



Strasbourg, 16 December 2013

**CDL-AD(2013)033**

**Study No. 585 / 2010**

Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**REPORT**

**ON**

**THE MISUSE OF ADMINISTRATIVE RESOURCES  
DURING ELECTORAL PROCESSES**

**Adopted by the Council for Democratic Elections  
at its 46<sup>th</sup> meeting  
(Venice, 5 December 2013)  
and by the Venice Commission  
at its 97<sup>th</sup> plenary session  
(Venice, 6-7 December 2013)**

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## I. Definition and scope

### A. Scope

1. After more than twenty years of election observation in Europe and more than ten years of legal assistance to the Council of Europe member states, many improvements were observed regarding electoral legislation and practice. These improvements were materialised thanks to political will and to a rather successful implementation of international recommendations in the electoral legal framework. Nevertheless, the practical implementation of electoral laws and laws related to political parties (including financing of political parties and electoral processes) remains problematic to several extents. The conduct of elections according to the rule of law involves the setting of a mechanism that would ensure the respect of democratic principles, the guarantee of equal treatment in the exercise of the right to vote and to be elected, the development of a political culture, as well as transparency in the exercise of rights and duties by the electoral actors, preventing therefore any kind of abuse. One of the most crucial, structural and recurrent challenges, raised on a regular basis in election observation missions' reports in most of the countries observed, is the misuse of administrative resources, also called public resources, during electoral processes. This practice is an established and widespread phenomenon in many European countries, including countries with a long-standing tradition of democratic elections. Several generations of both incumbents and civil servants consider this practice as normal and part of an electoral process. They seem even not to consider such practice as illegitimate action *vis-à-vis* challengers in elections. It may be consequently harder for these challengers to take advantage of administrative resources. This phenomenon seems part of an established political culture and keeps a relation not only with practices potentially regarded as illegal but also with the ones caused by the lack of ethical standards related to the electoral processes of the public authorities in office.

2. Considering this widespread phenomenon, the Venice Commission decided to prepare a report on the issue as well as to draw guidelines, on the basis *inter alia* of the contributions of three Venice Commission members, Messrs Gonzalez Oropeza,<sup>1</sup> Hirschfeldt and Kask, and one election expert, Mr Serhii Kalchenko. In order to assess the situation among the Venice Commission member states, the report aims at answering two questions: 1) what are the inherent weaknesses in legislation and in practice in the member states that lead to misuse of administrative resources during electoral processes? 2) How to address this problem in law and in practice?

3. The report proposes in this **introductory part** a definition of the notion of administrative resources during electoral processes. The report also defines in this introductory part the scope of this analysis in a comparative perspective. For the purpose of this comparative approach, the Secretariat of the Venice Commission prepared a table comparing legal provisions, opinions and election observation missions' reports dealing with this topic in the various Venice Commission member states, with the help of the members who contributed to this comparative table (CDL-REF(2012)025rev). This table exclusively analyses electoral laws. Therefore, other pieces of legislation related to the misuse of administrative resources, though relevant, are not covered in the report. The report also benefits from the contributions of the Fourth Eastern Partnership Seminar held in Tbilisi, Georgia, on 17-18 April 2013, and presentations on relevant practice in Latin America, France, Armenia, Azerbaijan, Georgia, Ukraine and Moldova.<sup>2</sup>

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<sup>1</sup> Use of public funds for election purposes, the practice in Mexico, Report by Mr Manuel González Oropeza (CDL(2012)076).

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL\(2012\)076-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2012)076-e).

Remark: All website references are updated up to 15 October 2013.

<sup>2</sup> Reports of the Seminar: CDL-EL(2013)007.

4. After an executive summary (**part two**) the **third part** of the report focuses on the legal environment and the practice in member states, making reference to other countries for the purpose of comparison. A **fourth part** elaborates on the distinction between legitimate or illegitimate use of administrative resources during electoral processes. The **fifth part** of the report suggests recommendations in order to prevent the misuse of administrative resources and limit the phenomenon.

5. Finally, in a **sixth part**, the Venice Commission draws **guidelines** aiming at fighting misuse of administrative resources during electoral processes, for the consideration of the states and lawmakers.

6. *This report was adopted by the Council for Democratic Elections at its 46<sup>th</sup> meeting (Venice, 5 December 2013) and by the Venice Commission at its 97<sup>th</sup> Plenary Session (Venice, 6-7 December 2013).*

## B. Sources, reference documents

7. This report is mainly based on the following sources:

- Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms;<sup>3</sup>
- OSCE, Copenhagen Document 1990;<sup>4</sup>
- Case-law of the European Court of Human Rights;<sup>5</sup>
- Council of Europe, Parliamentary Assembly, election observation missions' reports;<sup>6</sup>
- Council of Europe, GRECO reports;<sup>7</sup>
- Council of Europe, Parliamentary Assembly, Lobbying in a democratic society (Doc. 11937);<sup>8</sup>
- Council of Europe, Venice Commission, Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev);
- Council of Europe, Venice Commission, Report on media monitoring during election observation missions (CDL-AD(2004)047);
- Guidelines on Media Analysis during Election Observation Missions Prepared in co-operation between the OSCE's Office for Democratic Institutions and Human Rights, the Council of Europe's Venice Commission and Directorate General of Human Rights, and the European Commission (CDL-AD(2005)032);
- Guidelines on Media Analysis during Election Observation Missions by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission (CDL-AD(2009)031);
- Council of Europe, Venice Commission, Code of Good Practice in the Field of Political Parties (CDL-AD(2009)021);
- Council of Europe, Venice Commission, Guidelines on political party regulation by OSCE/ODIHR and Venice Commission (CDL-AD(2010)024);
- Council of Europe, Venice Commission, Report on the role of the opposition in a democratic parliament (CDL-AD(2010)025);
- Council of Europe, Venice Commission, Comparative table on legislation, opinions and election observation missions' reports dealing with administrative

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Available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-EL\(2013\)007-bil](http://www.venice.coe.int/webforms/documents/?pdf=CDL-EL(2013)007-bil).

<sup>3</sup> Available at: [www.conventions.coe.int/Treaty/en/Treaties/Html/005.htm](http://www.conventions.coe.int/Treaty/en/Treaties/Html/005.htm).

<sup>4</sup> Available at: [www.osce.org/odihr/elections/14304](http://www.osce.org/odihr/elections/14304).

<sup>5</sup> Available at: <http://hudoc.echr.coe.int>.

<sup>6</sup> The reports by country are detailed in the report.

<sup>7</sup> Available at: [www.coe.int/t/dghl/monitoring/greco/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/default_en.asp).

<sup>8</sup> Available at:

<http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=12205&lang=EN&search=MTE5Mzc=>.

resources, updated after consultation of the Venice Commission members (CDL-REF(2012)025rev);

- OSCE/ODIHR, Review of electoral legislation and practice in OSCE participating states;<sup>9</sup>
- Council of Europe, Venice Commission and OSCE/ODIHR, Guidelines on political party regulation (CDL-AD(2010)024);<sup>10</sup>
- Fourth Eastern Partnership Facility Seminar on the “use of administrative resources during electoral campaigns” – Tbilisi, Georgia, 17-18 April 2013 – Reports of the Seminar (CDL-EL(2013)007); and
- OSCE/ODIHR, election observation missions’ reports.<sup>11</sup>

### C. Definition

8. The “misuse of public resources” is widely recognised as the unlawful behaviour of civil servants, incumbent political candidates and parties to use their official positions or connections to government institutions aimed at influencing the outcome of elections. Nevertheless, this definition does not cover the exact scope of this report. Indeed, the report highlights the problem of constant, or frequent, practice of **misuse** of **administrative** resources by both incumbents and civil servants during electoral processes. The assumption is therefore the following: there are among the Venice Commission member states inherent weaknesses in legislation and in practice that may lead to misuse of administrative resources, giving an undue advantage to **incumbent** political parties and candidates vis-à-vis their challengers, thus affecting the equality of electoral processes.<sup>12</sup>

9. An **electoral process** as understood in the report is a period going **beyond** the electoral campaign as strictly understood in electoral laws, it covers the various steps of an electoral process as starting from, for example, the territorial set-up of elections, the recruitment of election officials or the registration of candidates or lists of candidates for competing in elections. This whole period leads up to the election of public officials. It includes all activities in support of or against a given candidate, political party or coalition by incumbent government representatives before and during election day. An electoral campaign as defined in the report starts at such an early stage. Hence, the report alludes to domestic provisions that for some of them strictly refer to the electoral campaign, for some others to larger periods. Electoral campaigns are part of the electoral process. Hence, it does not impact the comparative dimension of the methodology used for this report (in particular regarding the comparative table on legislation, opinions and election observation missions’ reports dealing with administrative resources).<sup>13</sup> The report retains therefore a broad definition of the electoral process.

10. The report also clearly distinguishes the **use** and the **misuse** of administrative resources. The **use** of resources should be permitted by law; it implies a lawful possibility of using administrative resources during electoral processes for the proper functioning of the institutions and providing that such a use is not devoted to campaigning purposes. On the

<sup>9</sup> Publication issued on 15 October 2013. Available at: [www.osce.org/odihr/elections/107073](http://www.osce.org/odihr/elections/107073). This publication is indicated for information as it was not used by the rapporteurs for completing this report due to its recent publication.

<sup>10</sup> Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)024-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)024-e); and [www.osce.org/odihr/77812](http://www.osce.org/odihr/77812).

<sup>11</sup> Available at: [www.osce.org/odihr/elections/](http://www.osce.org/odihr/elections/). The reports by country are detailed in the report.

<sup>12</sup> The OSCE/ODIHR Guidelines on political party regulation define the incumbency advantage as follows: “While there is a natural and unavoidable incumbency advantage, legislation must be careful to not perpetuate or enhance such advantages. Incumbent candidates and parties must not use state funds or resources (i.e., materials, work contracts, transportation, employees, etc.) to their own advantage”.

<sup>13</sup> CDL-REF(2012)025rev.

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2012\)025rev-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2012)025rev-e).

contrary, the **misuse** of administrative resources should be sanctioned by law due to the unlawful use of public resources by incumbents and civil servants for campaigning purposes.

11. The allocation of **public funds** for campaigning purposes provides political parties and candidates with a specific public financial support, limiting risks of unbalanced financial means for campaigning. In this respect, there are examples of laws stipulating that parliamentarians and cabinet ministers have the right to travel within the country free of charge, including during electoral processes. If such political activities are financially supported by public funds, in conformity with the principle of equality among parliamentarians and under independent supervision, such measures will not fall under the definition of misuse of administrative resources.

