis au pouvoir ont notamment été accusés

d'avoir favorisé les pays où ils pouvaient compter sur le soutien de la majorité des électeurs (Doc. 12476/24-01-2011/APCE).

B. L'inscription des électeurs

L'inscription des électeurs sur les listes électorales est liée à l'exigence de l'universalité du suffrage car elle établit leur admissibilité à voter et assure la légitimité du processus électoral.

Malgré les progrès, des problèmes persistent avec notamment des listes imprécises et incomplètes qui peuvent contenir des noms d'électeurs inventés ou décédés, des électeurs doublement inscrits, ou encore ne pas inclure le nom de certains électeurs vivants.

- En **République de Moldova**, les rapports d'observation des élections législatives du 5 avril 2009 ont relevé « *le vote de personnes inconnues enregistrées comme résidant dans des appartements sans l'accord des propriétaires* » (Doc.11878/28-04/2009/APCE).
- A l'occasion des élections législatives anticipées du 27 avril 2014 et des élections présidentielles des 13 et 27 avril 2014 en **ex-République yougoslave de Macédoine**, plusieurs interlocuteurs de la mission d'observation ont soulevé le problème du grand nombre d'électeurs résidant à la même adresse. Etant donné que les dispositions légales ne précisent pas clairement quelle agence doit enquêter sur ce type de plainte, la question est restée en suspens, suscitant des doutes sur l'exactitude des listes électorales (Communiqué de presse de l'APCE, 13-03-2014, mission pré-électorale).
- En **Arménie**, lors des élections législatives du 6 mai 2012, en dépit de recommandations antérieures pour compiler une liste électorale exacte, l'échange de données entre les Institutions de l'Etat arménien n'a pas été suffisamment organisé. Contrairement aux différents indicateurs démographiques qui montrent une diminution de la population arménienne, le nombre de citoyens inscrits sur la liste électorale a été le seul à augmenter depuis l'élection présidentielle de 2008 (157 000 personnes de plus). Cela ne pouvait que contribuer au manque de confiance dans le processus électoral (Doc. 12937/24-05-2012/ APCE).

L'absence d'une liste permanente semble également favoriser les irrégularités. Les listes périodiques créent un climat favorable à la fraude électorale. La loi relative à la liste électorale d'Etat de l'Ukraine proposant une liste électorale « *permanente, informatisée et constamment mise à jour* » a ainsi permis de favoriser le recul de la fraude électorale au stade de l'inscription des électeurs.

Pour combler l'inexactitude des listes électorales, certains pays ont mis en place des listes électorales supplémentaires qui devraient viser les personnes ayant changé de domicile ou ayant atteint l'âge légal de vote depuis la publication de la liste définitive.

- La pratique des listes supplémentaires ne fait qu'augmenter les risques de manipulation des votes depuis l'étranger, qui ne peuvent pas être observés correctement. Ainsi, lors des élections législatives de 2010 en **République de Moldova**, des observateurs ont mis en cause le fait que presque tous les électeurs résidant à l'étranger avaient été ajoutés sur les listes supplémentaires le jour même du scrutin (Doc. 12476/24-01-2011/APCE).

- Au **Royaume-Uni**, le système d'inscription des électeurs sans identifiant personnel a été critiqué par la Commission de Venise et la Commission de suivi de l'APCE comme ouvrant la voie à la fraude électorale. La Commission de suivi de l'APCE a souligné que les élections sont démocratiques au Royaume-Uni, « *en dépit de la vulnérabilité du système électoral et celle-ci pourrait facilement affecter la nature démocratique de futures élections dans son ensemble en Grande-Bretagne* » (Doc. 13021/14-09-2012/APCE).

C. Restrictions relatives au droit de se présenter à une élection et à l'inscription des candidats

Les autorités appliquent parfois des restrictions au vote de groupes ethniques, sociaux ou religieux afin de se prémunir d'un vote identitaire qui leur serait défavorable lors des élections.

A l'inverse, certaines ONG ont indiqué que lors de la campagne présidentielle du 27 octobre 2013 en **Géorgie**, les représentants de l'opposition ont pu librement mener la campagne électorale dans les régions peuplées par les minorités nationales, ce qui semble ne pas avoir été le cas lors des élections précédentes (Doc.13359/21-11-2013/APCE).

De telles restrictions peuvent également exister à l'égard des candidats :

- A l'occasion des élections générales de 2010 en **Bosnie-Herzégovine**, des citoyens n'ont pas été autorisés à se présenter aux élections pour des raisons ethniques, ce qui constitue clairement une violation de la Convention européenne des droits de l'homme et a été maintes fois condamné par la Cour de Strasbourg et par la communauté internationale, y compris par l'Assemblée Parlementaire du Conseil de l'Europe (Doc. 12432/11-11-2010/APCE).
- Les observateurs internationaux regrettent ainsi l'existence de règles trop restrictives en matière de conditions de citoyenneté et/ou de durée de résidence sur le territoire national, notamment en **Azerbaïdjan** (au moins 10 ans de résidence), en **Arménie** (au moins 5 ans de résidence) ou à **Monaco** (au moins 5 ans de citoyenneté).

L'inscription des candidats est également une question importante puisque des conditions restrictives d'inscription et/ou une mise en place incorrecte de celles-ci peuvent empêcher les citoyens d'exercer leur droit de se présenter.

- En **Fédération de Russie**, le caractère restrictif de ces règles a été systématiquement critiqué par les observateurs internationaux car elles restreignent le droit des citoyens de créer des associations, pourtant protégé par la Constitution et les articles 10 et 11 de la Convention (la loi sur les partis politiques impose à tous les partis de disposer d'au moins 45 000 membres et de sections régionales regroupant au moins 450 membres dans plus de la moitié des sujets de la Fédération) (Doc. 12833/23-01-2012/APCE).
- Lors des élections législatives de 2010 en **Azerbaïdjan**, les observateurs ont condamné le fait que certains citoyens n'aient pas été autorisés à présenter leur candidature en raison d'erreurs techniques et sans considération du principe de la proportionnalité des erreurs (Doc.12475/24-01-2011/APCE). Selon certaines

allégations, des candidats auraient été victimes d'intimidations ou leurs sympathisants auraient été poussés à retirer leur signature des feuillets prévus à cet effet.

- En **Géorgie**, la mission d'observation de l'élection présidentielle du 27 octobre 2013, a émis un avis favorable sur le Code électoral, même si des inquiétudes ont été exprimées suite à l'adoption du nouveau Code électoral le 27 décembre 2011, modifié en juillet et septembre 2013, notamment en ce qui concerne les restrictions au droit d'éligibilité (durée de résidence excessive imposée aux candidats) et les restrictions au droit de vote appliquées aux citoyens placés dans un établissement pénitentiaire et du personnel militaire, l'absence de mécanisme efficace pour faciliter la participation des femmes aux élections et la constitution de listes électorales qui incluaient 98 000 électeurs dont l'adresse mentionnée sur leur carte d'identité n'était pas leur véritable adresse (Doc.13359/21-11-2013/APCE).

4) Falsification des résultats électoraux

En matière d'abus de ressources administratives, j'entends par falsification des résultats l'ensemble des mesures matérielles qui peuvent être prises pour influencer sur ceux-ci, en excluant volontairement l'achat de voix direct ou indirect, qui caractérise un acte de corruption. Cela concerne ainsi l'ajout de bulletins au nom de citoyens qui ne sont pas venus voter, la détérioration volontaire de bulletins en faveur d'un candidat d'opposition afin de faire invalider sa candidature, ou encore le contrôle, par les autorités, des personnels participant aux Commissions électorales, associés aux mesures visant à empêcher les missions indépendantes d'observation des élections.

- Les élections municipales au **Monténégro** du 25 mai 2014 ont révélé 800 irrégularités, incluant des registres de vote parallèles, la violation du secret du scrutin, le recours abusif au vote par correspondance et les cas de vote multiple. L'ensemble des irrégularités a été porté à la connaissance des autorités dans les délais impartis par la législation en vigueur, mais toutes les affaires ont cependant été rejetées par les entités responsables (*Transparency International*/Communiqué de presse/06-06-2014).
- En **Géorgie**, à l'occasion du scrutin du 27 octobre 2013, il a été constaté, le jour du scrutin, que le dispositif d'enregistrement vidéo et de prise des photos dans les bureaux de vote autorisé par le Code électoral dans un certain nombre de bureaux de vote, a gêné voire intimidé de nombreux électeurs. Les observateurs ont par ailleurs relevé des cas d'interventions non autorisées des observateurs locaux ou des partis politiques dans le travail des commissions de bureau de vote (Doc.13359/21-11-2013/APCE).
- En **Arménie**, lors des élections législatives du 6 mai 2012, des personnes portant un badge « *Maxinfo* » ont été observées en train de filmer en continu avec de petites caméras dans un grand nombre de bureaux de vote, de façon extrêmement intrusive, ce qui causait des tensions parmi les électeurs, dont tous les mouvements étaient filmés à une distance de 0,5 m. Dans un bureau de vote, la personne représentant « *Maxinfo* » avait installé sa caméra sur l'isoloir (Doc. 12937/24-05-2012/ APCE).

5) Contrôle des « mass médias »

Dès les premières missions d'observation des élections par l'Assemblée, le rôle des médias a été évoqué comme un élément crucial dans le déroulement des processus électoraux. En effet, déjà en 1992 le Manuel à l'usage des observateurs d'élections prescrivait de les examiner afin d'observer notamment « *s'ils penchent pour une cause particulière ou s'ils sont vraiment indépendants* » et de « *vérifier s'ils sont dans les mains d'un seul parti politique* ».

Les lignes directrices sur l'analyse des médias au cours des missions d'observation des élections, éditées en juin 2009 par la Commission de Venise, en partenariat avec le BIDDH, fournissent par ailleurs un inventaire détaillé des divers éléments à prendre en compte lors d'une évaluation (CDL-AD(2009)031/Commission de Venise), comme le temps de parole accordé aux candidats et les sondages d'opinion.

Les mass médias concernent la télévision ainsi que la radio et, dans une mesure croissante, les réseaux sociaux, dont le rôle est exponentiel pour déjouer la propagande des autorités. Le contrôle des mass médias est un outil stratégique fondamental aux mains des autorités en place car ils constituent la principale source d'information de la population dans une large majorité des Etats.

- En **Fédération de Russie**, selon le rapport de l'APCE relatif à l'élection présidentielle de 2008, « *l'égalité d'accès des candidats aux médias et au domaine public en général ne s'est pas améliorée, ce qui remet en cause l'équité de l'élection* » (Doc. 11536/17-03-2008/APCE). Un tel constat prévaut depuis l'observation de l'élection présidentielle de 1996 (Doc. 7633, Addendum I/06-09-1996/APCE). Il a été réitéré à l'occasion des élections législatives de 1999 (Doc. 8623/24-01-2010/APCE) et présidentielles du 26 mars 2000 (Doc. 8693/03-04/2000/APCE).
- En outre, lors de l'élection présidentielle du 4 mars 2012, les observateurs internationaux de l'APCE ont souligné le fait que « *les conditions étaient clairement faussées en faveur d'un candidat, le Premier ministre Poutine, qui a bénéficié d'un net avantage en termes de présence dans les médias; de plus, les ressources publiques ont été mobilisées pour le soutenir à l'échelon régional. A différents niveaux, les institutions publiques ont chargé les structures subordonnées d'organiser et de faciliter les meetings de campagne de M. Poutine. Les collectivités locales ont utilisé les moyens de communication officiels (sites web et journaux institutionnels) en faveur de la campagne de M. Poutine* » (Doc. 12903/23-04-2012/APCE).
- En **Serbie**, lors des élections législatives anticipées du 16 mars 2014, les observateurs de l'APCE ont souligné dans le communiqué de presse publié à l'issue du scrutin, que « *le paysage médiatique était pluraliste, mais l'indépendance journalistique faisait défaut, tout comme le manque de transparence concernant les propriétaires des médias* » (Doc. 13516/22-05-2014/APCE).
- En **Arménie**, la mission de l'APCE a observé les élections législatives du 6 mai 2012 et constaté des progrès significatifs en matière d'impartialité des médias, en notant que les principaux candidats politiques en lice ont bénéficié d'une bonne couverture médiatique. De même, la radiotélévision publique a offert aux partis politiques du temps de passage à l'antenne gratuit et payant, ainsi que le prévoit le

Code électoral, ce qui semble être un progrès par rapport à la période ayant précédé la campagne officielle (Doc. 12937/24-05-2012/APCE).

- En **Albanie**, les observateurs internationaux ont constaté différentes irrégularités, lors des élections législatives du 28 juin 2009, qui semblent persister d'une élection à l'autre : « *le manque d'indépendance éditoriale dans un grand nombre de médias, l'absence de transparence concernant le financement des médias, l'obscurité des liens entre les propriétaires des médias et les leaders des partis politiques* » (Doc. 12007/16-09-2009/APCE).
- Au cours du scrutin parlementaire organisé en **République de Moldova** le 6 mars 2005, la « *réglementation trop restrictive et parfois ambiguë des médias a sérieusement entravé la possibilité pour les électeurs d'obtenir les informations nécessaires pour faire un choix éclairé le jour du scrutin* ». Par ailleurs, la « *télévision et la radio publiques ont fait preuve d'un parti pris évident en faveur du parti au pouvoir, tout comme la chaîne nationale privée NIT* » (Doc. 10480/29-03-2005/APCE). Les élections législatives suivantes, en avril 2009, ont confirmé cette appréciation négative (Doc. 11870/27-04-2009/APCE).
- L'**Azerbaïdjan** est un autre pays marqué par un environnement médiatique encore trop éloigné des standards internationaux. Depuis la première mission déployée par l'APCE, en 1995, le « *quasimonopole du parti au pouvoir à la télévision* » a été dénoncé de manière récurrente (Doc. 7430 Addendum III/17-01/1996/APCE), (Doc. 8256/03-11-1998, présidentielle de 1998) et (Doc. 11769/27-11-2008/APCE, présidentielle de 2008). De même, à l'occasion des élections présidentielles du 9 octobre 2013, les observateurs internationaux et *Amnesty International* ont dénoncé une campagne de répression à l'approche du scrutin, avec nombre d'arrestations et des lois pour bâillonner toute critique jusque sur les media sociaux (Doc.13358/21-11-2013/APCE).
- En « **ex-République yougoslave de Macédoine** », il existe de nombreux médias dans le pays, mais les plus importants sont indirectement contrôlés par le parti au pouvoir, et le gouvernement y constitue le plus gros annonceur. Par conséquent, lors des élections présidentielles des 10 et 14 avril 2014, la plupart des médias ont présenté sous un jour favorable le parti au pouvoir VMRO-DPMNE et son candidat présidentiel, et principalement de façon négative le SDSM et son candidat. De même, les médias de langue albanaise ont favorisé le DUI par rapport aux autres candidats albanais (Doc. Doc. 13517/26-05-2014/APCE).
- Lors de la campagne présidentielle, les candidats n'ont eu qu'une occasion de se confronter au président sortant, Gjorge Ivanov, lors d'un débat télévisé sur la chaîne publique MRT1. Après le débat, cette chaîne publique a organisé une discussion qui s'est principalement centrée sur les échecs perçus du principal candidat d'opposition, Stevo Pendarovski.

Propos conclusifs : poursuivre une approche concertée avec les acteurs du changement et favoriser la transparence et la coopération internationale

En 20 ans d'observation des élections, il a été constaté des progrès notoires sur le continent européen en matière de législations nationales afin de garantir plus de transparence et d'équité dans les processus électoraux.

La lutte contre les abus de ressources publiques, les abus de pouvoir et de manière plus large contre la corruption dans les processus électoraux, implique nécessairement une approche concertée entre les autorités et la société civile ainsi qu'un sens des responsabilités de la part de tous les acteurs politiques et des milieux d'affaires (« *multi-stakeholder solutions* »).

Plusieurs actions méritent ainsi d'être encouragées pour lutter contre l'abus de ressources administratives pendant les processus électoraux:

Au niveau international

- Favoriser la ratification des instruments internationaux et la mise en œuvre effective des normes internationales, contraignantes ou non²⁰.

Au niveau international/national

- Renforcer la protection des donneurs d'alerte et établir des normes internationales pour éviter les phénomènes de représailles dans le secteur public mais aussi privé ;
- Assurer une liberté d'expression effective, notamment sur les nouveaux supports de communication (*Facebook, Twitter, Instagram, etc*) qui permettent de renforcer la transparence en diffusant les informations de manière virale.

Au niveau national/local

- Former les fonctionnaires et sanctionner les infractions commises pour renforcer l'intégrité du processus électoral ;
- Prévoir des dispositions faisant clairement la distinction entre les responsables politiquement actifs et les fonctionnaires, et déterminer leur degré de responsabilité respectif ;
- Mettre en place des règles détaillées et transparentes concernant le budget public, son affectation et sa bonne utilisation ;
- Assurer la participation de la société civile et des ONG pour renforcer la confiance du public.

Les actions menées doivent permettre de nourrir une culture politique et juridique de l'équité, tendant à ce que tous les membres de la classe politique (notamment les pouvoirs en place), les juges, les fonctionnaires et tous les responsables qui interviennent au sein de la société dans le processus électoral de renouvellement du pouvoir politique se conforment à la loi mais aussi aux normes éthiques dans l'accomplissement de leurs missions.

Les codes de bonnes pratiques méritent d'être encouragés afin de développer une culture de normes éthiques en matière d'administration des élections et de contentieux électoral.

²⁰ Conventions et textes internationaux de référence :

- 1) Le Document de Copenhague de 1990 de la Conférence sur la dimension humaine de la CSCE (OSCE) qui souligne la nécessité d'une « séparation claire entre l'Etat et les partis politiques ». Ces derniers doivent recevoir « les garanties juridiques nécessaires pour leur permettre de se mesurer sur la base d'une égalité de traitement devant la loi et les autorités » ;
- 2) Le Pacte international relatif aux droits civils et politiques (ICCPR) ;
- 3) La Convention des Nations Unies contre la corruption (CNUCC) ;
- 4) La Convention de l'OCDE contre la Corruption (OECD Anti-Bribery Convention) ;
- 5) La Recommandation de 2003 du Comité des Ministres du Conseil de l'Europe sur les règles communes contre la corruption dans le financement des partis politiques et des campagnes électorales, ainsi que les études et avis de la Commission Européenne pour la Démocratie par le Droit (Commission de Venise) et du GRECO.

Toutefois, le succès de cette codification dépend de son accessibilité pour les agents publics directement concernés.

Un haut degré d'indépendance du pouvoir judiciaire joue également un rôle central pour réprimer les délits commis en matière de ressources administratives.

J'ajouterai que ces efforts pédagogiques nécessitent également d'accepter le respect du rôle de l'opposition dans un parlement démocratique. C'est justement parce que le rôle de l'opposition et l'alternance au pouvoir ne sont pas admis par le pouvoir en place que l'abus de ressources administratives peut être constaté.

La transparence et le respect du principe de liberté de l'information doivent ainsi prévaloir tout au long du processus électoral.

A cet égard, les médias classiques et les médias sociaux jouent un rôle crucial, aux côtés des *ombudsmen*, des Organisations internationales et des ONG, pour favoriser la transparence et l'intégrité du processus électoral, fondement même d'un régime démocratique, comme le rappelle le Document de Copenhague, en son paragraphe 6, « *la volonté du peuple, exprimée librement et équitablement dans le cadre d'élections périodiques et honnêtes, est le fondement de l'autorité et de la légitimité de tout gouvernement* ».

VI. OSCE/ODIHR observation and reporting on misuse of administrative resources in elections by Ms Tatyana Bogussevich, Senior Election Advisor, Office for Democratic Institutions and Human Rights of the OSCE (OSCE/ODIHR)

In the last years, the issue of misuse of administrative resources has featured in a number of elections observed by the ODIHR and has become one of the areas that ODIHR looks into in the framework of its observation activities. Final reports published detailed the observations and provided recommendations related to the misuse of administrative resources and have also been subject of discussions with the OSCE participating States, including as part of follow-up and legislative review processes.

This area, however, remains under-researched, and there is still insufficient practical guidance on how the misuse of administrative resources could be monitored in the context of election observation and be tackled in a longer-term perspective. There are, nevertheless, a number of relevant international standards and good practice that provide a basis for assessment. Many of these standards are usefully referenced in the recently adopted Venice Commission's Report on the Misuse of Administrative Resources during Electoral Processes.

This includes several OSCE documents stressing the requirement for a clear separation between the State and political parties, obliging States to provide legal guarantees enabling parties to compete on a basis of equal treatment, emphasizing an obligation for participating States to eliminate all forms of corruption and to implement effective and resolute measures against it. The framework also includes equality of opportunity and anti-corruption provisions of the ICCPR and UNCAC, respectively, as well as the 2003 Council of Europe Committee of Ministers Recommendation on common rules against corruption in the funding of political parties and electoral campaigns. Finally, the 2010 ODIHR and Venice Commission *Guidelines on Political Party Regulation*, as well as ODIHR's Election Observation Handbook both include sections on this issue. All these documents serve as reference points and benchmarks in ODIHR's assessments.

While the misuse of administrative resources mostly manifests itself in the run-up to and during elections, it needs to be underscored that it is a complex and frequently a framework issue requiring comprehensive and long-term analysis. The effect of abuse of state resources is not limited to distorting electoral competition. This malpractice has a damaging impact on democratic processes and the political system, in general, by greatly affecting the quality of governance. In addition to creating economic problems due to inefficient allocation of public material or financial resources, such practices may negatively affect civil liberties and the functioning of State institutions.

While there may be many different definitions of misuse of administrative resources emphasizing its various elements and effects, ODIHR generally understands it as any use of publicly-owned resources that affects the financing of political parties or elections in such a way as to benefit one party or candidate at the expense of other contenders and/or the State.

It is for this reason that in the context of ODIHR election observation this issue is looked at in particular through the prism of fairness, level playing field, and equality of opportunities among electoral contestants. Most commonly, the issue is examined as part of review of

campaign environment and campaign finance regulation and practice, and the conclusions feature in the respective parts of ODIHR's final reports.

In elections where the issue of misuse of administrative resources was observed, it manifested itself in a number of different ways.

Cases of misuse of administrative resources were frequently related to the lack of separation between activities of governing parties or incumbents in their official capacities and their electoral campaigns and the blurring of lines between the two. This included such practices as active engagement of state employees in campaign activities in support of incumbents during official working hours (this is particularly prominent in countries where independent civil service is not well developed and the state employees and political parties' activists are not clearly separated). Widely encountered was the involvement of state institutions, state-owned enterprises or state-supported organisations in campaign activities, with employees of such institutions and organizations being coerced into attending incumbents' campaign events. Frequently, incumbents and governing parties had privileged access during election campaigns to public premises, offices, equipment, and transportation, without related expenses being either declared or paid for. Among the practices amounting to misuse of institutional resources, many observations of unequal or biased coverage by state-affiliated media of political contenders were made.

In addition to the misuse of institutional and material resources, ODIHR has also observed practices amounting to the misuse of public financial resources. This included cases of disbursement of public funds in the course of the election campaign not included in any relevant budget item without any clear explanation; distribution to voters of goods and services paid for from public funds; or use of public services free of charge or at discounted rates significantly below the market value. Such types of misuses are usually more difficult to identify and verify in the framework of election observation missions.

In the period of 2010-2013, ODIHR made explicit recommendations related to the misuse of administrative resources in 12 OSCE participating States and in a few instances reiterated these recommendations in reports issued on subsequent elections.

Recommendations made can generally be grouped under the following four categories:

- o Most commonly, ODIHR recommended that legal provisions be introduced in the legislation explicitly prohibiting the misuse of public resources for campaign purposes. This included recommendations to stipulate offences for violations of corresponding provisions.
- o Where legal provisions against the misuse of administrative resources already existed, a number of recommendations suggested that these provisions be clarified, detailed or tightened, including by ensuring that the legislation is clear about the scope of regulation, what categories of officials provisions apply to, and that there are clear and timely judicial review mechanisms for such violations.
- o In a few reports ODIHR recommended that institutional mechanisms for monitoring possible abuse of administrative resources for campaign purposes be introduced or strengthened. In these cases ODIHR found that while relevant legal regulation was in place, it was not backed with sufficient oversight structures to monitor their implementation. It was emphasized that oversight bodies should be vested with sufficient authority and have the necessary resources to conduct comprehensive monitoring.
- o Finally, in several instances, ODIHR found that it was the insufficient enforcement of existing legal provisions that undermined the effectiveness of

regulation. In these cases, ODIHR called on the States to resolutely address instances of abuse and to hold those in violation accountable. In addition, ODIHR suggested that consideration could be given to the adoption of Codes of Conduct on the non-use of administrative resources and to training on ethical and professional standards to public officials.