12. Therefore, the following **definition of administrative resources** can be retained for the purpose of this report:

**Administrative resources are human, financial, material, *in natura*<sup>14</sup> and other immaterial resources enjoyed by both incumbents and civil servants in elections, deriving from their control over public sector staff, finances and allocations,<sup>15</sup> 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.<sup>16</sup>**

13. The misuse of administrative resources includes accordingly the use of equipment (i.e. the use of phones, vehicles, meeting rooms, etc.) as well as access to human resources (i.e. civil servants, officials...) in ministries and among territorial and local public institutions aimed at promoting the campaigns' activities of the incumbents. Such abuses lead to inequality between candidates, particularly between incumbents and other political parties or candidates and even more for those having no representation in parliament. Moreover, it should be noted that despite the focus of the report on elections to parliaments, the report could also apply to territorial and local self-government bodies. Furthermore, in order to limit the scope of the study, the report retains the public institutions as main actors of misuse of administrative resources. This does not exclude semi-public bodies such as state-owned enterprises, semi-public institutions, public agencies and their employees, which are subject to political pressure and can be abused for the purpose of electoral campaigning.

14. The notion of misuse of administrative resources during electoral processes should also be defined throughout the existing international binding texts and soft law. In this respect, the 1990 Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE (OSCE) underlines the need for "a clear separation between the State and political parties." Political parties should be provided "with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities."<sup>17</sup> The International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Corruption (UNCAC) are also part of the applicable international standards, as well as the Council of Europe Committee of Ministers 2003 Recommendation on common rules against corruption in the funding of political parties and electoral campaigns.<sup>18</sup>

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<sup>14</sup> Like some benefits from social programmes, including goods and in kind resources.

<sup>15</sup> As well as state-owned media, which will not be addressed here.

<sup>16</sup> This definition aims at harmonising various expressions that can be found in domestic legislation such as "public resources" or "state resources". Both expressions refer to "administrative resources".

<sup>17</sup> Respectively para. 5.4 and 7.6 of the 1990 Copenhagen Document.

Available at: [www.osce.org/odihr/elections/14304](http://www.osce.org/odihr/elections/14304).

<sup>18</sup> See respectively:



15. This requirement of equal treatment – the principle of equality of opportunity – implies that there is an effective remedy against misuse of administrative resources by both the incumbent political parties and civil servants during electoral processes but also during the period under which they are in power and especially during the period immediately foregoing the electoral process.<sup>19</sup> Following the principle of neutrality that guarantees a level playing field for all political contestants and that entails an impartial behaviour by civil servants during the whole electoral process, it is important that authorities of all levels stay away from the election process in order to avoid any kind of interference and guarantee fairness and impartiality during the entire electoral process.<sup>20</sup> Moreover, in countries where re-election is allowed, officials in public positions that are running for office should not use their opportunities as officials when they campaign and act as candidates. Norms dealing with misuse of administrative resources by public officials aimed at consolidating repetitive practices identifiable as democratic principles, the guarantee of equality for each political party and the safeguard of the principle of free and fair elections.<sup>21</sup>

16. The report is based on the above definition of misuse of administrative resources during electoral processes. It does not therefore cover the issue of abuse of administrative resources through state-owned media or limits to campaign expenditures, even if these are also widespread phenomena. Moreover, specific provisions apply to media coverage during electoral campaigns and prescribe in general that airtime is devoted to all competitors on an equal basis.<sup>22</sup> If abuses do exist, the purpose of this report is not to reflect such considerations.

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. ICCPR, Article 25: "(...) Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind".

Available at: <http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

. UNCAC, Article 17: "each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position".

Available at: [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=XVIII-14&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=XVIII-14&chapter=18&lang=en).

. CoE Committee of Ministers Recommendation Rec(2003)34, Section IV: "(...) Objective, fair and reasonable criteria should be applied regarding the distribution of state support (...)" (art. 1) and "(...) States should prohibit legal entities under the control of the state or of other public authorities from making donations to political parties" (art. 5. c).

Available at: [www.coe.int/t/dghl/monitoring/greco/general/Rec\(2003\)94\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/general/Rec(2003)94_EN.pdf).

<sup>19</sup> See also Guidelines on political party regulation by OSCE/ODIHR and Venice Commission (CDL-AD(2010)024), p. 207-210, where some of the general problems concerning abuse of state resources are presented. Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)024-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)024-e).

<sup>20</sup> 2006 Ruling on the final count result of the Presidential elections in the United States of Mexico, declaration of validity of the election and the President elect, Mexico, TEPJF, 2008, p. 392.

Available at: [www.tedf.org.mx/sentencias/index.php/sentencias](http://www.tedf.org.mx/sentencias/index.php/sentencias).

<sup>21</sup> As acknowledged by the Constitutional Court of Germany in a judgement of 1977, actions by state authorities have an influential effect on the electorate's opinion and how to vote. Therefore, they are forbidden, with regard to their public function, to identify themselves with political parties or candidates during elections and to use administrative resources in favour or against them, particularly through advertising aimed at influencing the voters' decision (see BverfGE 44; 125; C; I; 4; para. 49). See *inter alia*:

<http://www.kommunalbrevier.de/kb.epl?dn=ou%3D%C2%A7%2011%20Unterrichtung%20oder%20Einwohner%20Cou%3DLandkreisordnung%20%28LKO%29%20Cou%3DGesetzestexte%20Cou%3DKommunalbrevier%20Cdc%3Dkomb%20Cdc%3Dgstbrp>.

<sup>22</sup> In this respect, the Venice Commission's Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev) states that:

#### I. 2.3. Equality of opportunity

a. Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to:

- i. the election campaign;
- ii. coverage by the media, in particular by the publicly owned media;

## II. Executive summary

17. Despite many improvements in Europe in the field of electoral legislation and practice, the practical implementation of electoral laws and laws related to political parties (including financing of political parties and electoral processes) remains problematic to several extents. One of the most crucial, structural and recurrent challenges, raised on a regular basis in election observation missions' reports in most of the countries observed, is the misuse of administrative resources, also called public resources, during electoral processes. This practice is an established and widespread phenomenon not only in Europe but also for example in the Americas and in Central Asia, including in countries with a long-standing tradition of democratic elections. The Venice Commission believes that there are among the Venice Commission member states inherent weaknesses in legislation and in practice that may lead to the misuse of administrative resources, potentially giving an undue advantage to incumbent political parties and candidates vis-à-vis their challengers, thus affecting the equality of electoral processes and the freedom of voters to form an opinion.

18. The report underscores that the misuse of administrative resources during electoral processes can threaten some of the basic requirements of a democratic constitutional state. Nevertheless, the political will of the highest state authorities to ensure free, fair and balanced elections remains a key factor. Furthermore, what is crucial here is how the legislative instrument is used, the executive power is exercised and the judiciary or independent relevant bodies apply the law. 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.

19. Legal provisions on prevention and sanction of the misuse of administrative resources can be divided into six categories. Certain sub-sections refer to similar laws but emphasise distinct provisions:

- The first category 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 favour of any political party that contends for elections.
- The second category emphasises particular types of resources. The countries concerned are *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

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iii. public funding of parties and campaigns.

(...)

### I. 3.1. Freedom of voters to form an opinion

- a. State authorities must observe their duty of neutrality. In particular, this concerns:
- i. media;
  - ii. billposting;
  - iii. the right to demonstrate;
  - iv. funding of parties and candidates.

See also the Report on media monitoring during election observation missions (CDL-AD(2004)047), para. 9,14.5, 22.1, 22.3, 26, 41, 46, 49.1, 58, 60, 62-63, 147-148 and 166.

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2004\)047-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2004)047-e).

See also Guidelines on Media Analysis during Election Observation Missions Prepared in co-operation between the OSCE's Office for Democratic Institutions and Human Rights, the Council of Europe's Venice Commission and Directorate General of Human Rights, and the European Commission (CDL-AD(2005)032); as well as Guidelines on Media Analysis during Election Observation Missions (CDL-AD(2009)031) in particular para. 60-61. Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2005\)032-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2005)032-e); and at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)031-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)031-e).



Kazakhstan, the relevant regulations deal with the misuse of public real estate properties for instance. 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. Some European countries fit in a general restrictive clause, *inter alia*, Armenia, Azerbaijan, Georgia, Kazakhstan and Moldova.

- A third category focuses on provisions forbidding any kind of intervention by public servants in favour of a candidate. This is notably the case in Greece, Ireland, the Kyrgyz Republic, Portugal and Spain. Four analysed legislations refer to temporary circumstances where public servants cannot campaign while in office or only during their workdays, i.e. Albania, Armenia, Kyrgyz Republic and Ukraine.
- A fourth category of provisions contains rules focusing 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.
- A fifth category includes media coverage as a possible misuse of public funds (see the electoral codes of Armenia and Georgia).
- A sixth and last category mentions the 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.

20. In countries without provisions on misuse of administrative resources during electoral processes, constitutional courts or equivalent bodies interpreted the law through a corpus of decisions, by giving a judicial interpretation of constitutional principles about equality in electoral processes and contributing to ensure neutrality of government authorities in electoral processes. The report also mentions several topical decisions of the European Court of Human Rights.

21. The Venice Commission considers that codes of good practice and ethical standards – particularly with regard to electoral administration and electoral disputes – should be identified and incorporated materials should be readily available to public servants. The importance of respecting the role of the opposition in a democratic parliament has also to be highlighted. It could be looked upon as a first important step against misuse of political power.

22. Moreover, the report underlines that satisfactory criminal laws against misuse of administrative resources are in force in most countries, but an effective implementation remains a general problem. To effectively implement the legislation, a mutual understanding and a sense of responsibility are required among all political stakeholders. There is a need for a shared understanding and consensus on the importance of constitutional values. However, this does not concern only criminal law but also general legislation.

23. The integrity of all relevant stakeholders, *inter alia* police, prosecutors, courts, judges, as well as auditors, is clearly vital to tackle the misuse of administrative resources. Media under the principle of freedom of information can also play an important role in countering abuses and support the effective administration of justice in this field. The Venice Commission reminds that the fundamental principles of transparency – in electoral processes – and of freedom of information are *sine qua non* pre-conditions for preventing misuse of administrative resources.

24. Guidelines aimed at fighting the misuse of administrative resources during electoral processes can be found in chapter V. These guidelines are based on this report.

### III. Legal environment and practice

#### A. Principles

25. Traditionally, an electoral process is a highly competitive period, sometimes far from political platforms that should be proposed to the citizens. Electoral processes are often characterised by harsh rhetoric between competitors; by pressure on voters and on candidates; by defamation; by vote buying and sometimes by illegal campaigning means. The latter practice is persistent throughout electoral processes in many elections. Indeed misuse of administrative resources during the whole electoral process does impact public institutions (ministries, territorial and local bodies and other state-funded bodies) and human resources within the public sector.

26. Despite the need to regulate the use of administrative resources during electoral processes, in many countries, domestic electoral laws do not provide rules and/or sanctions. As a result, the principle of balance of powers can be threatened by a misuse of administrative resources due, *inter alia*, to unbalanced electoral processes in favour of incumbents. Moreover, general pieces of legislation, such as laws against corruption, on conflict of interest or on public service may be too general to effectively respond to the need for tackling specific situations of misuse of such resources. Where there is no legislation on the issue, public authorities should act based on ethical principles, guaranteeing conditions of equality for all political competitors. The respect of a balanced electoral process and consequently of basic requirements of a democratic constitutional state implies an obligation for the State to protect such principles, notably for new political parties and candidates, especially those without representation in parliament and/or local self-government bodies and particularly during electoral processes, where the environment is the most competitive and too often the most unbalanced. In this sense, electoral legislation should be developed to provide efficient and sufficient means for tackling the misuse of administrative resources, which must be applied ethically by public servants, following the principle of neutrality in exercising their functions, with a clear, understandable and predictable system of appropriate sanctions.