While ODIHR's experience in observing the issue of misuse of administrative resources has been positive overall, allow me to share a few observations on some of the challenges to comprehensive monitoring of those issues in the framework of election observation missions that were encountered.

- o Firstly, practical guidelines and methodology on what and how to monitor could be further developed to serve as guidance for observation missions.
- o Secondly, in view of a frequently complex nature of the issue, short timeframe of election observation missions would at times not permit comprehensive enough assessment. Relevant events frequently happen well ahead of missions' arrival.
- o In addition, comprehensive analysis requires time and access to relevant information, including for instance to state/local budgets. Such access is not always possible to obtain. Moreover, observation missions' capacity to analyse such information in detail is frequently limited. ODIHR's approach in this regard is that it reports on what is observable and points to the issues, and believes that it is up to the national bodies to investigate further. The role of citizen observers in this context is also crucial.
- o Finally, despite the significant potential impact of abuses of state resources on the fairness of an electoral process, regrettably follow-up to recommendations related to such issues has been limited, especially when the recommendations called for implementation and enforcement, both of which are mostly contingent on political will.

In looking ahead and seeking to further develop its approaches to this issue, ODIHR was pleased to offer its comments to the Venice Commission's Report on the Misuse of Administrative Resources. ODIHR's Elections and Democratization Departments are also currently working on internal draft guidelines on this subject, which could then serve to support ODIHR's work in this area.

VII. OAS Electoral Observation Missions' work on political financing: Assessing the misuse of administrative resources by Mr Sebastián Molano, Specialist of the Department of Electoral Co-operation and Observation (DECO), Organisation of American States

Background

Since 1962, the Organization of American States deploys Electoral Observation Missions (OAS/EOMs) throughout the continent. To the date, the OAS has deployed more than 200 missions in 27 member states. In the framework of these OAS/EOMs, the relation between money and politics has arisen as one of the most important, yet complex topics affecting equity and transparency in the electoral competition.

The OAS has an institutional mandate regarding this matter. The Inter-American Democratic Charter, its article 5 establishes that “special attention will be paid to the problems associated with the high cost of election campaigns and the establishment of a balanced and transparent system for their financing”²¹. In addition, the empirical evidence collected by the OAS/EOMs teams throughout the years have identified three key elements: 1) lack of regulation on political financing; 2) common perception of disparity in the access of financing resources; and 3) high demand to mitigate distortions created by money in politics in the relationship of *one citizen, one vote*.

The OAS work on assessing Political Financing in its EOMs

In spite of this, the assessment performed by the OAS/EOMs teams on these matters was based on anecdotal, subjective information, limiting its ability to make recommendations regarding the likeliness of misusing public resources in elections. For instance, in the electoral cycle from 2000 to 2006, out of 39 EOMs only 14 (36%) have included recommendations regarding political financing. The challenge faced by the OAS was how to assess/measure political financing in the framework of its EOMs?

In order to tackle this situation, starting in 2010, the Department of Electoral Cooperation and Observation (DECO) developed a [methodological tool to assess equity and transparency in the electoral competition](#), as part of its work. The Political Financing Methodology allows the OAS to perform an objective, verifiable, quantitative assessment of the political financing situation in the observed country. To do this, the OAS created 8 indicators and 33 variables that allow it to collect information regarding the conditions of equity²² and transparency²³ in the system observed. Since the official implementation of this methodology in 2011, 24 out of 27 EOMs (89%) included recommendations regarding political financing.

As part of the assessment performed on the equity of the political financing system observed, one of these indicators focuses on the *prohibition of the misuse of political*

²¹ Inter-American Democratic Charter, available http://www.oas.org/charter/docs/resolution1_en_p4.htm

²² Observing Political-Electoral Financing Systems: A manual for OAS Electoral Observation Missions, “An equitable political financing system is a system that, through the regulation of campaign resources, seeks to guarantee equal conditions in terms of the right to elect and to be elected. Regulation entails promoting resources that favor equal conditions, restricting those with adverse effects, and limiting campaign spending” (page 13) Available from: http://www.oas.org/es/sap/deco/pubs/manuales/MOE_Manual_e.PDF

²³ Observing Political-Electoral Financing Systems: A manual for OAS Electoral Observation Missions, “A transparent political financing system is a system that guarantees the necessary conditions for exercising the right to information on the flow of economic resources for party campaigns. The requirements for a transparent system are: party reporting, government oversight, a penalty system, and access to information” (page 19) Available from: http://www.oas.org/es/sap/deco/pubs/manuales/MOE_Manual_e.PDF

resources. This variable is very important as public resources are in principle used to promote the common good while private resources pursue private benefits. As a result, the equity in a political financing system might be compromised when public resources are used for electoral purposes.

The OAS identified a recurrent issue emerging in every election observed regarding the likelihood of misuse of public resources. In order to assess this indicator, four variables to assess conditions that facilitate the misuse of public resources in the elections were defined: 1) publicity of government affairs; 2) use of public office for campaign purposes; 3) use of resources in campaigns; and 4) vote buying and political patronage.

This new approach towards assessing the conditions that facilitate the misuse of public resources was a result of the deepening on political financing analysis. It also was the consequence of the current political conditions of the region where such practices affect the equity in the electoral competition. Some examples of these practices are: an incumbent running for re-election and how to assess the duality of candidate and public servant; also, the use of public offices and public resources with electoral purposes by the First Lady Office, among others.

In addition, the current methodology assesses the potential misuse of political resources at a national level *vis-à-vis* the local level. This is an important limitation as local elections create more conditions for the use of public resources as their overseeing is weaker and the relevance of the local governments is higher. As a result, the challenge for the OAS now was on how to assess/measure the conditions for the misuse of political resources in the framework of its EOMs.

In the implementation of the political financing methodology became clear that the assessment performed by these four variables fell short in allowing the OAS/EOMs teams to make public statements about said conditions or to formulate recommendations to mitigate and prevent such misuse. Once again, the challenge was to move from a qualitative, subjective assessment towards a more robust, objective, verifiable assessment.

UPRAT: “Use of Public Resources Assessment Tool”

To face this challenge, in 2013, the OAS teamed with the Georgetown University’s McCourt School of Public Policy to develop a practical tool for allowing the OAS/EOMs to develop sub-variables that facilitate the assessment of the potential misuse of public resources in the elections observed. Using the assessment of the legal framework in each country as a starting point, the team created the ***Use of Public Resources Assessment Tool (UPRAT)***. This tool was designed to facilitate the analytical process of assessing the four categories aforementioned to each country observed. UPRAT systematically organizes the appraisal of information to interpret the overall conditions in any observed country. With UPRAT, the OAS has a set of twenty-four sub variables to measure and observe the four key variables of the misuse of public resources:

Variable 1 - Publicity of Government Affairs

Sub-variable 1: Mass Media Structure

Sub-variable 2: Electoral Monitoring Body's role and Media Monitoring

Sub-variable 3: Legal frameworks and regulation of Mass Media

Sub-variable 4: Free Media Access

Sub-variable 5: Media Spending

Sub-variable 6: Debate

Sub-variable 7: Government publicity during elections

Variable 2 - Use of Public Office for Campaign Purposes

Sub-Variable 1: Existence of a legal framework that defines the use of public office for political purposes

Sub-Variable 2: Clear definitions of the sanctions that relate to unlawful use of public office

Sub-Variable 3: The use of the First Lady's office

Sub-Variable 4: Politicization of public servants

Sub-Variable 5: Influence over access to public resources

Sub-Variable 1: Assessing the Legal Framework

Sub-Variable 2: Reporting on the Use of Funds in Practice

Sub-Variable 3: Conditions for the Presence and Magnitude of Political Budget Cycles

Sub-Variable 4: Changes in Budget Composition

Sub-Variable 5: Assessing Alterations in Social Programs during Electoral Periods

Variable 3 - Use of Resources in Campaigns

Variable 4 - Vote Buying (VB) and Political Patronage (PP)

Sub-variable 1: A Legal framework that clearly defines VB & PP as electoral offenses

Sub-variable 2: Clear definitions of sanctions

Sub-variable 3: Legal framework that protects voters with disabilities

Sub-variable 4: Institutions and resources for the enforcement of legal framework on VB &

Sub-variable 5: Time and resources dedicated to pre-electoral VB & PP activities

Sub-Variable 6: Vote buyer's ability to monitor voter's ballot

Sub-Variable 7: Observed and reported cases of vote buying and patronage

UPRAT uses data gathered from multiple sources and intends to triangulate insights gained from voters, candidates, political parties, government, officials and civil society. In spite of the multiple challenges in terms of data availability, time constrains and EOMs' nature, today the OAS has an objective, verifiable, quantitative tool that will allow it to make recommendations on how to mitigate and prevent the misuse of public resources in electoral processes. This tool has been tested retrospectively as a pilot in the recent presidential elections in El Salvador and Costa Rica. The OAS expects to implement UPRAT in real time in the upcoming 2015 electoral year.

Conclusions

The assessment of the likeliness of misuse of public resources in elections is a challenging task, yet a necessary issue to tackle, in order to improve the conditions of the electoral competition among parties and candidates. The OAS has understood the importance of this situation and the creation of tools such as UPRAT is a sample of how the organization is using its EOMs to respond to the changes observed in the political and electoral context in Latin America and the Caribbean. Thanks to the systematic collection of information on this topic, the OAS has a more robust and objective set of indicators that provide information to make specific recommendations regarding the conditions for the misuse of public resources in the election observed.

THIRD PLENARY SESSION: PREVENTING AND COMBATING THE MISUSE OF ADMINISTRATIVE RESOURCES, A KEY ISSUE TO REINFORCE CONFIDENCE IN DEMOCRATIC ELECTORAL PROCESSES

VIII. External/Internal audit/controls: detecting the misuses of administrative resources by Mr Yves-Marie Doublet, Deputy Director, Secretariat General, National Assembly of France, Scientific Expert to the Group of States against corruption (GRECO)

1. Evaluations of the GRECO

The GRECO²⁴ is a structure of the Council of Europe. It has been established in 1999 and is composed of representatives of 49 member states²⁵ of the Council of Europe. Its purpose is to monitor states compliance with anticorruption standards. The relevant standard for this supervision is provided for by the recommendation of the Council of Europe of 2003 on common rules in the funding of political parties and electoral campaigns²⁶. According to this document, party financing legislation should include stipulations regulating transparency, monitoring of the implementation of regulations on party and electoral campaign funding and enforcement to ensure that these regulations are not evaded. Penalties should be imposed too when the law is breached.

An evaluation round on party and electoral campaign funding laws in the member states regarding this recommendation was launched by the GRECO in 2007. The method of evaluation of the legislation on party and electoral campaign funding of member states is based on replies to a questionnaire of the GRECO and on meetings of its experts with officials and representatives of civil society of the host country on the spot. This peer review approach leads to recommendations to the member states for changing rules on political party and electoral funding in respect to the recommendation of the Council of Europe of 2003. 46 member states have been evaluated at the moment.

Some member states have amended their rules after their evaluation by the GRECO: Albania, Bulgaria, Finland, Island, Luxemburg and Norway for instance. The compliance procedure is the following: the GRECO assesses the implementation of its recommendations 18 months after the release of the evaluation. Whether these recommendations have been implemented satisfactorily or partly or they have not been implemented at all. If not all recommendations have been complied with, a new period of 18 months is opened. The approach for steps for members which have not complied with the recommendations is a graduate one. The last step is a letter from the Secretary General of the Council of Europe to the Minister of foreign affairs of the member state²⁷. If we consider the outcome of this review, 22% of the recommendations have been implemented satisfactorily, 5 % have been implemented in a satisfactory manner, 40% have been partly implemented and 33 % have not been implemented.

²⁴ http://www.coe.int/t/dghl/monitoring/greco/default_en.asp

²⁵ Currently it comprises the 47 Council of Europe member states, Belarus and the United States of America.

²⁶ Adopted by the Committee of Ministers on 8 April 2003.