27. In democratic institutions, a distinction should be made regarding the access to public facilities of political parties which are or not represented in parliament, considering that candidates without representation in parliament do not have easily access to such public facilities. Opposition parties and candidates should have access to administrative resources following the principle of equality. Governmental action and political campaigning should be distinct activities, following the separation of roles for political actors, which include state authorities and political parties. It is therefore important to design appropriately the law, including public funding of political parties and electoral campaigns, in order to reflect these various situations, both in presidential and parliamentary systems.

28. The misuse of administrative resources during electoral processes can threaten some of the basic requirements of a democratic constitutional state.<sup>23</sup> The balance of powers and freedom of opinion must be guaranteed and promoted by parliament in its role as a legislator supervising the government, by the government in its executive role, by an independent judiciary and by free media and opinions. Moreover, a body independent from government and political structures could be in charge of tackling the misuse of administrative resources, according to the practice established for equivalent independent bodies in the countries. The format of an inter-agency, as set up in Georgia for instance, seems to be an interesting

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<sup>23</sup> See para. 25.

approach, bearing in mind that such a body does not have a judicial dimension. It is logically associated to electoral commissions – and in particular to the central electoral management body – and courts dealing with electoral matters.<sup>24</sup> Nevertheless, the political will of the highest state authorities to ensure free, fair and balanced elections remains a key factor. Without such a will, widely shared among political stakeholders, establishing an independent body that monitors the use of administrative resources during electoral processes may remain a superficial initiative.

29. Accordingly, a well-functioning democratic state under the rule of law requires that certain overarching common values within the society can be developed and maintained. The goal must be a political and legal culture of fair play, where politicians – in particular the incumbents –, judges, civil servants and all social leaders, intervening in the election process for the renewal of public authorities, should not only comply with the law but also seek to maintain high ethical standards in their task. The public should also take part in a comprehensive and responsible social debate.

30. The report clearly takes into account the various traditions and views of the political parties' positions. Some countries, such as the Nordic countries, have traditionally preferred self-regulation and voluntary agreements of party life to more detailed laws. Such gentlemen's agreements may be more difficult to achieve in other regions of Europe where the tradition of a pluralistic political scene is still recent or less developed.

31. A national legislation may guarantee some privileges for oppositions political forces, including seats in parliamentary committees and majority in a central electoral management body for instance.<sup>25</sup>

32. It is important to note that both in countries with strong and longstanding legal traditions and in those with thin legal frameworks, there are two key elements to protect administrative resources during the whole electoral process: firstly, the enforcement of existing laws and secondly, the well-functioning of institutions where self-regulation can be exercised by the political community. The latter involves a real possibility for non-incumbent political parties and candidates to publicise and institutionally channel grievances against the misuse of administrative resources. Independent, impartial and open institutions strengthen and incentivise a culture of legality and a democratic environment.

33. In the end, however, what is crucial here is how the legislative instrument is used, the executive power is exercised and the judiciary or independent relevant agencies apply the law. As in corruption cases, the implementation of sanctions against abuse of administrative power is possible only if the investigation, prosecution and justice systems are independent of the ruling political power.

## **B. Comparative analysis**

34. Regarding the legal environment and based on the comparative table provided,<sup>26</sup> several Venice Commission member states do not have specific provisions against the misuse of administrative resources during electoral processes in their electoral legislation. Nevertheless, a more thorough analysis of other pieces of legislation may cover such

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<sup>24</sup> See para. 62.

<sup>25</sup> In the case of Sweden, it is now an accepted practice within Parliament that a representative of the opposition parties is in charge of the office of President of the Constitutional Committee, while the majority of the committee stays in the hands of the party(-ies) in government as long as the ruling party or the ruling coalition has the majority in parliament.

<sup>26</sup> CDL-REF(2012)025rev.

provisions such as criminal or administrative legislation or laws on political parties.<sup>27</sup> For the countries providing legislation on the misuse of administrative resources during electoral processes, the level of details and of effective sanctions stipulated by law is variable and does not ensure the same level of safeguards. If electoral processes are often regulated regarding financing of campaigns and political parties, media coverage or defamation, laws are weaker in regulating misuse of administrative resources during electoral processes, including sanctions. The law is therefore absent or insufficient in domestic electoral laws to face this long-standing practice.<sup>28</sup> Overall, the judiciary does not cover enough the phenomenon and other existing complaints as well as appeals procedures are not systematically adapted to this issue. In countries like Mexico, constitutional principles have helped the Judiciary to adjudicate controversies over the misuse of administrative resources based on the equality principle.

35. It should be noted that the list of OSCE/ODIHR reports referenced in the present report is not exhaustive. Moreover, no mention of issues of misuse of administrative resources in OSCE/ODIHR reports does not necessarily mean that there was no issue. The same consideration applies to the election observation missions' report of the Parliamentary Assembly of the Council of Europe.

36. The following sub-sections aim at distinguishing various categories of provisions dealing with the use of administrative resources. Certain sub-sections refer to similar laws but emphasise distinct provisions.

**37. a. The first category of provisions regulates the use of administrative resources during electoral processes, without distinguishing between material and human resources.**<sup>29</sup>

38. The Election Code of **Georgia**, newly enacted in 2011, provides for exhaustive provisions both on "prohibition of the abuse of administrative resources during the pre-election agitation and campaign" (Article 48) and on "prohibition of the use of budget funds, occupational status or official capacity" (Article 49).<sup>30, 31</sup>

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<sup>27</sup> To find further information on relevant provisions dealing with the misuse of administrative resources, please refer to the International IDEA Political Finance Database. Available at: [www.idea.int/political-finance/index.cfm](http://www.idea.int/political-finance/index.cfm).

<sup>28</sup> In Latin America, at least 18 countries provide special regulations on the misuse of administrative resources during campaigns. In cases such as Mexico and Uruguay, there are constitutional provisions that mandate civil servants to perform impartially, avoiding influencing political competitors. There is evidence that Supreme Courts and Specialized Electoral Courts have taken actions with regard misuse of administrative resources that provide evidence of good practice, although challenges are still pervasive.

<sup>29</sup> Countries described in para. 38-44 belong to this category. In the Americas, countries like Bolivia, Guatemala, Honduras, Mexico, Panama, Dominican Republic, the United States and Venezuela are concerned by this category. Regarding more precisely the United States, the Hatch Act 1939 restricts the partisan political activity of any individual employed by the state, an executive agency, or someone working in connection with a program financed by federal loans or grants. The Hatch Act has undergone a reform in 2011 (The State and Local Law Enforcement Hatch Act Reform Act 2011).

<sup>30</sup> The expressions "Electoral Code" or "Election Code" are used in the report on purpose, depending on the original version used by the country, in opinion or all other relevant documents.

<sup>31</sup> Mexican regulations are also quite specific in the matter of use of public funds during elections. Article 134 of the Constitution establishes that financial resources of the federal, state, municipal and Mexico City governments with their political administrative sub-agencies of their territorial demarcations shall be managed with efficiency, economy, transparency and integrity in order to achieve the objectives they are destined to, and that public officials shall be accountable for the enforcement of these provisions. Federal, State and municipal public officials, as well as the ones of Mexico City and its boroughs are under the obligation to use the public resources under their responsibility with impartiality without affecting fairness in the competition of political parties. For a more exhaustive report on the misuse of public funding for election purposes and practice in the filed in Mexico, including electioneering expenditure and case-law of the Supreme Court of Elections on public resources, see the report of Mr Manuel Gonzalez Oropeza (CDL(2012)076). Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL\(2012\)076-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2012)076-e).

39. In the **Russian Federation**, Article 46 of the Law on State Duma Elections imposes several restrictions to avoid the use of public means in favour of any political party that contends for elections. In practice, the OSCE/ODIHR notes in its report following the presidential election of 4 March 2012 that “[t]here was an evident mobilization of individuals and administrative resources in support of Mr Putin’s campaign, which was observed by the OSCE/ODIHR EOM [Election Observation Mission]. In several regions, participants in campaign events reported that they had been ordered to take part by their superiors. Various levels of public institutions instructed their subordinate structures to organize and facilitate Mr Putin’s campaign events. Local authorities also used official communication, such as their institutional websites or newspapers, to facilitate Mr Putin’s campaign.”<sup>32</sup> The PACE Report following the same elections recommends “strict rules [...] with regard to the use of administrative resources in campaign periods.”<sup>33</sup>

40. In **Turkey**, the Law on Basic Provisions on Elections and Voter Registers prohibits in Articles 63-65 the misuse of administrative resources during electoral campaigns by public authorities. In practice, following the 2011 parliamentary elections, the misuse of administrative resources was not brought to the attention of the OSCE/ODIHR Election Observation Mission.<sup>34</sup>

41. In **Ukraine**, the Law on Elections of People's Deputies prohibits misuse of administrative resources during campaigns by public authorities.<sup>35</sup> Article 74 of the Law stipulates the restrictions regarding the conduct of electoral campaigns, banning *inter alia* canvassing for civil servants during their working hours or placing campaign material in public administration’s buildings. In practice, the OSCE/ODIHR reported in its final report following the 28 October 2012 parliamentary elections a “lack of a level playing field, caused [*inter alia*] primarily by the abuse of administrative resources [...]” The report also underlines that this misuse of administrative resources during the electoral campaign “demonstrated the absence of a clear distinction between the State and the ruling party in some parts of the country, contrary to paragraph 5.4 of the 1990 OSCE Copenhagen Document.”<sup>36</sup>

42. In **Albania**, the use of material assets and human resources belong to similar provisions but both notions are explicitly distinguished. The Electoral Code covers the misuse of administrative resources during electoral campaigns as follows:

Article 88 - Prohibition of the use of public resources for the support of electoral subjects

1. Except for the cases provided by law, resources of public organs or entities of a central or local level, or of any other entity where the state owns capital or shares or/and appoints the majority of the supervisory or administrative body of the entity, regardless of the source of the capital or ownership, cannot be used or made available for the support of candidates, political parties or coalitions in elections.

<sup>32</sup> OSCE/ODIHR, Russian Federation, Presidential Election, 4 March 2012, Election Observation Mission Final Report, page 1. Available at: [www.osce.org/odihr/90461](http://www.osce.org/odihr/90461).

<sup>33</sup> Council of Europe, Parliamentary Assembly, Observation of the Presidential Election in the Russian Federation (4 March 2012), Election observation report (Doc. 12903, 23 April 2012), para. 61.

Available at:

<http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=18168&lang=EN&search=MTI5MDM=>.

<sup>34</sup> OSCE/ODIHR, Republic of Turkey, Parliamentary Elections, 12 June 2011, Final Report. Available at: [www.osce.org/odihr/84588](http://www.osce.org/odihr/84588).

Council of Europe, Parliamentary Assembly, Observation of the parliamentary elections in Turkey (12 June 2011), Report (Doc. 12701, 5 September 2011).

Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=12999&lang=en>.

<sup>35</sup> Articles 6.2, 68.4, 68.10, 74.1, 74.4, 74.13, 74.21 and 74.24 of the Law.

<sup>36</sup> International Election Observation Mission, Ukraine, Parliamentary Elections, 28 October 2012, Final Report, Executive Summary, pages 3-4. Available at: [www.osce.org/odihr/elections/98578](http://www.osce.org/odihr/elections/98578).

Council of Europe, Parliamentary Assembly, Observation of the parliamentary elections in Ukraine (28 October 2012), Election observation report (Doc. 13070, 29 November 2012), para. 7.

Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19213&lang=en>.

2. For purposes of this article, movable and immovable assets provided in article 142 of the Civil Code, as well as any human resource of the institution, are considered “resources”. The use of “human resources” is understood as the use of the administration of the institution during working hours for election purposes. Even hiring, dismissing from work, release, movement and transfer of duty, with the exception of motivated cases, are considered to be activities of the public institution.<sup>37</sup>

43. In this provision, assets and human resources are considered as administrative resources as soon as they are used for electoral purposes during working hours. This provision is interesting as it covers at least in the law the requirements for preventing misuse of administrative resources. Nevertheless, the last joint opinion of the Venice Commission and the OSCE/ODIHR<sup>38</sup> on the Electoral Code of Albania underlines that the expression “with the exception of motivated cases” (Article 88.2) “appears as very broad and needs some specification”. Therefore, “the Venice Commission and OSCE/ODIHR recommend amending Article 88.2 in order to limit the scope of this exception”.<sup>39</sup>

44. In practice, the OSCE/ODIHR Final Report following the 28 June 2009 parliamentary elections underlines that “[t]here were substantiated allegations of misuse of administrative resources by the [Democratic Party] for campaign purposes. Such actions blurred the distinction between state and party activities, in contravention of paragraph 5.4 of the OSCE Copenhagen Document.”<sup>40</sup> The report of the Parliamentary Assembly of the Council of Europe (PACE) following the same elections raises the same concerns:

“38. The ad hoc committee considered worrying the information supplied by the opposition parties about cases of administrative resources being used for the purposes of the election campaign and public servants threatened with loss of employment, specifically schoolteachers and medical personnel, chiefly in the rural regions supporting the opposition candidates.

39. The ad hoc committee was informed that a large number of ceremonies to open roads, hospitals and a hydro-electric plant, and other official functions had been organised during the election campaign in Tirana and in the regions by the authorities, with public servants, students and schoolchildren allegedly participating under coercion. Nevertheless, one of the main objectives of the election campaign should be to inform the citizens of the programmes and ideas of the political parties before asking citizens for a mandate.”<sup>41</sup>

Following the 23 June 2013 parliamentary elections, the report of the Parliamentary Assembly of the Council of Europe underlines that “[l]egislation did not adequately regulate or penalise the misuse of administrative resources. The enforcement of provisions against campaign misconduct, including vote buying, was weak.”<sup>42</sup> The OSCE/ODIHR stresses in its report that “[t]he framework fails to detail a comprehensive system of sanctions for misuse of administrative resources, including public servants, involvement of schoolchildren in campaigning, and misappropriation of public official positions and government events, for

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<sup>37</sup> Article 88 of the Electoral Code of Albania (CDL-REF(2011)038). Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2011\)038-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2011)038-e).

<sup>38</sup> All references made to joint opinions in the report are opinions prepared jointly by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

<sup>39</sup> CDL-AD(2011)042, para. 85-86.

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)042-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)042-e).

<sup>40</sup> OSCE/ODIHR, Republic of Albania, Parliamentary Elections, 28 June 2009 Election Observation Mission Final Report, page 2. Available at: [www.osce.org/odihr/elections/albania/38598](http://www.osce.org/odihr/elections/albania/38598).

<sup>41</sup> Council of Europe, Parliamentary Assembly, Observation of the Parliamentary Elections in Albania (28 June 2009), Report, (Doc. 12007; 16 September 2009), para. 38-39.

Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=12831&lang=EN>.

<sup>42</sup> Council of Europe, Parliamentary Assembly, Observation of the Parliamentary Elections in Albania (23 June 2013), Report (Doc. 13296; 3 September 2013), para. 22.

Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20055&lang=en>.



campaign purposes” and recommends that “[t]he abuse of state resources, including human resources, for campaign purposes could be more effectively prevented through improved enforcement and by holding those in violation accountable.”<sup>43</sup>

**45. b. There is another category of provisions that draw attention to some particular types of resources.**<sup>44</sup>

46. The Electoral Code of **Armenia** covers the misuse of administrative resources during electoral campaigns since 2011, following up recommendations from the OSCE/ODIHR and the Venice Commission to address in the Armenian legal framework the chronic issue of separation of state resources from party and/or candidate resources. In this respect, Article 22 provides:

1. Candidates occupying political, discretionary, civil positions, as well as candidates occupying a position of state or community servant shall conduct election campaigns taking into account the following restrictions:

(...)

(2) use of areas for election campaign purposes, of transportation and communication means, of material and human resources provided for performing official responsibilities, shall be prohibited, except for security measures applicable in respect of high-ranking officials subject to state protection under the Law of the Republic of Armenia “On ensuring the safety of persons subject to special state protection”.

These candidates shall make use of state property on the grounds equal to those provided for other candidates.

(...)

47. Another example of this subdivision in Europe<sup>45</sup> is the Election Code of **Georgia**, whose Article 48.1 allows the use of administrative resources for campaign purposes. The provision allows the use of state-funded buildings, communication means, and vehicles, provided that equal access is given to all election subjects. The joint opinion on the draft Election Code of Georgia of the Venice Commission and the OSCE/ODIHR raises once again concerns regarding continuous risk of misuse of administrative resources. The opinion states that “this provision appears to adhere to the equal opportunity principle. However, in practice such equality may quickly be undermined as political parties in government have easier access to such resources (government facilities, telephones, computers and vehicles). Moreover, Article 48(2) allows civil servants to use their official vehicles for campaign purposes of campaigning, provided that the fuel costs are reimbursed.”<sup>46</sup>

48. In its final report on the 1 October 2012 parliamentary elections, the OSCE/ODIHR underlines the possibility given by the law to misuse “some administrative resources for campaign purposes, in particular state-funded buildings, provided that equal access is given to all election subjects.” Nevertheless, the report relays the concerns expressed in the joint opinion as “[i]n practice, such equality may be undermined as political parties in government have easier access.”<sup>47</sup> The Parliamentary Assembly report underlines that “[t]he campaign centred mostly on issues of abuse of administrative resources and the advantages of

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<sup>43</sup> OSCE/ODIHR, Republic of Albania, Parliamentary Elections, 23 June 2013 Election Observation Mission Final Report, part V, page 7; also page 14 and Recommendation no. 18.

Available at: [www.osce.org/odihr/elections/106963](http://www.osce.org/odihr/elections/106963).

<sup>44</sup> This group not only distinguishes material and human administrative resources but also includes other criteria that are country specific

<sup>45</sup> In the Americas, the cases are Bolivia, El Salvador and Nicaragua.

<sup>46</sup> CDL-AD(2011)043, para. 11 & 60 ss.

Available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)043-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)043-e).

<sup>47</sup> OSCE/ODIHR, Georgia, Parliamentary Elections, 1 October 2012, Election Observation Mission Final Report, page 6. Available at: [www.osce.org/odihr/98399](http://www.osce.org/odihr/98399).

incumbency by the ruling party and on the abuse of private financial resources by opposition leaders” and noted that “[t]he abuse of administrative resources continued to be an issue during these elections, including allegations of pressure on civil servants and opposition activists. International observers noted that the distinction between State and the ruling party was often blurred. Local civil society organisations played an important watchdog function in this respect. In a number of cases, the IATF [Inter Agency Taskforce for Free and Fair Elections] made recommendations to address both proven cases and allegations of misuse of administrative resources.”<sup>48</sup>

49. **Kazakhstan** also has regulation for misuse of public real estate properties (para. 63-64). Similarly, **Moldova** (para. 65-66) and **Montenegro** (para. 50-51) have this kind of legal provisions, although the prohibitions of using administrative resources for electoral purpose are not aimed at public servants, but at candidates, probably in the context of re-election.

50. **Montenegro**’s legal provisions focus in a special way on the use of material resources; Article 22 of the Law on the election of the President provides:

The candidate for President of Montenegro may not use the facilities, financial resources, vehicles, technical means and other state property for the purpose of the electoral campaign.

51. The Law on the Election of Councillors and Representatives of Montenegro provides in its Article 50.2 that “[n]o property (money, technical equipment, facilities etc.) of state authorities, state-owned enterprises, public institutions and funds, or of the Chamber of Commerce and Economy of Montenegro can be used for the presentation of electoral lists.”

52. In practice, the OSCE/ODIHR final report following the early parliamentary elections of 14 October 2012 underlines that “[a]llegations of abuse of state resources and reported violations of the public sector recruitment ban during the electoral campaign blurred the line between state activities and the campaign of the ruling coalition.”<sup>49</sup> The Council of Europe Parliamentary Assembly report following the early parliamentary elections of 14 October 2012 reports misuse of administrative resources and in particular pressure and intimidations on civil servants to vote in favour of ruling political forces.<sup>50</sup> Following the 7 April 2013 presidential election, the OSCE/ODIHR final report indicates that “[a]llegations of the misuse of state resources and mistrust in public institutions and the judiciary diminished public confidence in the electoral process and should be addressed.”<sup>51</sup> The Parliamentary Assembly report underlines that “[t]he ad hoc committee was informed by the ODIHR limited election observation mission and by the NGO and media representatives of cases of alleged vote-buying and of misuse of administrative resources by the ruling coalition inasmuch as the dividing line between the activities of the State and the election campaign was blurred. Some 40% of jobs in Montenegro are directly or indirectly tied to the various public administrations.” The report recommends that misuse of administrative resources “should be tackled at the earliest opportunity by the Montenegrin authorities.”<sup>52</sup>

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<sup>48</sup> Council of Europe, Parliamentary Assembly, Observation of the parliamentary elections in Georgia (1 October 2012), Election observation report (Doc. 13068, 29 November 2012), para. 59 & 61.

<sup>49</sup> OSCE/ODIHR, Montenegro, Early Parliamentary Elections, 14 October 2012, Limited Election Observation Mission Final Report, page 1. Available at: [www.osce.org/odihr/97940](http://www.osce.org/odihr/97940).

<sup>50</sup> Council of Europe, Parliamentary Assembly, Observation of the early parliamentary elections in Montenegro (14 October 2012), Election observation report (Doc. 13069, 29 November 2012), para. 5, 33, 42 & 45. Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19196&lang=en>.