²⁷ http://www.coe.int/t/dghl/monitoring/greco/documents/Greco%282012%2926_RulesOfProcedure_EN.pdf

In the forewords of the 14th General activity report of the GRECO released on 19 June 2014, the chairman of the GRECO considers that political financing “*has turned out to be the ‘hottest potato’ GRECO has ever dealt with*”. In this report the GRECO expresses concern about the little progress made by a significant number of European countries in implementing its recommendations on transparency of political funding. It partly attributes this situation to the political sensitivity of party and campaign funding and to the fact that in this field, GRECO’s monitoring has extended to areas beyond direct governmental control and under the influence of political parties and parliaments themselves.

But abuse of public resources is not a crucial concern in these evaluations in comparison with other issues. Evaluations of the GRECO have focused their attention on regulating private funding. They especially pleaded too for a more efficient monitoring and called on states for effective, proportionate and dissuasive sanctions considering that these ones were very often inappropriate or not applied. We have to remind also that some states such as Latvia, Malta and the United Kingdom don’t have any public funding. In a State as Armenia public funding has a minor role.

2. Abuse of Public Resources

Standards on abuse of public resources for this supervision of the rules on party and electoral campaign funding have to be quoted.

Article 1 of the abovementioned recommendation of the Council of Europe of 2003 states that: “*objective, fair and reasonable criteria should be applied regarding the distribution of State support*”. It means levels of public support should be calculated on the basis of objective criteria. The criteria most frequently used are the number of votes cast for the party, the number of parliamentary seats or a combination of the two. According to Article 5.c of the Recommendation: “*States should prohibit legal entities under the control of the State or other public authorities from making donations to political parties*”. Further guidance is available in a recommendation of the Assembly of the Council of Europe from 2001 (1516): European countries should maintain “*a ban on donations from States enterprises, enterprises under State control or firms which provide goods or services to the public administration sector*”. The OSCE issued guidelines too. For the OSCE the legal framework on political funding must provide for rules to “*ensure that State resources are not misused for campaign purposes and that they are used only with strict adherence to the applicable legal provisions*”. The Observation Handbook on elections of the OSCE includes following recommendations: “*Regulations on campaign financing should not favour or discriminate against any party or candidate.. Government office space, vehicles and telecommunications equipment should not be used for partisan purposes unless equal access is provided to all contestants*”.

If the incumbent party may be favoured at the expense of the opposition, in practice abuse of public resources for partisan ends may have different forms²⁸:

- In Austria GRECO noted that ministries or municipal administrations with a public policy message during electoral campaigns bought advertising space in free newspapers.
- Public facilities may be used by all elected officials in the National Assembly of Bulgaria as it was noted by the GRECO. Use of official cars, equipments, secretariat services by elected officials who are candidates has been observed by the GRECO in Georgia, Montenegro, Romania and Russia. GRECO reported the payment of 850

²⁸ Various examples of these abuses all around the world are mentioned in the Political Finance Oversight Handbook edited by Magnus Ohman for the International Foundation for Electoral systems in 2013.

public officials in the Greek national Parliament and in the European Parliament who worked for the MPs and the political parties. In Montenegro public companies were instructed to award grants or debt remissions related to electricity and water bills to consumers, if we refer to a recent report of the European Union.

Nevertheless the issue of abuse of public resources is a matter of political culture. Before the recommendations of the GRECO to Norway, Norwegian political parties heavily depended upon public funding but this system was not heavily criticized because it relied on two characteristics of the country: transparency and trust. So if political parties are moving in a transparent, democratic environment with a culture of legality, the risk of misuse of public resources is weaker.

Rules against abuse of public resources apply in several countries to prevent such risks. In Moldova trustees of candidates having public functions may not use public means for electoral campaigns. In Montenegro paid advertising of State bodies and local self-Government bodies, public companies, public institutions shall be prohibited. Abusing public office in elections to favour a political party is forbidden. In Slovenia preelection meetings shall not be allowed in the premises of Public entities.

French electoral code prohibits all public figures and public sector bodies corporate from giving donations or other benefits to a candidate nor any other provision requires campaign accounts to be rejected solely on the ground that the candidate enjoyed a benefit within the meaning of these provisions. It is for the monitoring body and for the electoral court to assess whether the campaign accounts should be rejected accordingly, having regard to all the circumstances and in particular to the value of the benefit, the conditions in which the benefit was given and its amount. For instance the occasional use of an official vehicle by a candidate given the amount, the nature and the benefit does not justify rejection of the candidate's campaign account.

So in practice laws and regulations on abuse of public resources may be simply ignored, altered or interpreted.

3. Problems in implementing regulations on abuse of public resources

Shortages of regulations on party and electoral campaign funding and weaknesses of monitoring of these regulations may explain the problems with implementing rules against abuse of public resources in the political competition.

In its reports the GRECO listed several loopholes of the regulatory framework on public resources. The first evaluation of the Austrian legislation noted that public inkind funding was not regulated. Donations were understood as direct monetary contributions. The GRECO invited Austria to regulate public inkind funding. The same applied in Ukraine. In Bulgaria the GRECO considered that the criteria concerning the use of public facilities for election campaign purposes were not stringent enough. Lack of distinction between the State and the Governing party was an important area of concern in Georgia. The report on the Greek rules recommended to properly reflect in parties accounts services rendered by public officials to assist MPs. In Montenegro ongoing changes in the regulations on undertaking of electricity and water bills by public companies to prohibit these facilities have to be mentioned.

As well as for transparency of private funding, supervision of use of public resources is a key issue. Supervisory bodies will be able to carry out their duties if they are independent.

This independence must apply both to auditors and to public supervisory bodies. Membership of a party may not be automatically incompatible with the role of an auditor in Germany, Hungary, Ireland, Iceland and Russia while an independence requirement applies in Moldova and Norway. GRECO noted that two major political parties had the same auditor in the Czech Republic.

Independence is opened to question when monitoring bodies have an exclusively political membership either in the hands of Parliament (Belgium, Czech Republic, Estonia before the amendment to the relevant act and Germany) or in the hands of the Executive power (Azerbaijan, Finland before the reform and Latvia for instance). As independent monitoring bodies we may mention Estonia, France and Norway where the auditing committee is exclusively composed by professional auditors. If the monitoring body may be a single one in certain countries (Finland, France, Germany, Norway and the United Kingdom), this supervision may be split in different units with a risk of overlap between these various structures (Albania, Belgium, Lithuania and Slovakia for instance).

But monitoring of private and public resources is not just a problem of status. The mere fact of having a supervision body is not in itself a guarantee of effectiveness. Many of the evaluation reports of the GRECO showed that the oversight exercised by the monitoring bodies to ensure compliance with political financing legislation failed to extend beyond data political parties or candidates supply. This is obvious in Austria, Croatia, Estonia, France, Poland, Slovakia, Slovenia and Turkey for instance. Formal monitoring does not allow for the identification of funding which may bypass official accountancy in Russia too.

The scope of the supervision body's oversight will vary according to whether it covers all or just a part of the political funding channels. The GRECO observed for instance that electoral accounts of individual candidates haven't to be monitored in Belgium. Funding of presidential election is not liable to supervision in Croatia and neither had to be scrutinized in Iceland before the recommendation of the GRECO. Party accounts are not liable to supervision in Azerbaijan.

The GRECO considers too that the relevant supervision bodies have to be provided with adequate financial and human resources to perform their duties. But the evaluation reports frequently refer to an insufficient number of staff to carry out this monitoring. Just eight persons fulfilled this function in the German Bundestag when the GRECO made its assessment of the German rules. A lack of staff has been noted in Belgium, Poland, Russia, Serbia and Spain before a new allocation of personnel has been decided. This lack of staff has an impact on the monitoring process and on the disclosure of the reports carried out by the monitoring bodies. For instance the report of the Spanish Audit Court on the accounts of the political parties in 2008 has been disclosed in 2013.

What could be the various ways to counteract the abuse of public resources to safeguard free and fair elections?

Some tracks may be outlined.

The evaluation reports of the GRECO emphasized the need for setting up a clear definition of the campaigning period so that the interference of public bodies during this period should be forbidden.

Efforts have to be achieved to strengthen independence of monitoring bodies to create impartial supervision. For instance rules forbidding abusing public office in elections in Russia come up against the independence and the capacity of the electoral commissions.

The same remark may be applied for Georgia. But in the defense of the monitoring bodies, we must admit that it is not always easy for them to establish their authority because violations of these regulations may be precisely made by senior Government officials or Government parties. For that reason to strengthen the independence of monitoring bodies, appointment of former politicians to key positions in these bodies should be avoided and a so-called "cooling-off" period applicable to former members of the monitoring bodies before engaging in politics could be suggested.

Building awareness of abuse of administrative resources by the media which supposes their independence is a need for the voters and for democracy. Strengthening the independence of the civil service should be a long-term target too. If civil servants obey standards of professionalism, public interest and not political standards, the abuse of public supplies and of political commitment of state officials would be made more difficult for candidates and political parties.

IX. Combating the misuse of administrative resource during electoral processes: Russian and international practice in view of the recommendations of the Venice Commission and GRECO by Ms Vlada Fadeyeva, Member, Central Election Commission, Russian Federation

The process of democratic formation of the bodies of public power inevitably faces the issue of the extent of legality of using administrative resource when conducting election campaigns.

In my presentation, I would like to reference the “Report on misuse of administrative resources during electoral processes” presented in Strasbourg on December 16, 2013, a.k.a. “research No.585/2010” (hereinafter referred to as “Report”).

According to the Report, it may be reasonable to distinguish between legal use and misuse of administrative resources.

We believe that organizing public safety and maintaining public order when conducting election campaigns at all stages of the election process may be considered as legal forms of using administrative resources.

In addition, legal use of administrative resources undoubtedly includes various elements of material support provided to ensure unimpeded progress of election proceedings (e.g. financing the operations of election commissions, designation of public venues as polling stations and other organizational activities), as well as governmental guarantees enabling candidates and election associations to exercise their legal rights, such as provision of registered candidates with free-of-charge air time on the channels of state-owned and municipal TV and radio companies, as well as spaces in state-owned and municipal newspapers.

The notion of illegal use of administrative resources in election processes is explained in Paragraph 5, Article 40 of the Federal Law of the Russian Federation “On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum” (hereinafter referred to as “Federal law”) that provides for a list of actions deemed as various forms of misuse of official or public authority. They include:

- Having rank-and-file employees to perform actions and implement activities during their regular business hours to facilitate the process of nomination or election of candidates and lists of candidates;
- Collection of signatures and implementation of campaigning activities by publicly elected officials, employees of state or municipal bodies of power, heads of local governments, and members of the governing bodies of organizations regardless of their form of ownership;
- Using such resources as state-owned or municipal mass media (except for cases specifically accounted for by relevant laws), offices, vehicles, means of telecommunication and office equipment to facilitate the process of nomination or election of candidates and lists of candidates;
- Delivering speeches and making presentations of election-campaigning nature at public events organized by state or municipal bodies of power;
- Publication of progress reports and dissemination of congratulatory and other materials unpaid for from relevant election funds during the period of election campaigns.

In addition, Paragraph 1, Article 40 of the Federal law identifies the scope of individuals that are subject to limitations in the course of election campaigns. They particularly include:

- Candidates from among publicly elected officials representing state or municipal bodies of power;
- Candidates who are employees of state or municipal bodies of power or are members of the governing bodies of organizations regardless of their form of ownership (in organizations whose supreme governing body is an assembly of members – members of the bodies governing the operations of these organizations), except for political parties;
- Candidates from among administrative officials, journalists and other creative workers of mass media organizations.

Such individuals are forbidden to perform their official duties when taking part in elections. They must provide relevant election commissions with documentation proving they have been relieved of their official duties for the duration of election campaigns.

At the same time, such natural advantages (preferences) as renown, reputation, and public esteem of political activists, representatives of businesses and non-commercial (e.g. charitable) organizations, political party leaders, including leaders of oppositional political parties must not be deemed as misuse of administrative resource.

There is no doubt, however, that enlisting the services of rank-and-file employees and spending public or private funds bypassing or exceeding transparent election funds for the purpose of winning elections must be strictly forbidden.

It should be noted that the aforementioned Report focuses on the problem of fighting political corruption to a somewhat excessive extent that is not reflected in the definition of misuse of administrative resource provided in the same document.