<sup>51</sup> OSCE/ODIHR, Montenegro, Presidential Election, 7 April 2013, Limited Election Observation Mission Final Report, pages 1, 2, 11 & 12; and Recommendation 19. Available at: [www.osce.org/odihr/elections/103093](http://www.osce.org/odihr/elections/103093).

<sup>52</sup> Council of Europe, Parliamentary Assembly, Observation of the presidential election in Montenegro (7 April 2013), Election observation report (Doc. 13217, 30 May 2013), para. 29, 32, 46, 49 & 52. Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19735&lang=en>.

53. 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.

54. Some European countries fit in the general restriction clause, *inter alia*, **Armenia, Azerbaijan, Georgia, Kazakhstan and Moldova**.<sup>53</sup>

55. In **Armenia** (as mentioned in para. 46), Article 22 provides:

1. Candidates occupying political, discretionary, civil positions, as well as candidates occupying a position of state or community servant shall conduct election campaigns taking into account the following restrictions:

(1) making direct or indirect statement urging to vote for or against a candidate, political party, alliance of political parties while performing official duties, as well as any abuse of official position to gain advantage at elections, shall be prohibited. (...)

56. Moreover, the representative of the Central Election Commission of Armenia also indicated during the Seminar of April 2013<sup>54</sup> that the Election Code bans the use of premises for campaigning in buildings occupied by state government bodies and local self-government bodies (except for cases where electoral campaign's offices occupy an area not belonging to such bodies), or in buildings in which electoral commissions are functioning.<sup>55</sup> The Electoral Code further stipulates that community leaders should designate spaces for putting campaign posters up. Campaign posters are provided free of charge to all the candidates in order to safeguard equal conditions.<sup>56</sup>

57. The joint opinion on the Electoral Code of Armenia (as of 26 May 2011) underlines that "[t]he separation of state resources from party and candidate resources has been a problem cited in every OSCE/ODIHR election report since 1996. The governing party network exercises influence on national government, but also the governors' offices and local self-government in most regions. During a national election, the resources under the control of these offices are called on to campaign on behalf of the government candidates. This creates a disparity in resources available with the added problem of creating the perception that employees are obligated to work for, attend rallies on behalf of and vote for the government candidates for fear for their employment. This practice is neither in conformity with the Code of Good Practice in Electoral Matters, where the principle of equality of opportunity entails a neutral attitude by state authorities,<sup>[57]</sup> nor with OSCE commitments which call for a separation of party and State and campaigning on the basis of equal treatment.<sup>[58]</sup> The changes to Articles 19 and 22, if implemented fully and properly, could contribute significantly to address problems noted in past elections."<sup>59</sup>

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<sup>53</sup> In the Latin American context, the following countries fall within the scope of general restriction clause: Costa Rica, El Salvador, the United States and Venezuela.

<sup>54</sup> Fourth Eastern Partnership Facility Seminar on the "use of administrative resources during electoral campaigns" – Tbilisi, Georgia, 17-18 April 2013 – Reports of the Seminar (CDL-EL(2013)007).

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-EL\(2013\)007-bil](http://www.venice.coe.int/webforms/documents/?pdf=CDL-EL(2013)007-bil).

<sup>55</sup> Article 20.9 of the Electoral Code of Armenia adopted on 26 May 2011.

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2011\)029-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2011)029-e).

<sup>56</sup> Article 21.2 of the Electoral Code of Armenia adopted on 26 May 2011.

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2011\)029-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2011)029-e).

<sup>57</sup> Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), I, 2.3, a.

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023rev-e).

<sup>58</sup> OSCE, Copenhagen Document 1990, para. 7.6.

Available at: [www.osce.org/odihr/elections/14304](http://www.osce.org/odihr/elections/14304).

<sup>59</sup> CDL-AD(2011)032, para. 50.

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)032-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)032-e).

58. In practice, criticisms remain. Following the last parliamentary elections of 6 May 2012, the OSCE/ODIHR Election Observation Mission Final Report stresses that “[s]ome violations of campaign provisions by electoral contestants, including the use of administrative resources and attempts to limit voters’ freedom of choice, created an unequal playing field.”<sup>60</sup> Following the same elections, the Council of Europe Parliamentary Assembly underlines that “administrative resources were misused, in direct contradiction with the Electoral Code. The RPA [Republican Party of Armenia, ruling party] actively involved teachers and pupils in campaign events, including during school hours. In one case, teachers and local authorities even asked parents to attend an RPA event. RPA campaign material and party flags were present on a number of school buildings.”<sup>61</sup> The OSCE/ODIHR final report following the presidential elections of 18 February 2013 underlines that “the campaign regulations were not always interpreted or implemented properly by the authorities and contestants, especially with regard to campaign-finance provisions. This proved to allow for abuse of administrative resources and did not provide for a level playing field among candidates or protect voters from undue influence. In addition, the Criminal Code does not include specific offenses for abuse of office and state resources in an election campaign. These factors contributed to an undue advantage of the incumbent during the campaign.”<sup>62</sup> The Parliamentary Assembly indicates in its report following the same election that “[t]he campaign regulations did not provide sufficient protection against the misuse of administrative resources, nor against the blurring of the distinction between the State and the ruling party.”<sup>63</sup>

59. The Electoral Code of **Azerbaijan** prohibits the misuse of administrative resources during electoral campaigns as well. Article 55 aims at “[e]nsuring Equal Status for Candidates during their Nomination”. This provision underlines that “[a]ll candidates shall have equal rights and responsibilities” (Article 55.1). Article 55.2 develops the actions considered by the Electoral Code as abuse of position. Moreover, a list of persons and institutions prohibited to implement charitable activities during electoral campaigns is highlighted in Article 55.3. Pursuant to Article 115 of the Election Code, the persons who misuse their powers and administrative resources in order to influence the results of elections shall be accordingly subject to criminal, civil or administrative liability. The Criminal Code of the Republic of Azerbaijan also implies that the incumbents who violate electoral rights by misusing their official powers shall be relevantly punished by penalty, deprivation of the right to take official position for some period or imprisonment.

60. In practice, the OSCE/ODIHR Final Report following the parliamentary elections of 7 November 2010 underlines *inter alia* that “misuse of administrative resources as well as interference by local authorities in favour of candidates from the ruling party created an uneven playing field for candidates.” The Report details that “[t]he misuse of administrative resources was reported from 20 constituencies where employees of state institutions were involved in campaigning for a particular candidate during working hours.” The OSCE/ODIHR Report recommends that “[t]he continuous problems regarding undue interference of local executive authorities in the election process, in particular regarding [...] the misuse of administrative resources in favour of certain candidates, should be resolutely addressed as it is the responsibility of the State to enable contestants to compete on a basis of equal

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<sup>60</sup> OSCE/ODIHR, Republic of Armenia, Parliamentary Elections, 6 May 2012, Election Observation Mission Final Report, page 1. Available at: [www.osce.org/odihr/91643](http://www.osce.org/odihr/91643).

<sup>61</sup> Council of Europe, Parliamentary Assembly, Observation of the Parliamentary Elections in Armenia (6 May 2012), Election observation report (Doc. 12937, 24 May 2012), para. 30. Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=18720&lang=en>.

<sup>62</sup> OSCE/ODIHR, Republic of Armenia, Presidential Election, 18 February 2013, Election Observation Mission Final Report, page 5. Available at: [www.osce.org/odihr/elections/101314](http://www.osce.org/odihr/elections/101314).

<sup>63</sup> Council of Europe, Parliamentary Assembly, Observation of the Presidential Election in Armenia (18 February 2013), Election Observation Report (Doc. 13172, 22 April 2013), para. 34. Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19556&lang=en>.



treatment...”<sup>64</sup> The Council of Europe Parliamentary Assembly Report following the same elections also underlines “allegations of abuse of administrative resources”.<sup>65</sup> Following the 9 October 2013 presidential election, the International Election Observation Mission stated that “YAP’s campaign on behalf of the incumbent President appeared well-organized and resourced, including rallies and concerts. While the incumbent President did not directly campaign, he toured the country in his official capacity and frequently appeared at public events. The campaigns of the other candidates were more modest, involving small-scale meetings, door-to-door canvassing, and social media on the internet, with few large-scale rallies. Some of the candidates did not hold any rallies or produce posters.”<sup>66</sup>

61. Article 49.1 of the Election Code of **Georgia** prohibits persons “holding offices in state or local authorities” from combining campaign activities in support of (or against) electoral subjects with the conduct of their official duties. This applies specifically when those persons use subordinates in campaigning, gathering signatures during official business trips, or conducting “pre-election agitation.” The joint opinion criticises this provision because “[p]ersons ‘holding offices in state or local authorities’ are not listed in Article 49 and there are varying interpretations among stakeholders as to which public officials are legally considered to be persons ‘holding offices in state or local authorities.’” The opinion recommends to clarify the list of officials concerned by this provision and to include governors and mayors, who are entitled to campaign. According to the joint opinion, “[t]he Code should further prohibit such individuals from directly or indirectly using administrative resources and from engaging in electoral campaign activities on behalf of any party/candidate, in order to ensure a level playing field for all contestants.”<sup>67</sup> On the contrary, the joint opinion welcomes the provision “which stipulates that state and local governments, between the day of announcement of the elections and the day of determining the election results, are not allowed to launch any special programs apart from those envisaged in their annual budgets.”<sup>68</sup>

62. In practice, “OSCE/ODIHR election observation mission reports from past elections have consistently identified the [mis]use<sup>69</sup> of administrative resources in Georgian elections as a significant problem. This problem is due in part to the lack of clarity and specificity in the legislation, as reproduced in the draft Code. The draft Code provisions blur the line between the state and political parties and fall short of OSCE commitments. The Venice Commission and the OSCE/ODIHR recommend revising the provisions on the misuse of administrative resources. Additionally, the last Evaluation Report by the Council of Europe Group of States against Corruption (GRECO) on transparency of party funding in Georgia raises similar concerns and “recommends to take further measures to prevent the misuse of all types of administrative resources in election campaigns”.<sup>70</sup> As a consequence, the Inter-agency

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<sup>64</sup> OSCE/ODIHR, Republic of Azerbaijan, Parliamentary Elections, 7 November 2010, Election Observation Mission Final Report, pages 1, 11 & 24.

Available at: [www.osce.org/odihr/elections/azerbaijan/75073](http://www.osce.org/odihr/elections/azerbaijan/75073).

<sup>65</sup> Council of Europe, Parliamentary Assembly, Observation of the parliamentary elections in Azerbaijan (7 November 2010), Report (Doc. 12475, 24 January 2011), para. 30 & 49.

Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=13086&lang=en>.

<sup>66</sup> International Election Observation Mission, Republic of Azerbaijan, Presidential Election, 9 October 2013, Statement of Preliminary Findings and Conclusions, page 7.

Available at: [www.osce.org/odihr/elections/106901](http://www.osce.org/odihr/elections/106901).

<sup>67</sup> CDL-AD(2011)043, para. 62.

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)043-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)043-e).

<sup>68</sup> CDL-AD(2011)043, para. 63.

<sup>69</sup> The original text says *use*. The Rapporteurs added the prefix *mis* to preserve conceptual coherence in the report.

<sup>70</sup> CDL-AD(2011)043, para. 61.

Additional reference: GRECO, Evaluation Report on Georgia on Transparency of party funding, Third Evaluation Round, Strasbourg, 27 May 2011, Adopted by GRECO at its 51st Plenary Meeting (Strasbourg, 23-27 May 2011; Greco Eval III Rep (2010) 12E), paragraph 69. Available at: [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282010%2912\\_Georgia\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282010%2912_Georgia_One_EN.pdf).

Commission (IAC) was set up to administrate the misuse of administrative resources during the electoral campaign. The IAC is a body composed of senior officials of the executive mandated to consider complaints or allegations of violations by civil servants. Mr Zurab Kharatishvili, former President of the Central Election Commission, highlighted the efficiency of such mechanism. It played a pro-active role in deterring campaign violations through issuing 12 recommendations on corrective measures. However, certain recommendations raised concern over the actual scope of the IAC's authority, which at times exceeded its mandate and challenged the principle of separation of powers.

63. The **Kazakhstan** Constitutional Act on elections states that (Article 27.5):

“Taking advantages of the official status by the candidates, who are officials of the state bodies, shall be forbidden. Under the use of advantages of the positional or official status, this Constitutional Act shall consider the following:

- 1) involvement of persons, who are subordinated or dependent on a candidate, to the conduct of a pre-election campaign, except the cases when the above-mentioned persons conduct campaigning as proxies of a candidate;
- 2) using the premises occupied by the state bodies to promote the election of a candidate or a political party that nominated a party list, if other candidates, political parties are not guaranteed by the use of these premises on the same conditions.”

64. In practice, the OSCE/ODIHR report following the 15 January 2012 early parliamentary elections does not explicitly refer to administrative resources. Nevertheless, the electoral process as a whole was assessed as not having met “fundamental principles of democratic elections.”<sup>71</sup>

65. The Election Code of **Moldova** states in Article 47.6 that “[c]andidates may not use public means and goods (administrative resources) during the electoral campaigns, and public authorities/institutions and other related institutions may not send/grant to the electoral competitors public goods or other benefits unless on a contract basis, providing equal terms to all electoral competitors.” The 2010 joint opinion underlines that “this new paragraph is welcomed and addresses previous recommendations.”<sup>72</sup> The risk of misuse of administrative resources is higher among the candidates who hold a public position at the time of registration on the electoral candidate list. The Election Code therefore imposes their suspension from function for the entire duration of the electoral campaign.<sup>73</sup>

66. In practice, following the 2011 local elections (5 and 19 June 2011), the OSCE/ODIHR reported the distribution of illegal electoral gifts to voters during the electoral campaign.<sup>74</sup> The report also indicates that interlocutors “complained about the misuse of administrative resources at the local level, especially by incumbents running for re-election, although the scale was difficult to determine.”<sup>75</sup> In its 2010 report following early parliamentary elections, the PACE states that “[a] number of people expressed anxiety about the [mis]use of

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<sup>71</sup> OSCE/ODIHR, Republic of Kazakhstan, Early Parliamentary Elections, 15 January 2012, Election Observation Mission Final Report, page 1.

Available at: [www.osce.org/odihr/elections/89401](http://www.osce.org/odihr/elections/89401).

<sup>72</sup> CDL-AD(2010)014, para. 37.

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)014-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)014-e).

<sup>73</sup> Article 44.1 g) of the Election Code of Moldova.

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL\(2008\)082-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2008)082-e).

<sup>74</sup> It should be taken into account that the financing of campaigns in Moldova is mainly public.

<sup>75</sup> OSCE/ODIHR, Republic of Moldova, Local Elections, 5 and 19 June 2011, Limited Election Observation Mission Final Report, pages 10-11.

Available at: [www.osce.org/odihr/elections/85409](http://www.osce.org/odihr/elections/85409).



administrative resources during the election campaign.” The document reports allegations of gifts to voters bearing the names of political leaders, including food and sundry items.<sup>76</sup>

67. **c. Among European countries, there are provisions forbidding any kind of intervention in favour of a candidate, i. e. prohibition of endorsement by public officials or civil servants.**<sup>77</sup>

68. In **Portugal**, the Law on Election to the Parliament prohibits the abuse of public functions for campaigning purposes (Article 153). In practice, misuse of administrative resources during the electoral campaign, following the parliamentary elections of 27 September 2009, was not brought to the attention of the OSCE/ODIHR Election Observation Mission..<sup>78</sup>

69. In **Greece**, the provision is included in the Constitution:

Article 29

3. Manifestations of any nature whatsoever in favor of or against a political party by magistrates and by those serving in the armed forces and the security corps, are absolutely prohibited. In the exercise of their duties, manifestations of any nature whatsoever in favor or against a political party by public servants, employees of local government agencies, of other public law legal persons or of public enterprises or of enterprises of local government agencies or of enterprises whose management is directly or indirectly appointed by the State, by administrative act or by virtue of its capacity as shareholder, are absolutely prohibited.

70. The Electoral Act of **Ireland** prohibits “officer[s] acting as agent of candidate or furthering a candidature” (Article 144):

“A returning officer, an assistant, deputy or acting returning officer or any person employed by any such officer for any purpose relating to a Dáil election who acts as agent for any candidate at that election or who is actively associated in furthering the candidature of any candidate or promoting the interests of any political party at the election shall be guilty of an offence”.

71. In practice, the OSCE/ODIHR underlines in its Needs Assessment Mission Report following the 25 February 2011 early parliamentary elections that “[t]here is [...] a very high level of confidence of all stakeholders in the electoral process and the election administration”. Therefore, no concern was raised regarding misuse of administrative resources during electoral campaigns.<sup>79</sup>

72. According to the Constitutional Law of the **Kyrgyz Republic** on the Presidential and Parliamentary Elections, “[m]embers of election commissions, observers, international observers, judges, representatives of religious organizations, charity organizations, individuals under 18 years of age, foreign citizens and organizations have no right to carry out election campaign, issue and disseminate any campaign materials. Officers of government and self-governance bodies can carry out campaign and disseminate any campaign materials when they are outside of their official positions” (Article 22.15). The joint opinion on the electoral law underlines that by prohibiting certain groups from campaigning,

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<sup>76</sup> Council of Europe, Parliamentary Assembly, Observation of the Early Parliamentary Elections in Moldova (28 November 2010), Report (Doc. 12476, 24 January 2011), para. 40.  
Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=13085&lang=en>.

<sup>77</sup> In Latin America, the general prohibition of acting in favour of any particular candidate can be found in the legal provisions of Bolivia, Colombia, Costa Rica, Haiti, Honduras, Nicaragua and Panama. See also footnote no. 31.

<sup>78</sup> OSCE/ODIHR, Portugal, Parliamentary Elections, 27 September 2009, Election Assessment Mission Report.  
Available at: [www.osce.org/odihr/elections/41003](http://www.osce.org/odihr/elections/41003).

<sup>79</sup> OSCE/ODIHR, Ireland, Early Parliamentary Elections, 25 February 2011, Needs Assessment Mission Report, page 11. Available at: [www.osce.org/odihr/elections/75725](http://www.osce.org/odihr/elections/75725).

Article 22.15 introduces ‘unreasonable restrictions on individual citizens’ and may be considered as ‘overly restrictive’.<sup>80</sup>

73. In practice, the OSCE/ODIHR report following the 30 October 2011 presidential election underlines that “[a]llegations of misuse of institutional authority in the form of pressure and intimidation were raised throughout the pre-election period, which undermined confidence in the electoral process.” The report also indicates that “[o]n 29 September the parliament adopted a decree on “Measures to ensure the implementation of the Law on Presidential and Parliamentary Elections”, reinforcing the electoral law and imposing strict measures in cases such resources are misused.”<sup>81</sup>

74. In **Spain**, the Law on the Regime of General Elections includes different provisions regarding misuse of administrative resources. Article 52 prohibits officials from campaigning; Article 139 sanctions infractions committed by civil servants during electoral campaigns; and Article 140 sanctions civil servants misusing their positions for campaigning purposes. In practice, the misuse of administrative resources was not brought to the attention of the OSCE/ODHIR Election Observation Mission in its report following the early parliamentary elections of 20 November 2011.<sup>82</sup>

75. Other more specific prohibitions include the use of staff and employees, as in Georgia (para. 61-62) and in Kazakhstan (para. 63-64).<sup>83</sup>

76. **Only four analysed legislations refer to temporary circumstances where public officials cannot campaign while in office or only during their work-day**, i.e. the legislations of Albania (para. 43), Armenia (para. 55), the Kyrgyz Republic (para. 72-73) and Ukraine (para. 41).<sup>84, 85</sup>

77. Also related to campaigning, the Electoral Code of **“the former Yugoslav Republic of Macedonia”** stipulates that:

(1) As an election campaign is considered: public gathering and other public events organised by the campaign organiser, public display of posters, video presentations in public areas, electoral media and internet presentation, dissemination of printed materials and public presentation of confirmed candidates by official electoral bodies and their programmes.

(2) The election campaign commences 20 days prior the Election Day and in the first and the second round of election cannot continue 24 hours before elections and on the Election Day (Article 69-a).

78. The joint opinion on the Electoral Code underlines that “[t]his definition could be considered as limiting regular political activities held prior to the start of the official campaign period” and that “[t]he Code should specify what political activity is not permissible before the start of the official campaign period.”<sup>86</sup>

<sup>80</sup> CDL-AD(2011)025, para. 73.

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)025-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)025-e).

<sup>81</sup> OSCE/ODIHR, The Kyrgyz Republic, Presidential Election, 30 October 2011 Election Observation Mission Final Report, pages 2 & 10. Available at: [www.osce.org/odihr/elections/86926](http://www.osce.org/odihr/elections/86926).

<sup>82</sup> OSCE/ODIHR, Spain, Early Parliamentary Elections, 20 November 2011, Election Assessment Mission Final Report. Available at: [www.osce.org/odihr/elections/Spain/88222](http://www.osce.org/odihr/elections/Spain/88222).

<sup>83</sup> In the Americas, this kind of provisions can be found in Bolivia, Colombia and the United States.

<sup>84</sup> In the Americas, this is the case of Chile, Costa Rica, Guatemala, Honduras, Panama, the United States and Uruguay.

<sup>85</sup> In Mexico, there is a judicial criterion (Supreme Court of Elections, 14/2012) regarding the same issue: Political Proselytism Acts. The sole attendance of public servants in non-working days to such acts is not restricted by law.

<sup>86</sup> CDL-AD(2011)027, para. 46.

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)027-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)027-e).