There is no doubt that political corruption is very closely related to the subject matter of this presentation but the two notions must not be used interchangeably. The tendency to interpret misuse of administrative resource as political corruption ignores a number of important problems directly related to the subject matter of this presentation.

Before we discuss political corruption in detail, I would like to clarify that this presentation does not seek to provide the only correct definition of political corruption. Nevertheless, it is necessary to consider some specific examples of political corruption in order to ensure that its essence and forms of manifestation in the election process are universally understood.

Violations of the procedures governing the formation and expenditure of election funds and funds of political parties can be viewed as indicative examples of political corruption in election campaigns.

It should be noted that the Administrative Code of the Russian Federation provides for administrative liability for using illegally provided material support when financing an election campaign and conducting elections, including material support provided in the form of works, goods, and services provided free of charge or at rates that are either significantly below or considerably above the going market rates (Article 5.19 and Article 5.20 of the RF Administrative Code).

Using the online payment system “Yandex Money” as a fundraising mechanism is one of the most indicative examples of illegal financing of election campaigns.

Funds are voluntarily transferred to a designated account created within the “Yandex Wallet” system. The system can be used to transfer funds by both physical and legal entities. The funding sources are not subjected to verification, i.e. there is no mechanism to ascertain that contributors meet applicable legal requirements.

In addition, the scheme made it possible for a significant share of funds transferred via “Yandex Wallet” to end up in private “pockets”.

The government is drafting a law to ban fundraising among third parties and to preclude unauthorized entities from donating funds as campaign contributions.

When speaking about violations of the requirement pursuant to which election associations can be provided with material support whose purpose is to ensure certain election results only if relevant contributions are compensated from corresponding election funds, it is reasonable to mention a notorious case that occurred in the election of deputies of the State Duma of fifth convocation. One of the election associations received material support in the form of printed campaigning materials that were not paid for from the association’s election fund. The fact was concealed by reducing the number of copies of printed matter produced in compliance with legal requirements.

It should be noted that in both cases the government promptly responded to eliminate said violations.

Despite the existing violations, it should be noted that the Russian Federation represented by law-enforcement bodies and election commissions takes all requisite legal and organizational measures to not only eliminate, but to also prevent such violations in future.

To counteract such schemes and other possible violations, the President of the Russian Federation has designed a draft law and submitted it for review to the State Duma of the Federal Assembly of the Russian Federation (hereinafter referred to as “State Duma”).

The bill, in particular, limits the amounts of admission and membership fees payable to political parties to the maximum possible amount of contribution that may be paid by a physical entity.

Paragraph 5, Article 58 of the Federal law provides for a limited list of funding sources that can be used to create election funds of candidates and election associations.

An election association may form its election fund using loans, among other sources. At the same time, upon conclusion of elections, loans made available to political parties and used thereby to create their election funds are sometimes repaid using funds provided by third parties, which constitutes evasion from compliance with relevant requirements of the law.

In this connection, the draft law proposes to limit the maximum amount of loans that can be made available to a political party.

The bill also suggests reducing the amount of time within which the Central Election Commission of the Russian Federation must publish summary financial reports of political parties on its website, and proposes to publish revenue and expenditure reports of political

parties in amounts determined by the Central Election Commission of the Russian Federation. The newly suggested norm seeks to enhance transparency of the process of financing of political parties. Responding to the GRECO recommendation, the Central Election Commission of the Russian Federation has reduced the amount of political party financing subject to mandatory publication from 400 to 300 thousand roubles.

The bill also requires that political parties be subject to independent financial audit in specific cases and circumstances.

Regular financial audit conducted by independent organizations will improve the system of control over financial operations of political parties.

The aforementioned bill was passed by the State Duma after a third reading on June 18, 2014.

In addition, the State Duma is now reviewing a draft federal law introducing administrative liability for violations in the sphere of financial operations of political parties. The bill also suggests reducing the amount of funds donated by a contributor in elections of the President of the Russian Federation that is subject to mandatory publication.

In conclusion, I would like to draw your attention to the high degree of compliance with relevant international standards by the Russian Federation.

Article 14 of Recommendation No. R (2003) 4 of the Council of Europe Committee of Ministers to member states on the general rules of counteracting corruption in the financing of political parties and election campaigns of April 8, 2003 (hereinafter referred to as "Recommendation") provides that governments arrange for independent control over the financing of political parties and election campaigns that includes overseeing and publishing the budgets of political parties.

Russia has implemented this mechanism of control. Pursuant to relevant provisions of election legislation and the RF Federal Law "On political parties", the main role is played by the Central Election Commission of the Russian Federation that oversees the financing of all political parties operating in the country.

Russia is also in compliance with Article 15 of the Recommendation on special personnel specializing in counteracting illegal financing of political parties and election campaigns: the institution of audit services established under election commissions has proven its effectiveness and continues to grow and evolve progressively.

The problem of control over the sources of financing of political parties themselves cannot be ignored either. The law determines the sources of financing of political parties, as well as the governmental bodies responsible for exercising control over the operations of political parties and their regional chapters. This aspect is transparent for voters and financial reports of political parties are freely accessible to the public.

Thus, the task of improving transparency of the process of financing of candidates running for public offices, as well as the process of financing of political parties has been successfully handled by Russian legislation.

Despite the fact that Russia is the only state that strives to meet the GRECO recommendations in a most comprehensive fashion, representatives of various international expert groups publish reports in which they subject the laws of the Russian

Federation to unjustified criticism based on unsupported assumptions and allegations of biased individuals.

The recommendations of the Venice Commission and GRECO set very high standards for the entire international practice. At the same time, saying that these standards are met by the countries that are generally considered democratic, well developed and even models of democracy, or that these standards are even taken into account by the emerging democracies would tantamount to making a false allegation.

This conclusion is based on the results of public telemonitoring of the election of the US President in November 2012, the election of the FRG Bundestag deputies in September 2013, as well as the early election of the President of Ukraine on May 25, 2014 conducted by Russian public organizations.

In the USA, the president continued performing his official presidential duties while simultaneously conducting an election campaign. There are no legal restrictions because, according to legislators, the advantages of the presidential status, e.g. the attention of mass media, are counterbalanced by the fact that the president does two very complex jobs at the same time and cannot focus solely on his election campaign. In practice, however, this approach implies unequal opportunities for the candidates. For example, B. Obama improved his rating significantly, after he interrupted his election campaign to personally oversee the recovery efforts brought about by the consequences of Hurricane Sandy. After that, two members of the Republican Party – the Governor of New Jersey Chris Christie and the Mayor of New York Michael Bloomberg, acting in the capacity of publicly elected officials, publicly expressed their support for B. Obama who also acted in the capacity of a publicly elected official. This information was broadcast by all the leading US television channels as news.

It is permissible in the USA to use administrative resources for the benefit of one's election campaign. For example, in the city of Milwaukee, Wisconsin, federal and local transit organizations were used to bring Barak Obama's supporters to polling stations on November 6, 2012, as well as on early voting dates, free of charge. The blog of the US President and the news feed published on the official website of the US White House were actively used during the election campaign as well.

Facts were registered when the "third" out-of-the-system political parties and rank-and-file employees were pressured "to vote properly".

The owners of "Koch Industries" who are the primary sponsors of the ultra-conservative "Tea Party" disseminated lists of "proper" candidates among 50 thousand rank-and-file employees. The letter enclosed with the list contained an unambiguous warning of dismissal that would follow if Barak Obama were to win the election. The owners of the "Westgate Resorts" hotel chain and computer company "ASG Software Solutions" who support the Republican Party acted similarly.

It is a well-known fact that the Pentagon ensures a 100% turnout of military personnel at the polling stations. Voting takes place under direct supervision of commanding officers.

Force resources were used as well. Law-enforcement bodies exercised their right to persecute candidates who protested against violation of their electoral rights. Jill Stein – an officially registered candidate for the US President Office from the Green Party – was arrested on October 16, 2012 when she attempted a sit-in protest at the site of the televised debates between Barak Obama and Mitt Romney. The ecologist protested

against the prohibition for representatives of the “third” parties to take part in televised debates. The woman spent eight hours handcuffed in a police station where she was accused of violating the public order and disrupting the operation of public transit. At the time, however, there was no public transit available in the street because it had been cordoned off by the special services.

There are issues related to the financing of the election campaign. The existing legislation created conditions for a race of election budgets. The 2012 presidential elections made a fundraising record, yet both of the leading candidates refused to make use of the governmental contributions in favour of private donations. No chance was left to all other candidates who had neither powerful financial support, nor sufficient personal capital.

According to American citizens themselves, the exclusive role of “big political money”, especially money coming from anonymous sources, as well as political action committees and non-commercial organizations, undermines the democratic nature of elections. Political action committees constitute a source of unlimited financing of election campaigns that essentially amounts to acquisition of state power. Legislators and courts had traditionally restricted the ability of political action committees to uncontrollably raise money and use financial resources to support candidates. In January 2010, however, the US Supreme Court ruled that corporations and associations had the right to make unlimited contributions to the accounts of political action committees provided that these contributions were not subsequently transferred to the bank accounts of the candidates' election headquarters (the case of “Citizens United vs. Federal Election Commission”). The Court of Appeals of the District of Columbia later agreed that political action committees had the right to receive unlimited financing from both physical and legal entities and were not obligated to disclose their funding sources (the case of “Speechnow.Org vs. Federal Election Commission”).

Upon the whole, the principle of free and fair elections was poorly manifested in the 2012 presidential elections in the USA in view of numerous abuses of legislative, administrative, and financial resources which precluded representatives of “smaller parties” and independent candidates from taking part in the elections and deprived the election process of a truly competitive nature thereby limiting the pluralism of the election campaign upon the whole.

The public telemonitoring of the election of the FRG Bundestag deputies on September 22, 2013 identified facts of misused administrative resource when rank-and-file employees of the German parliament were enlisted by existing deputies and political parties represented in Bundestag to perform campaigning activities. For example, employees whose job descriptions entailed implementation of analytical and research activities and provision of assistance to deputies, were involved in dissemination of campaigning materials (application of posters and dispensation of flyers). By law, they are not allowed to engage in partisan work or take part in election campaigning. Yet, according to some of them, they frequently spent 10-12 hours a day in the election districts of relevant candidates performing election campaigning duties instead of being physically present in Bundestag as required by their job descriptions. A left-wing deputy, Stefen Bokhan²⁹, claimed that campaigning would have been financially impossible without assistance from these people.

At the same time, experts note that vote manipulation techniques were widely used in the course of the election campaign.

²⁹ Орфография имени требует проверки по первоисточникам (прим. пер.).

Experts are especially concerned about the possibility to legally use the so-called “splitting” technique (persuading supporters to give their “second” vote to the list of a partner party in order to increase parliamentary representation of a political party). Splitting results in parliamentary representation that does not fully match the actual expression of the voters’ free will. In fact, in all electoral districts, a significant share of voters (in some territories – more than 50%) who cast their “first” vote in favour of a candidate from CDU/CSU chose to cast their “second” vote in favour of FDP. Apparently, all direct seats of the candidates from the single-mandate electoral districts had been designated for CDU/CSU, whereas the sum of the “second” votes would have given additional “suspended” votes to CDU/CSU and a chance for FDP to overcome the five-percent election barrier and acquire mandates in the newly elected Bundestag. The plan failed in a number of electoral districts. As a result, FDP did not make it to the Bundestag of the 18th convocation thereby “wasting” about one million votes (more than 2% of the voters who cast their ballots in that election). If they had not been pressured against, these voters could have decided to use their “second” votes at their own discretion thereby visibly changing the political landscape of the Bundestag, which would have reflected the actual will of citizens much more adequately.

In its Final report on observation of the parliamentary elections of September 22, 2014, OSCE/ODIHR recommended to legally regulate a number of issues related to financing of political parties’ participation in elections. The FRG system of financing of election campaigns of candidates and political parties is not transparent. The voters learn who sponsored the election campaign of a candidate or a party only from annual financial reports submitted to the German parliament and the President of the Bundestag (in compliance with Article 21.1 of the FRG Constitution and Article 23 of the Law on political parties). German political parties do not submit any interim or final reports on the financing of their election campaigns. The law does not limit the maximum amount of funds that can be spent on election campaigning by election participants; nor does it restrict the sources of funding in any fashion. The only exceptions are donations in excess of 50,000 Euros paid as a lump sum or 10,000 Euros paid throughout a calendar year (which political parties must report immediately).

Financial transparency of participation of political parties in parliamentary elections is questioned by German politicians themselves. For example, according to the Bundestag President’s report, in 2011, the majority of political parties represented in the Bundestag that were entitled to governmental subsidies failed to submit their annual financial reports, while two political parties that received governmental subsidies failed to submit their financial reports for 2011 by December 31, 2012. Thus, the financial histories of the political parties that took part in the election of Bundestag deputies on September 22, 2013 were “murky”. Given that the law does not provide for a penalty for failure to submit financial reports, such as, for example, a ban on participation in parliamentary elections, these parties encountered no barriers nominating their candidates for Bundestag elections.

In 2011, GRECO recommended that FRG should design and implement a system of public financial reporting for political parties when conducting parliamentary elections, as well as make sure that relevant reports are made available to the public immediately following the elections. This GRECO recommendation implied that FRG was not to restrict itself to requiring that political parties submit annual financial reports, but that it had to design and implement a separate independent system of financial reporting effective for the duration of parliamentary elections, that it had to design and implement a mechanism that would make political parties truly liable for failure to submit election-related financial reports. Regrettably, the aforementioned recommendation was not implemented in time for the

September 22, 2013 election of Bundestag deputies (no changes to relevant legislation had been introduced by the Bundestag of the 17th convocation).

Based on the telemonitoring of the election of the President of Ukraine of May 25, 2014, the Russian Public Institute of Election Law identified the following:

- A number of candidates running for the office of the President of Ukraine had been repeatedly assaulted and subjected to physical violence; some of them had encountered serious barriers impeding their campaigning activities; representatives of some of the candidates' regional election headquarters had been abducted and pressured into changing their political views;
- The government does not fully ensure free operation of mass media, which is supported by a number of registered facts when journalists most of whom represented an alternative point of view on the political events in Ukraine were abducted, threatened, and subjected to pressure;
- Facts were registered when voters were pressured against by governmental officials and employers;
- Facts were registered when governmental officials were involved in election campaigning and when campaigning materials were found in the offices of election commissions, local self-government bodies, and state-owned enterprises;
- Legal violations were identified in the process of election campaigning in mass media, including cases when national symbols were used in campaigning materials published in mass media, as well as cases when certain mass media failed to mention that the election materials published on their pages represented political advertisement;
- The law does not limit candidates' election campaign expenditures or the amount of funds that a political party may contribute to its candidate; the only financial report must be submitted by a candidate after the voting day (within not more than 15 days thereafter) which deprives citizens of the possibility to familiarise themselves with the sources of funding of the candidates' campaigns and take that information into account when casting their ballots.

International organizations also noted that Ukrainian authorities openly condoned misuse of administrative resource and that the financing of political parties and their participation in elections was not transparent.

Resolution 1755 (2010) of the Parliamentary Assembly of the Council of Europe, "The functioning of democratic institutions in Ukraine" (October 2010), provided that a judicial reform was required to strengthen the rule of law in Ukraine in which connection PACE regretted the Supreme Rada's decision to postpone the implementation of a package of anticorruption laws developed in collaboration with the Council of Europe until 2011 as well as the veto imposed by the previous President on the draft law designed to counteract money laundering.

In their joint statement, the Venice Commission and OSCE/ODIHR criticized the election legislation adopted in 2011, particularly, the lack of a mechanism of independent monitoring of the process of financing of election campaigns, as well as effective penalties for violation of the financing procedures.

On September 5, 2013, the Supreme Rada of Ukraine adopted a special (one-time) law requiring holding repeat elections of people's deputies of Ukraine within single-mandate electoral districts No. 94, 132, 194, 197 and 223 on the basis of which it decided to hold repeat elections within the aforementioned electoral districts by December 15, 2013. At the same time, said law failed to eliminate some serious drawbacks identified in the Final

report on international observation of the election of people's deputies of Ukraine published by OSCE/ODIHR on October 28, 2012, as well as the joint statement of the Venice Commission and OSCE/ODIHR published on October 11-12, 2013, pertaining to the issue of legal regulation of the recently held parliamentary elections, particularly, misuse of administrative resource, bribery of voters, and commission of other electoral violations.

The OSCE/ODIHR report on international observation of the early election of the President of Ukraine of May 25, 2014 states that the lack of visible cases of misuse of administrative resource was a positive development. Although not a single drawback or deficiency mentioned above had been eliminated by the time the 2014 election was held, unlike all the previous elections, OSCE/ODIHR did not express any concerns on that score.

Since the day the early presidential election was announced, the election law of Ukraine underwent some very serious changes: in February, the Ukrainian parliament changed the timeframe of the election process to hold the election on May 25, 2014; in March, the Ukrainian parliament adopted what Ukrainian experts and OSCE observers identified as "significant changes effected within the framework of the election reform"; in April, the Ukrainian parliament adopted changes that allowed holding local elections simultaneously with presidential elections, changed the election procedure and certain election security issues; on May 6, on the last day of the legally established term for the formation of territorial election commissions, the parliament changed the minimal number of members in precinct election commissions. The preliminary report of the OSCE/ODIHR observation mission states that the changes adopted in March had been adopted "within a very short timeframe in compliance with special provisions on adoption of emergency legislation ... and had been preceded by minimal public discussion".

Changing election laws in the course of an election campaign and in such drastic a fashion deprives election participants of equal opportunities, fails to meet the universally recognized principle of inalterability of the laws regulating appointed elections, and directly contradicts the recommendation of the Venice Commission pursuant to which changing the fundamental elements of election law, particularly such that regulate the composition of election commissions, less than one year prior to elections (Paragraph II.2.b of the "Code of recommended election norms: governing principles and explanatory report" adopted by the Venice Commission in 2002) should be prohibited.

The Final OSCE/ODIHR report on international observation of the early election of the President of Ukraine of May 25, 2014 states the following:

- The law continued to give preference to candidates nominated by political parties, which contradicts Paragraph I.2.3 of the "Code of good practice in electoral matters" of the Venice Commission.
- The numerous changes of the election law adopted in 2014 failed to take into account the previous recommendations of OSCE/ODIHR and Venice Commission pertaining to the question of financing of election campaigns.

Conclusion: It is necessary that international organizations, the Venice Commission and GRECO monitor the election process more carefully with the view to provide an objective assessment of the national election laws and practices and develop requisite recommendations on their ongoing improvement by all participating states regardless of their "democratic age".

X. Monitoring of political party funding in Serbia: legal framework and experience of the 2014 early parliamentary elections in Serbia by Mr Vladan Joksimovic, Deputy Director, Anti-Corruption Agency, Serbia

I. Competences

The Anti-Corruption Agency, whose competence comprises (Article 5 of the Law on the Anti-Corruption Agency, hereafter: the ACA Law) the tasks stipulated by the Law on Financing of Political Activities, which regulates source and mode of financing of political activities of political parties, coalitions and group of citizen, has the following rights (Articles 27-29 and 32-34):

- Right to have direct and free access to book-keeping records and documentation and financial reports of both political entity and endowment and foundation founded by political party;
- Right to send a request to a political entity to submit all requested documents and information within a time limit not exceeding 15 days;
- Right to send a request to any authority of the Republic of Serbia, Autonomous Province, and local self-government units, banks, as well as to natural persons and legal entities financing political entities, or which on their behalf and for their account provided certain service, asking them to send information, in which process all prohibitions and restrictions regarding submission of information stipulated by other regulations are not implemented;
- Possibility to engage relevant experts and institutions;
- Possibility to, after financial report oversight, send a request to the State Audit Institution to audit the reports in accordance with the law regulating its competencies;
- Right to organize independent monitoring of election campaigns within the election campaign expenses oversight tasks, for which funds, from the budget of the Republic of Serbia, are allocated to the Agency;
- Right to adopt by-laws regulating the content and manner of keeping of records on assets and contributions, as well as those regulating the content of the annual financial statement and report on election campaign expenses.

In addition, according to the ACA Law an official may not use the public office and public resources for promotion of political parties, i.e. political entities. Exceptionally, public official may use public resources for protection of personal security, if such use of public resources is envisaged by regulations from that field or by decision of services that are in charge of the public officials security.

An official is required at all times to unequivocally present to his/her interlocutors and the general public whether he/she is presenting the viewpoints of the body in which he/she holds a public office or viewpoints of a political party, i.e. political entity.

Provisions of paragraph 4 of this Article shall not apply to MPs, deputies and council members.

Furthermore, the Agency was granted certain authorities in case of violation of the Law on Financing of Political Activities (Articles 35- 40 and Articles 42-43):

- To impose a warning measure on a political entity if in the oversight procedure it establishes some irregularities that might be corrected;
- To file a motion to institute a criminal or misdemeanor proceedings;

- To, after the initiation of a criminal or misdemeanor proceedings, send a request to the ministry competent for financial affairs, or the relevant province authority, or local self-government authority, to issue a decision on temporary suspension of transfer of funds from public sources to a political entity until a final decision in the criminal or misdemeanor proceedings is rendered;
- To, in case of a conviction for a criminal offence or if a political party or a responsible person in a political entity is convicted for a misdemeanor, issue a decision on the loss of rights to public funds for financing of regular work of a political entity for the next calendar year. The decision also established the amount of funds to be suspended.

II. Monitoring

In November 2011 the Agency has adopted a Rulebook on Election Campaign Monitors, regulating organization, competences, rights, obligations, terms, and manner of selection of monitors for the election campaign cost oversight procedure.

Back to 2012, a network comprising 165 monitors was formed in order to monitor political entities` activities during 2012 election campaign, and they were deployed in 23 towns throughout the Republic of Serbia (Belgrade and 22 other towns).

Monitors were organized as a pyramid organization of three levels:

- Field monitors (132) whose task was to directly, in the field in towns they were deployed to, monitor and make records of all activities of political entities. They submitted weekly reports on their activities to relevant coordinators.
- Coordinators (23) were deployed to towns and county municipalities, and were tasked not only to organize and supervise the work of the field monitors, but also to monitor and record all activities of political entities. They were authorized to communicate with political entities and state authorities, if needed, so as to get information related to election campaign. Each coordinator was obliged to submit a report to central coordinators about the activities of every political entity from the territory they were in charge of, on the basis of the reports of field monitors they supervised, and their own direct monitoring.
- Central coordinators (10) were tasked to supervise and instruct coordinators of certain districts, prepare and process reports of coordinators, and submit their own reports to the Secretariat of the Agency. Central coordinators collected and classified data in two ways:
 - for every political entity from the towns whose coordinators they supervised;
 - each central coordinator was obliged to exchange information with the other nine colleagues so as to collect all data about activities of one political entity at the level of the Republic of Serbia for all election levels.

For election campaigns in 2014 the same organization of the monitoring was enforced, yet with less monitors due to the fact that elections were announced before the end of the Government regular four year term (extraordinary elections), leaving the Agency shorter period to prepare the monitoring network.

In total, in 2014 for election campaigns Agency had a monitoring network of 142 monitors deployed in all 23 cities.

III. How monitoring works

The Law on Financing of Political Activities encompasses with the generic name “political entity” a political party, coalition, or group of citizens as a potential submitter of registered electoral lists and nominator of candidates whose activities are monitored throughout election campaign from the day of calling elections until the day final election results are proclaimed.

In 2014, elections for City of Belgrade were called on 17 January, election campaign has started on January 29, and the parliamentary elections were called on the very same day. The authorities has promptly reacted and enabled the Agency with sufficient budgetary funds for monitoring city elections. However, the decision for allowing funds for monitoring the parliamentary elections took some time and the Agency has started to monitor parliamentary elections, throughout Serbia, after ten days of the day when the election campaign has officially started.

All data about election material, public events, and appearances in local media outlets were collected. When it comes to election material, the first thing to be noted was how many different election materials existed – whether they were leaflets or any other promotional material such as pens, flags, lighters, etc. Further on, which level of elections the election material referred to – whether to parliamentarian, provincial (2012), presidential, or local elections, or if the material was a general nature and to be used for promotion at all levels of elections. Finally, attention has to be paid to the location and time of distribution of election material, as well as to the quantity.

Data were collected and the record was made about billboards (locations, time, and other specifications).