79. In practice, the OSCE/ODIHR report following the 5 June 2011 early parliamentary elections describes that “certain aspects [of the elections] require attention”, including “measures to ensure an adequate separation of state and party structures.” Moreover, “[t]he OSCE/ODIHR EOM [Election Observation Mission] received a number of allegations that party activists had requested civil servants to list a certain number of voters who would vote for the ruling party. According to these allegations, employees of state and public institutions were intimidated and threatened with loss of their jobs if they did not comply with these requests. Other allegations included threats that citizens would lose their pensions or social services if they did or did not support certain parties or candidates. The overwhelming majority of these allegations concerned actions by state officials and activists of the principal governing party. Any partisan actions by state employees taking place during working hours represent a misuse of state resources for party purposes.”<sup>87</sup>

80. Apart from Article 134 of the Constitution,<sup>88</sup> the specific relevant piece of legislation for **Mexico** is the Federal Code of Electoral Institutions and Procedures. Article 134.8 of the Constitution states that representatives, either at federal or at local levels as well as senators and parliamentary groups are banned from campaigning with governmental facilities. The catalogue of restrictions on officials is large as it includes the Human Rights Commissions, the Elections Commissions, the National Institute of Statistics, Geography and Informatics and the Bank of Mexico. This catalogue also includes any other entity or government agencies, which are subject to any legal system of public status at all levels of government (federal, state or city). This legislation is completed by Article 212 of the Federal Criminal Code, which prohibits offenses committed by public officials.<sup>89</sup> These rules establish the separation of all public officials from their duties for the time they compete for an elective position which is different from the one they hold. It should be taken into consideration that immediate re-election is prohibited. In the 2012 presidential election, it was alleged that the winning candidate’s party distributed bank and store cards in order to favour the presidential candidate. However, the evidence presented was not detailed enough to confirm an influence on the final results.

**81. d. Another category of provisions contains rules focusing on the preservation of freedom of vote against possible influence of public servants through gifts, donations or promises.**<sup>90</sup>

82. The Electoral Code of **Belgium** sanctions persons who promise jobs in public or private sectors (Article 182). The Code also prohibits promises made to persons against their vote or their abstention (Article 187).<sup>91</sup> In practice, the OSCE/ODIHR underlines in its report following the 10 June 2007 federal elections that the legal framework “is in some aspects advantageous to established parties, but this has not hindered new parties from emerging in the last decades, contributing to an already heterogeneous political landscape”.<sup>92</sup>

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<sup>87</sup> OSCE/ODIHR, “The former Yugoslav Republic of Macedonia”, Early Parliamentary Elections, 5 June 2011, Election Observation Mission Final Report, pages 1, 6 & 11.

Available at: [www.osce.org/odihr/elections/83666](http://www.osce.org/odihr/elections/83666).

<sup>88</sup> Article 134 of the Constitution establishes an explicit mandate for public servants to make impartial use of administrative resources, avoiding influencing equality in the competition between political parties.

Available at: [www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf).

<sup>89</sup> For a more exhaustive report on the use of public funding for election purposes and practice in the filed in Mexico, including electioneering expenditure and case-law of the Supreme Court on public resources, see the report of Mr Manuel Gonzalez Oropeza (CDL(2012)076).

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL\(2012\)076-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2012)076-e).

<sup>90</sup> In the Americas, there are cases in Brazil and El Salvador. In Canada, candidates are forbidden from accepting gifts or any other advantage during electoral campaigns.

<sup>91</sup> Available at: [www.droitbelge.be/codes.asp](http://www.droitbelge.be/codes.asp).

<sup>92</sup> OSCE/ODIHR, Belgium, Federal Elections, 10 June 2007, Election Assessment Mission Report, page 1. Available at: [www.osce.org/odihr/elections/belgium/28213](http://www.osce.org/odihr/elections/belgium/28213).

83. The Electoral Code of **France** prohibits any gifts, donations and promises aimed at influencing the vote as well as those accepting such gifts, donations or promises.<sup>93</sup> In practice, misuse of administrative resources during the electoral campaign, following the parliamentary elections held on 10 and 17 June 2012, was not brought to the attention of the OSCE/ODIHR Election Observation Mission.<sup>94</sup> Nevertheless, France's National Commission for Campaign Accounts and Political Financing (CNCCFP)<sup>95</sup> underlines in its 2011 annual activity report<sup>96</sup> that the Commission took 2,899 decisions of approbation with reformation of candidates' accounts (for a total of accounts of 7,047 scrutinised). The accounts approved with reformation represent a bit more than 40% of all accounts (twice more than for the 2008 elections), which tends to demonstrate the inclusion by many candidates of costs qualified as electoral expenses that are not considered by the Commission as expenses for electoral purposes. These candidates' accounts were approved mainly after reformation of the following expenses: interest rates, equipment, receptions, phone and communication costs.<sup>97</sup> However, these rules are not always easily enforceable as it was observed during the campaign of the former French President Nicolas Sarkozy in 2012. In this case, France's National Commission for Campaign Accounts and Political Financing estimated that Mr Sarkozy had to incorporate in his campaign expenses the cost of public meetings he had held in the province as part of his mandate of President, even if some of them were held before he declared his candidacy. In July 2013, the French Constitutional Council rejected the 2012 presidential campaign accounts of Mr Sarkozy.<sup>98</sup> Consequently, his Party (U.M.P) shall reimburse 11 million euros to the State. This case highlights that despite the existence of excellent instruments against any kind of abuse, it remains difficult to do a clear distinction between the use of administrative resources for the campaign of a candidate and the use of these resources by the incumbents in their official capacities.

84. The Electoral Law of **Luxembourg** prohibits to give or to receive donations, gifts or promises between electoral contestants and voters (Article 95). The Law also prohibits to give or to receive donations as well as gifts or promises in order to obtain a specific vote or abstention (Article 96).

85. The Electoral Law of **Monaco** on national and municipal elections prohibits gifts and promises in the electoral context (Article 69). Misuse of administrative resources during the electoral campaign was not brought to the attention of the OSCE/ODIHR Election Observation Mission.<sup>99</sup>

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<sup>93</sup> (Only in French) République française, Code électoral, Article L106 (modifié par Ordonnance n°2000-916 du 19 septembre 2000 - art. 1 (V) JORF 22 septembre 2000 en vigueur le 1er janvier 2002) :

Quiconque, par des dons ou libéralités en argent ou en nature, par des promesses de libéralités, de faveurs, d'emplois publics ou privés ou d'autres avantages particuliers, faits en vue d'influencer le vote d'un ou de plusieurs électeurs aura obtenu ou tenté d'obtenir leur suffrage, soit directement, soit par l'entremise d'un tiers, quiconque, par les mêmes moyens, aura déterminé ou tenté de déterminer un ou plusieurs d'entre eux à s'abstenir, sera puni de deux ans d'emprisonnement et d'une amende de 15 000 euros.

Seront punis des mêmes peines ceux qui auront agréé ou sollicité les mêmes dons, libéralités ou promesses.

Available at: <http://www.legifrance.gouv.fr/>; and

[http://www.legifrance.gouv.fr/telecharger\\_pdf.do?cidTexte=LEGITEXT000006070239](http://www.legifrance.gouv.fr/telecharger_pdf.do?cidTexte=LEGITEXT000006070239).

<sup>94</sup> OSCE/ODIHR, Republic of France, Parliamentary Elections, 10 and 17 June 2012, Election Assessment Mission Final Report. Available at: [www.osce.org/odihr/elections/93621](http://www.osce.org/odihr/elections/93621).

<sup>95</sup> [www.cnccfp.fr/presse/kit/cnccfp\\_en.pdf](http://www.cnccfp.fr/presse/kit/cnccfp_en.pdf).

<sup>96</sup> [www.cnccfp.fr/docs/commission/cnccfp\\_activite\\_2011.pdf](http://www.cnccfp.fr/docs/commission/cnccfp_activite_2011.pdf).

<sup>97</sup> CNCCFP, 2011 Activity Report, pages 54-55. Available at: [www.cnccfp.fr](http://www.cnccfp.fr).

<sup>98</sup> French Republic, Constitutional Council, Decision of the Constitutional Council following an appeal from Mr Nicolas Sarkozy against the decision of 19 December 2012 of the National Commission for Campaigns Accounts and Political Financing (Decision n° 2013-156 PDR of 4th July 2013).

Available at: [www.conseil-constitutionnel.fr/conseil-constitutionnel/english/case-law/decision/decision-n-2013-156-pdr-of-4th-july-2013.137967.html](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/case-law/decision/decision-n-2013-156-pdr-of-4th-july-2013.137967.html).

<sup>99</sup> Council of Europe, Parliamentary Assembly, Observation of the elections to the National Council of Monaco (10 February 2013), Election observation report, (Doc. 13137, 27 February 2013).

Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19506&lang=en>.

86. **e. Two European countries include provisions related to media coverage as a possible misuse of public funds.**<sup>100</sup>

87. In addition to **Georgia**,<sup>101</sup> the Electoral Code of **Armenia** also refers to this issue in its Article 22:

1. Candidates occupying political, discretionary, civil positions, as well as candidates occupying a position of state or community servant shall conduct election campaigns taking into account the following restrictions:

(...)

(3) coverage via mass media of activities of these candidates shall be prohibited, except for the cases prescribed by the Constitution, official visits and receptions, as well as activities carried out by them during natural disasters.

2. Where coverage of other activities of a candidate referred to in this Article is made, mass media exercising terrestrial broadcast transmission must consider this when making coverage of the activities of other candidates, in order to comply with the non-discriminatory principle of equality of coverage laid down by Article 19 of this Code.<sup>102</sup>

88. **f. In a number of states, there are no explicit provisions on the misuse of administrative resources during electoral processes but implicit rules, which may be intended at dealing with this issue.** This will be developed hereafter (para. 89-91 as well as chapter C).

89. The Elections Act of **Finland** does not cover explicitly the misuse of administrative resources during electoral processes but sanctions breaches of their official duties by members of electoral commissions:

Section 185 — *Criminal responsibility of an election official*

If a member of an election district committee, central election committee of a municipality, election committee or an electoral commission or an election assistant or any other person functioning as an election official as defined in this Act, neglects his or her duties, he or she is punished as if he or she had committed an offence in office.<sup>103</sup>

90. In practice, the OSCE/ODIHR did not recommend deploying an election-related activity for the last presidential election (22 January 2012) as “[a]ll interlocutors met by the OSCE/ODIHR NAM [Needs Assessment Mission] expressed a high level of confidence in all aspects of the electoral process.” The remaining recommendations made in previous missions do not refer to the issue of misuse of administrative resources during electoral campaigns.<sup>104</sup>

91. Finally, the 2000 Act on Political Parties, Elections and Referendums of the **United Kingdom** regulates expenses when they are incurred for election purposes. Besides, the 2006 on Electoral Administration<sup>105</sup> includes rules on breach of official duty – as for **Finland** – that might include the issues at stake (Article 63). In practice, misuse of administrative resources during the electoral campaign, following the 6 May 2010 general

<sup>100</sup> In the Americas, this is the case of Bolivia, Ecuador, El Salvador, Honduras, Mexico, Paraguay and Peru.

<sup>101</sup> See para. 60 of the report.