Public events subject to monitoring encompassed mass rallies, conventions, stands, press conferences, and other public events organized around points and stands. When monitoring public events, every monitor was supposed to collect all information related to the costs of the monitored political entity. The system for data collecting relied mainly on field monitors who attended all public events and happenings, recorded distributed election material (type and quantity), made notes of activities that could have represented costs, and documented them with photo or video material. These data were, on a weekly basis, presented in reports and submitted to coordinators who, through their central coordinators, forwarded them to the Secretariat of the Agency.

When it comes to the local media, both printed and electronic, monitors were obliged to determine whether a certain political entity advertised there and how many types of advertising it had with a media company.

IV. Purpose of monitoring

The purpose of the monitoring is to collect data about activities of political entities during election campaign. Tracking these activities ensures records about political entities costs and /or contributions they received by either natural persons or legal entities. Without these data it would not be possible to examine and verify financial reports submitted by political entities to the Agency. The verification of political parties financial reports implies “data crossing” from various sources (financial reports, monitoring, bank accounts and data collected from natural persons and legal entities).

Monitoring, to a great extent, encourages the submission of reports by political entities, not only to fulfil a mere form and obligation, but rather to ensure that reported data are closer to the real situation. Political entities were not aware of what events monitors recorded, and that was a motivating factor to present their activities in a more regular fashion. In 2013, a total of 335 motions to institute misdemeanour proceedings were filed, out of which 18 were filed due to failure to submit the 2012 annual financial report, 10 were filed due to failure to submit the report on the 2013 election campaign expenses and 4 were filed due to failure to submit the opinion of the authorized auditor along with the 2012 annual financial report. A total of 303 motions were filed to the competent court due to failure to report on election campaign expenses in 2012. The results of the oversight control of 2014 elections will be presented to the public by the end of October.

In addition monitors are also trained to track violation of other laws by political entities, during election campaign. Collected data on these cases, the Agency forwards *ex officio* to relevant Government offices.

Finally, the purpose of the monitoring process corresponds to a need of the society to put in the legal channels a greater portion of funds used in campaigns.³⁰

³⁰ Relevant data from 2014 monitoring: 3200 billboards were noted; 1802 street pole bans; more than 250 public events; 1319 vehicles (out of which 73% were engaged to two ruling coalitions); approximately 250,000 pieces of promotion material was distributed (lighters, pens, calendars, etc.); more than a million of flyers was distributed; free medical check-ups were noted as a phenomenon of the election campaign (77); three political events were organized in kindergartens or schools.

XI. List of participants

ARMENIA

Central Electoral Commission of Armenia

Ms Tatevik Gevorgyan, Junior Specialist, Department of International Affairs

Mr Armen Smbatyan, Secretary

AUSTRIA

Federal Ministry of the Interior

Mr Gregor Wenda, Deputy Head of the Department of Electoral Affairs

AZERBAIJAN

Central Electoral Commission of Azerbaijan

Mr Mazahir Panahov, Chairman

Mr Rashid Yusifbayli, Head of International Relations Department

BELGIUM

SPF Intérieur, Direction générale Institutions & Population, Service Elections

Mr Regis Trannoy, Conseiller ff. (*apologised*)

BRAZIL

Supreme Court

Ms Cármen Lúcia Antunes Rocha, Justice, Supreme Court (*apologised*)

BULGARIA

Central Election Commission

Ms Tania Tzaneva, Member

Ms Rositsa Mateva, Member

Ms Yordanka Gancheva, Member

CANADA

Elections Canada

Ms Madeleine Dupuis, Policy Analyst, International, Provincial and Territorial Relations

ESTONIA

Mr Robert Krimmer, Senior Research Fellow, Coordinator of Governance Studies and Research, *Tallinn University of Technology*

Mr Tambet Drell, Audit Manager, *National Audit Office of Estonia*

Mr Kert Karus, Member, *Political Parties Financing Surveillance Committee*

FINLAND

Ministry of Justice

Ms Anna-Maja Henriksson, Minister of Justice

Ms Kirsi Pimiä, Director

Mr Jussi Aaltonen, Ministerial Adviser

Ms Catharina Groop, Anti-corruption Expert

Ms Heini Huotarinen, Senior Inspector

Mr Arto Jääskeläinen, Ministerial Advisor, Director of Electoral Administration

Ms Kaisa Tiusanen, Ministerial Adviser

Ms Terttu Tuomi, Department Secretary

Ms Nadja Lehtinen, Conference Assistant

Ms Ulla Rehula, Communications Specialist
Ms Eve Rasku, Photographer

Mr Benjamin Ellenberg, Assistant
Mr Mikael Eriksson, Assistant

Prime Minister's Office

Ms Auni-Marja Vilavaara, Director General

Parliament Audit Committee

Ms Tuija Brax, Member of Parliament, Chairperson
Ms Nora Grönholm, Committee Counsel

Parliament Constitutional Law Committee

Ms Elisabeth Nauclér, Member of Parliament, Member of the Parliament Constitutional Law Committee

National Audit Office

Mr Tuomas Pöysti, Auditor General
Mr Jaakko Eskola, Director for Financial Audit

Electoral District Committee of Helsinki

Mr Erikäinen Timo, Chairperson

Venice Commission

Mr Kaarlo Tuori, Professor of Administrative Law, Department of Public Law, University of Helsinki, Member of the Venice Commission

Åbo Akademi University

Mr Markku Suksi, Professor of Public Law

Mr Lauri Tarasti, Former Justice of the Supreme Court, Expert on Electoral Legislation

GEORGIA

Central Election Commission of Georgia

Ms Tamar Zhvania, Chairperson (*apologised*)
Ms Natia Jikia, Advisor

KAZAKHSTAN

Central Election Commission

Mr Issenbayev Anuar, Assistant to the Chairman

KYRGYZSTAN

Central Commission for Elections of the Kyrgyz Republic

Mr Aziz Kanatbek, Chairperson

LATVIA

Central Electoral Commission of Latvia

Mr Arnis Cimdars, Chairman
Mr Karlis Kamradzis, Deputy Chairman

MEXICO

Federal Electoral Institute of Mexico

Mr Manuel Gonzalez Oropeza, Justice, Substitute Member of the Venice Commission

Mr Alberto Guevara Castro, Head of Relations with Electoral Bodies

REPUBLIC OF MOLDOVA

Central Electoral Commission of Moldova

Mr Iurie Ciocan, Chairman

Ms Mariana Musteata, Chief of the Staff

NETHERLANDS

Ministry for the Interior and Kingdom Relations

Mr H.A. Aearnoud Akse, Policy advisor

Electoral Council

Mr Henk Kummeling, President

Mr Edward Brühheim, Senior Legal Advisor/Co-ordinator International Affairs

NORWAY

Ministry of Local Government and Regional Development

Election and Local Government Unit

Ms Else Muri, Advisor - Product Owner

Ms Anne-Lene Dyrstad, Advisor

PORTUGAL

Ministry of Internal Affairs - DGAI-MAI

Ms Isabel Miranda Gaspar, Head of Department legal and Electoral Studies, Directorate General of Internal Affairs

ROMANIA

Permanent Electoral Authority

Mr Marian Muhuleț, Vice-President

RUSSIAN FEDERATION

Central Election Commission of the Russian Federation

Ms Vladislava Fadeeva, Chief Consultant, External Relations Department

Mr Sergey Alyoshkin, Head of Law Department

Mr Sergey Danilenko, Member

SLOVAKIA

Ministry of Interior

Ms Eva Chmelova, Director, Department of Elections, Referendum and Political Parties

SWEDEN

Election Authority of Sweden

Mr Johan Särnquist, Head of IT and Technology

TAJKISTAN

Central Commission for Elections and Referendums

Mr Abdumannon Dodoev, Head of the Secretariat

Ms Nigina Abdullaeva, Senior Electoral Reform Programme Assistant, Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

TUNISIA*Instance Supérieure Indépendante des Elections*

Mr Chafik Sarsar, Président

UKRAINE*Central Election Commission*

Mr Mykhailo Okhendovskyi, Chairman

Mr Kostiantyn Khivrenko, Head of the Public Relations Department

Ms Tetiana Saviak, Deputy Head of the Legal Department of the Secretariat

Election Law Institute

Ms Nataliia Bogasheva, Director

Mr Yuriy Kliuchkovskyi, President

All Ukrainian Non-Governmental Organization "Committee of Voters of Ukraine"

Mr Oleksandr Chernenko

Civil Network OPORA

Ms Olga Aivazovska

OSCE Project Co-ordinator Ukraine

Mr Ievgen Poberezhnyi, Elections and Governance officer

Ms Yuliya Zoricheva, Elections Officer

Ms Anna Shalimova, Elections Officer

UNITED KINGDOM*Electoral Commission*

Mr Peter Wardle, Chief Executive

INTERNATIONAL ORGANISATIONS**International Institute for Democracy and Electoral Assistance (International IDEA)**

Ms Annette Monika Fath-Lihic, Senior Programme Manager, Electoral processes

Organisation of the American States (OAS)

Mr Sebastián Molano, Specialist of Electoral Co-operation and Observation (DECO)

OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

Ms Tatyana Bogussevich, Senior Election Advisor

OTHER INTERNATIONAL INSTITUTIONS**Association of European Election Officials (ACEEEO)**

Ms Eszter Bodnár, Project Manager

Association of World Election Bodies (A-WEB)

Mr Kim Jeong-Gon, Director General

Mr Sang Duck Nam, Assistant Manager

International Centre for Parliamentary Studies (ICPS), United Kingdom

Ms Nina Corradini, Electoral Network Coordinator

COUNCIL OF EUROPE**Secretariat of the Venice Commission, Directorate General of Human Rights and Legal Affairs (DG I)**

Mr Thomas Markert, Director, Secretary of the Commission

Mr Gaël Martin-Micallef, Legal Officer, Elections and Referendums Division

Ms Amaya Ubeda de Torres, Legal Officer, Elections and Referendums Division

Ms Rosy Di Pol, Administrative Assistant

Group of States against Corruption (GRECO), Directorate General of Human Rights and Legal Affairs (DG I)

Mr Yves Marie Doublet, Directeur adjoint, Assemblée Nationale, Service des affaires juridiques, Division contrôle et études juridiques, Division de la Réglementation, du Contrôle et des Marchés

Directorate General of Democracy (DG II)

Mr François Friederich, Head of Division, Elections and Census Unit

Congress of Local and Regional Authorities

Mr Andreas Kiefer, Secretary General

Ms Renate Zikmund, Deputy Head of Service, Department of Statutory Activities, Local and Regional Election Observation

VENICE COMMISSION RAPPORTEURS

Mr Jean-Charles Gardetto, Attorney at Law, Member and former President of the Monaco Bar Association, former Member of the National Council (Parliament) of Monaco, former Head of the Delegations of Monaco to the Parliamentary Assembly of the Council of Europe and to the OSCE Parliamentary Assembly and former Vice-President of both Assemblies, Monaco

Mr Manuel Gonzalez Oropeza, Justice, Electoral Court of the Federal Judiciary, Substitute Member of the Venice Commission

Mr Johan Hirschfeldt, Former President of the Svea Court of Appeal, Substitute Member of the Venice Commission

Mr Vladan Joksimović, Deputy Director, Anti-Corruption Agency, Serbia

Ms Barbara Jouan, Senior political finance expert, Legal Department, France's National Commission for Campaign Accounts and Political Financing (CNCCFP) (*apologised*)

Mr Oliver Kask, Judge, Tallinn Court of Appeal, Member of the Venice Commission

INTERPRETERS

Mr Rino Gelmi

Ms Anastasia Linnala

Mr Christian Paulus

Mr Aleksei Repin

Ms Sylvie Roos

Ms Mari Vainikka

XII. Synopsis / Carnet de bord

The Venice Commission of the Council of Europe organised in co-operation with the Ministry of Justice, the Parliament and the National Audit Office of Finland the eleventh European Conference of Electoral Management Bodies in Helsinki, Finland, on 26-27 June 2014.

The topic of the Conference was “**Combating the misuse of administrative resources during electoral processes**”. The participants debated more specifically on three main issues:

- “Defining administrative resources: Legal environment, self-regulation and financing political parties and campaigns”;
- “Practice – Recurring cases of misuses of administrative resources during electoral processes – Assessing the damages”; and
- “Preventing and combating the misuse of administrative resources, a key issue to reinforce confidence in democratic electoral processes”.

Ms **Anna-Maja Henriksson**, Minister of Justice of Finland, opened the Conference, followed by Ms **Tuija Brax**, Member of the Parliament of Finland, Chairperson of the Parliament Audit Committee and Mr Oliver Kask, Judge, member of the Venice Commission and Vice-President of the Council for Democratic Elections.

90 participants attended the Conference. The participants came from the national electoral management bodies of the following 24 countries: Armenia, Austria, Azerbaijan, Bulgaria, Canada, Estonia, Finland, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Mexico, Republic of Moldova, Netherlands, Norway, Portugal, Romania, Russian Federation, Slovakia, Sweden, Tajikistan, Tunisia, Ukraine and United Kingdom. Representatives of the Group of States against Corruption (GRECO), the Venice Commission, the Congress of Local and Regional Authorities and other Council of Europe Directorates also attended the Conference.

The Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the Organization of American States (OAS), the International Institute for Democracy and Electoral Assistance (International IDEA), the Association of European Election Officials (ACEEEO), the Association of World Electoral Bodies (A-WEB) and several other institutions active in the electoral field were also represented at the Conference.

The **conclusions** of the Conference are appended to this synopsis.

The **twelfth European Conference of Electoral Management Bodies** will take place in **Brussels, Belgium, on 30-31 March 2015**.

The participants in the Conference

1. *Considering* the common phenomenon of misuse of administrative resources during electoral processes;
2. *Referring* to the Venice Commission's Report on the misuse of administrative resources during electoral processes (CDL-AD(2013)033) and in particular to the definition of administrative resources, i.e.: "administrative resources are human, financial, material, *in natura* and other immaterial resources enjoyed by both incumbents and civil servants in elections, deriving from their control over public sector staff, finances and allocations, access to public facilities as well as resources enjoyed in the form of prestige or public presence that stem from their position as elected or public officers and which may turn into political endorsements or other forms of support";
3. *Having agreed* on a common understanding of the misuse of administrative resources during electoral processes, which includes both the abuse of material resources by candidates and political parties as well as biased actions or omissions by civil servants and other public officials in public institutions;
4. *Having taken into account* the existing legal environment and self-regulation in states concerning the prevention of the misuse of administrative resources during electoral processes;
5. *Having observed* in practice a blurred distinction between State and incumbents as well as recurring cases of misuse of administrative resources during electoral processes;
6. *Observing* the need to reinforce the independent supervision of the use of administrative resources;
7. *Referring* to the fundamental principles essential for the conduct of genuine elections and the importance of building public confidence in electoral processes;
8. *Underlining* the importance of existing international instruments against corruption in public administration and in political life, *inter alia* the following Council of Europe instruments:
 - Criminal Law Convention on Corruption (1999, CETS No. 173) and its additional Protocol (2003, CETS No. 191);
 - Civil Law Convention on Corruption (1999, CETS No. 174);
 - Recommendation (2000) 10 of the Committee of Ministers to member states "on codes of conduct for public officials";
 - Recommendation (2003) 4 of the Committee of Ministers to member states "on common rules against corruption in the funding of political parties and electoral campaigns";
 - Recommendation 1516 (2001) of the Parliamentary Assembly on "Financing of political parties";
 - Resolution 1897 (2012) of the Parliamentary Assembly on "Ensuring greater democracy in elections";
 - Resolution 316 (2010) of the Congress of Local and Regional Authorities on "Rights and duties of local and regional elected representatives and the risks of corruption";

9. *Invited* the Council of Europe's Council for Democratic Elections, in co-operation with other relevant institutions, to consider developing guidelines aimed at preventing the misuse of administrative resources during electoral processes;

10. *Stressed* that a full and effective implementation of the law is essential for preventing the misuse of administrative resources during electoral processes;

11. *Recommended* that legislation should provide measures for counteracting the misuse of administrative resources during electoral processes in a clear, foreseeable and proportionate manner, *inter alia* through:

- a. explicit requirements for all public bodies including the civil service to act impartially and independently;
- b. mechanisms for preventing the State and local authorities from holding official public events for campaign purposes;
- c. meaningful and dissuasive but proportionate sanctions in full respect of the principle of freedom of association and in line with international standards;
- d. an effective complaints and appeals system, including the possibility of bringing cases before an independent and impartial tribunal; and
- e. rules for the protection of individuals who report cases of misuse of administrative resources to the competent authorities;

12. *Recommended* the development of internal guidelines for public administration aimed at promoting ethical and non-partisan conduct;

13. *Recommended* promoting charters of ethics or agreements between political parties and making them available to the public;

14. *Recommended* public administrations to counteract activities that intentionally or unintentionally favour or disfavour any political stakeholder;

15. *Underlined* the importance of monitoring and auditing bodies supervising the use of administrative resources during electoral processes, mainly by:

- a. ensuring that electoral contestants keep comprehensive accounts of all income and expenditure, subject to control;
- b. designing appropriate donors' disclosure requirements;
- c. applying, when necessary, appropriate sanctions;

16. *Encouraged* co-operation with international institutions working in this field, in particular GRECO.

Carnet de bord

La Commission de Venise du Conseil de l'Europe a organisé en coopération avec le ministère de la Justice, le Parlement et la Cour des comptes de Finlande la onzième Conférence européenne des administrations électorales à Helsinki, les 26 et 27 juin 2014.

Le thème de la conférence était « **Lutter contre l'abus de ressources administratives pendant les processus électoraux** ». Les participants ont plus particulièrement débattu des trois principaux thèmes suivants :

- « Définir les ressources administratives : environnement juridique, autorégulation et financement des partis politiques et des campagnes » ;
- « La pratique – Les cas récurrents d'abus de ressources administratives pendant les processus électoraux – Evaluer les dommages » ; et
- « Prévenir et lutter contre les abus de ressources administratives, une question clef pour renforcer la confiance dans les processus électoraux démocratiques ».

Mme **Anna-Maja Henriksson**, ministre de la Justice de Finlande, a inauguré la conférence, suivie par Mme **Tuija Brax**, députée du parlement de Finlande, Présidente de la Commission parlementaire d'audit et M. Oliver Kask, juge, membre de la Commission de Venise et vice-président du Conseil des élections démocratiques.

90 participants ont participé à la conférence. Les participants venaient des administrations électorales des 24 pays suivants : Arménie, Autriche, Azerbaïdjan, Bulgarie, Canada, Estonie, Finlande, Géorgie, Kazakhstan, Kirghizistan, Lettonie, Mexique, République de Moldova, Pays-Bas, Norvège, Portugal, Roumanie, Fédération de Russie, Slovaquie, Suède, Tadjikistan, Tunisie, Ukraine et Royaume-Uni. Ont également participé à la conférence des représentants du Groupe d'Etats contre la corruption (GRECO), de la Commission de Venise, du Congrès des pouvoirs locaux et régionaux et d'autres entités du Conseil de l'Europe.

Etaient également représentés à la conférence l'Organisation pour la sécurité et la coopération en Europe/Bureau des institutions démocratiques et des droits de l'Homme (OSCE/BIDDH), l'Organisation des Etats américains (OEA), l'Institut international pour la démocratie et l'assistance électorale (International IDEA), l'Association des administrateurs d'élections européens (ACEEEO), l'Association mondiale des organes électoraux (A-WEB) et plusieurs autres institutions actives dans le domaine électoral.

Les **conclusions** de la conférence sont annexées à ce carnet de bord.

La **douzième édition de la Conférence européenne des administrations électorales** se tiendra à **Bruxelles, Belgique**, les **30 et 31 mars 2015**.

Les participants à la conférence

117. *Ayant pris note* de la fréquence du phénomène de l'abus de ressources administratives pendant les processus électoraux ;

2. *S'étant référés* au Rapport de la Commission de Venise sur l'abus des ressources administratives pendant les processus électoraux (CDL-AD(2013)033) et en particulier à la définition des ressources administratives, à savoir les « ressources humaines, financières, matérielles, en nature et autres ressources immatérielles dont disposent les candidats sortants et les fonctionnaires lors des élections grâce au contrôle qu'ils exercent sur le personnel, les finances et les affectations au sein du secteur public, à l'accès dont ils jouissent aux équipements publics, ainsi qu'au prestige ou à la visibilité publique que leur confère leur statut d'élu ou de fonctionnaire, et qui peuvent être interprétés comme un appui politique ou toute autre forme de soutien » ;

3. *S'étant mis d'accord* sur la notion d'utilisation abusive des ressources administratives pendant les processus électoraux, qui comprend à la fois l'abus des ressources matérielles par des candidats et partis politiques et les actions biaisées ou omissions par des fonctionnaires et autres agents publics au sein des institutions publiques ;

4. *Ayant tenu compte* de l'environnement juridique existant et de l'autorégulation dans les Etats en matière de prévention de l'utilisation abusive de ressources administratives pendant les processus électoraux ;

5. *Ayant observé* dans la pratique une distinction floue entre Etat et candidats sortants ainsi que des cas récurrents d'utilisation abusive des ressources administratives pendant les processus électoraux ;

6. *Ayant constaté* la nécessité d'un contrôle indépendant de l'utilisation des ressources administratives ;

7. *S'étant référés* aux principes fondamentaux essentiels pour la conduite d'élections crédibles et à l'importance de renforcer la confiance du public dans les processus électoraux ;

8. *Ayant souligné* l'importance des instruments internationaux existants contre la corruption dans l'administration publique et la vie politique, notamment les instruments suivants du Conseil de l'Europe :

- Convention pénale sur la corruption (1999, STCE n° 173) et son protocole additionnel (2003, STCE n° 191) ;
- Convention civile sur la corruption (1999, STCE n° 174) ;
 - Recommandation (2000) 10 du Comité des Ministres aux Etats membres sur les codes de conduite pour les agents publics ;
- Recommandation Rec(2003)4 du Comité des Ministres aux Etats membres sur les règles communes contre la corruption dans le financement des partis politiques et des campagnes électorales ;
- Recommandation 1516 (2001) de l'Assemblée parlementaire sur le financement des partis politiques ;
- Résolution 1897 (2012) de l'Assemblée parlementaire sur « Garantir des élections plus démocratiques » ;
- Résolution 316 (2010) du Congrès des pouvoirs locaux et régionaux sur les « droits et devoirs des élus locaux et régionaux : les risques de corruption » ;

9. *Ont invité* le Conseil des élections démocratiques du Conseil de l'Europe, en coopération avec d'autres institutions, à envisager l'élaboration de lignes directrices visant à prévenir l'utilisation abusive de ressources administratives pendant les processus électoraux ;

10. *Ont souligné* que la mise en œuvre pleine et effective de la loi est essentielle afin de prévenir l'utilisation abusive de ressources administratives pendant les processus électoraux ;

11. *Ont recommandé* que la législation prévoit des mesures visant à lutter contre l'utilisation abusive de ressources administratives pendant les processus électoraux de manière claire, prévisible et proportionnée, notamment par :

- a. des exigences explicites pour tous les organismes publics, y compris la fonction publique, visant à agir de manière impartiale et indépendante ;
- b. des mécanismes visant à empêcher les autorités nationales et locales de tenir des événements publics officiels à des fins de campagne ;
- c. des sanctions significatives et dissuasives mais proportionnées dans le plein respect du principe de la liberté d'association et en conformité avec les normes internationales ;
- d. un système de recours efficace, y compris la possibilité de porter des affaires devant un tribunal indépendant et impartial ;
- e. des règles pour la protection des personnes qui signalent des cas d'utilisation abusive de ressources administratives aux autorités compétentes ;

12. *Ont recommandé* l'élaboration de lignes directrices internes à l'administration publique visant à promouvoir un comportement éthique et non partisan ;

13. *Ont recommandé* la promotion de chartes d'éthique ou d'accords entre les partis politiques et de les rendre accessibles au public ;

14. *Ont recommandé* aux administrations publiques de contrecarrer les activités qui, intentionnellement ou non, favorisent ou défavorisent tout intervenant politique ;

15. *Ont souligné* l'importance des organes de contrôle et d'audit qui surveillent l'utilisation des ressources administratives pendant les processus électoraux, essentiellement :

- a. en veillant à ce que les candidats aux élections tiennent une comptabilité complète de toutes les recettes et dépenses, soumis à contrôle ;
- b. en élaborant des règles appropriées concernant la publicité des donateurs ;
- c. en appliquant, lorsque cela s'avère nécessaire, des sanctions appropriées ;

16. *Ont encouragé* la coopération avec les institutions internationales travaillant dans ce domaine, en particulier le GRECO.