<sup>102</sup> Electoral Code of Armenia adopted on 26 May 2011.

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2011\)029-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2011)029-e).

<sup>103</sup> Available at: [www.finlex.fi/en/laki/kaannokset/1998/en19980714.pdf](http://www.finlex.fi/en/laki/kaannokset/1998/en19980714.pdf).

<sup>104</sup> OSCE/ODIHR, Republic of Finland, Presidential Election, 22 January 2012, Needs Assessment Mission Report, page 2 and conclusions on page 8.

Available at: [www.osce.org/odihr/elections/85410](http://www.osce.org/odihr/elections/85410).

<sup>105</sup> Available at: [www.legislation.gov.uk/ukpga/2006/22/pdfs/ukpga\\_20060022\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/22/pdfs/ukpga_20060022_en.pdf).



election, was not brought to the attention of the OSCE/ODIHR Election Observation Mission.<sup>106</sup>

92. An additional issue is that only **Georgia** and **Montenegro** base their legal provisions on the principle of safeguard of public resources,<sup>107</sup> while most laws focus on electoral equity.

### C. Judicial standards established by case-law

93. The overview of the existing legislation on misuse of administrative resources during electoral processes on the one hand, and the practice observed during elections on the other hand, show that the implementation of legal provisions in the field remains difficult in many countries. Practice too often presents a contradiction between incumbents' interests and fairness of the electoral process.

94. Up to now, the report has dealt with existing provisions on the use and misuse of administrative resources during electoral processes. It has not addressed in detail the Venice Commission member states that do not have specific legal provisions in electoral laws or other specific means against the misuse of administrative resources during electoral processes.<sup>108</sup>

95. However, such specific legal provisions can be developed in other pieces of legislation, such as general criminal or administrative legislation as well as anti-corruption or public service legislation. These provisions could be as effective as a narrower or specific legislation (such as an electoral legislation) when appropriately applied to both incumbents and civil servants. They could be even more effective in general legislation as they can underline the severity of such abuses.

96. In countries without provisions on misuse of administrative resources during electoral processes,<sup>109</sup> **constitutional courts or equivalent bodies** interpreted the law through a corpus of decisions, delivering therefore a judicial interpretation on constitutional principles about equality in electoral processes. Such interpretation contributes chiefly to ensure the neutrality of government authorities in electoral processes.

97. In the European context, it should be referred to the following decisions of the **European Court of Human Rights** and of the **Constitutional courts** (or equivalent bodies) (by chronological order):

#### - European Court of Human Rights' case-law:

**United Kingdom**, case of Ahmed and others v. the United Kingdom, on the need of governmental neutrality during electoral campaigns in the United Kingdom;<sup>110</sup>

**Russian Federation**, case of Republican Party of Russia v. Russia, on the dissolution of the Republican Party of Russia and illustrating the misuse of administrative resources;<sup>111</sup>

<sup>106</sup> OSCE/ODIHR, United Kingdom of Great Britain and Northern Ireland, General Election, 6 May 2010, Final Report. Available at: [www.osce.org/odihr/elections/69072](http://www.osce.org/odihr/elections/69072).

<sup>107</sup> Like in the case of Argentina, Chile, Ecuador, Guatemala, Mexico, Nicaragua, Paraguay, Dominican Republic, the United States and Venezuela.

<sup>108</sup> See para. 87-91 of the report.

<sup>109</sup> Austria, Croatia and Czech Republic (CDL-REF(2012)025rev).

Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2012\)025rev-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2012)025rev-e).

<sup>110</sup> Decision ECH-1998-2-011.

Available at: [www.codices.coe.int/NXT/gateway.dll/CODICES/full/eur/ech/eng/ech-1998-2-011](http://www.codices.coe.int/NXT/gateway.dll/CODICES/full/eur/ech/eng/ech-1998-2-011).



**Russian Federation**, case Russian Communist Party and Others v. Russia, on media access, in the European Court of Human Rights, ruling of 19 June 2012;<sup>112</sup> and

- **Constitutional courts' case-law** (or equivalent bodies):

**France**, on municipal servants' intervention in electoral campaign;<sup>113</sup>

**Armenia**, on neutrality required from Armenian public servants standing for election;<sup>114</sup>

**Ireland**, in the case *McCrystal v. Minister for Children and Youth Affairs & ors*, on an Irish referendum, which refers to the British Electoral Commission principle that every democratic exercise, such as elections or referendums, should be based on trust and participation, and must stay away from any undue influence;<sup>115</sup>

**Ukraine**, in the case on Election of the President of Ukraine, the Constitutional Court highlights the importance to safeguard the voters' will to elect a candidate running for the presidency. The legislation bans the bodies of executive power and local self-governance, as well as their officials and officers from participating in electoral campaigns so as to avoid pressure on voters and ensure freedom of expression.<sup>116</sup>

98. In the judicial practice of the **United States of America**, there are also relevant cases:

**People v. Sperl**:<sup>117</sup> in 1976, the Marshal for Los Angeles County put a vehicle at the disposal of a candidate, his staff and family. Mr Sperl was sentenced to prison; the execution of the sentence was suspended and he was placed on probation for a period of four years, on certain terms and conditions, one thereof being that he spent the first six months in the county jail and was fined \$500.

**People v. Battin**:<sup>118</sup> in 1974, Battin was Supervisor of the First District of Orange County, while he decided to seek the Democratic Party's nomination for Lieutenant Governor of California. During the five months up to the time of the primary, he used his office, equipment and staff to promote his candidacy. Mr Battin was given three years'

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<sup>111</sup> Decision available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104495>.

<sup>112</sup> Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-111522>.

<sup>113</sup> Decision FRA-2002-3-007.

Available at: [www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/fra/fra-2002-3-007?fn=document-frame.htm\\$f=templates\\$3.0](http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/fra/fra-2002-3-007?fn=document-frame.htm$f=templates$3.0).

<sup>114</sup> Decision ARM-2012-2-002.

Available at: [www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/arm/arm-2012-2-002?f=templates\\$fn=document-frameset.htm\\$q=%5Bfield,GRP%3A%5Bborderedprox,0%3ACCCOCND%5D%5D%20\\$х=server\\$3.0#LPHit1](http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/arm/arm-2012-2-002?f=templates$fn=document-frameset.htm$q=%5Bfield,GRP%3A%5Bborderedprox,0%3ACCCOCND%5D%5D%20$х=server$3.0#LPHit1).

<sup>115</sup> Decision IRL-2012-3-005,

Available at: [www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/47c2796248c9a70280257ad1005980df?OpenDocument](http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/47c2796248c9a70280257ad1005980df?OpenDocument).

<sup>116</sup> Decision of the Constitutional Court of Ukraine № 3-пн/2005 dated 24 March 2005. Available (in Ukrainian) at: [www.ccu.gov.ua/uk/doccatalog/list?currDir=8847](http://www.ccu.gov.ua/uk/doccatalog/list?currDir=8847).

<sup>117</sup> *People v. Sperl*. 54 Cal. App. 3d 640. Crim. No. 26259. Court of Appeals of California, Second Appellate District, Division Five. January 21, 1976.

Available at: <http://law.justia.com/cases/california/calapp3d/54/640.html>.

<sup>118</sup> *People v. Battin* (1978) 77 Cal. App. 3d 635. Crim. No. 9051. Fourth Dist., Div. Two. Jan. 18, 1978. Available at: <http://law.justia.com/cases/california/calapp3d/77/635.html>.

informal probation on the condition that he served six months in the county jail and paid a \$3,500 fine plus penalty assessments.

**Stanson v. Mott:**<sup>119</sup> in June 1974 in California, voters approved a \$250 million bond issue to provide funds for the future acquisition of park land and recreational and historical facilities by state and municipal authorities. One day before the election, plaintiff Sam Stanson filed a taxpayer suit, alleging that defendant William Penn Mott, Jr., Director of the California Department of Parks and Recreation (department), had authorised the department to spend more than \$5,000 of public funds to promote the passage of the bond issue. Asserting the illegality of such use of public funds, the plaintiff sought a judgment that would require Mr Mott personally to repay the funds to the state treasury and any other appropriate relief. The Supreme Court unanimously found that the director had acted unlawfully, and stated that "...The selective use of public funds in electoral processes, of course, raises the specter of just such an improper distortion of the democratic electoral process."

99. In the Latin American context, there are also several examples that include decisions by the **Colombian Supreme Court** (which imposed limits to public servants to prevent influencing electoral campaigns),<sup>120</sup> as well as the **Peruvian National Electoral Jury** (by establishing restrictions to participation of State entities as soon as there is a call for elections).<sup>121</sup>

#### **IV. Legitimate use or misuse of administrative resources during electoral processes: elements for an analysis**

##### **A. Assessing a situation of use or misuse of administrative resources during electoral processes**

100. It appears legitimate, in accordance with the laws observed and the practice assessed in Part III of the report, to adopt legislation relating to the use of administrative resources during electoral processes as well as provisions prohibiting the misuse of such resources. It is also necessary to ensure continuity in implementing policies and political platforms that are established *before* the starting-point of the electoral process.

101. For instance, the Supreme Court of Elections of Mexico considered that the involvement of civil servants on non-working days to political campaigning events in support of a particular party, primary election candidate or election candidate, does not imply by itself the misuse of State funds.<sup>122</sup>

102. Hence, in order to establish a clear distinction between use and misuse of administrative resources during electoral processes, the timeframe that established these

<sup>119</sup> Stanson v. Mott, 17 Cal.3d 206. L.A. No. 30567. Supreme Court of California. June 22, 1976. Available at: <http://scocal.stanford.edu/opinion/stanson-v-mott-27987>.

<sup>120</sup> Sentencia de la Corte Constitucional, Decision C1153-2005. Article 38. Available at : [www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=18212](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=18212).

<sup>121</sup> Jurado Nacional de Elecciones, Decision 136-2010-JNE. Available at: <http://portal.jne.gob.pe/informacionlegal/Constitucion%20y%20Leyes1/Reglamento%20de%20proganda%20electoral.pdf>.

<sup>122</sup> Jurisprudence 14/2012, under the heading of "Acts Electioneering. The sole presence of public officials at non-working days at such acts is not is not restricted by law", derived from the appeals SUP-RAP-14/2009 and cumulative, SUP-RAP-258/2009 and SUP-RAP-75/2010. *Gaceta de Jurisprudencia y Tesis en Materia Electoral* Mexico City, number 10, 2012, pages 11-12. More details in the report of Mr Gonzalez Oropeza (CDL(2012)076). Available at:

. [www.seatlax.gob.mx/JURIS/14\\_2012.htm](http://www.seatlax.gob.mx/JURIS/14_2012.htm).

. <http://portal.te.gob.mx/coleccion/sentencias/html/SUP/2009/RAP/SUP-RAP-00014-2009.htm>;

. [www.te.gob.mx/Informacion\\_judicial/sesion\\_publica/ejecutoria/sentencias/SUP-RAP-0258-2009.pdf](http://www.te.gob.mx/Informacion_judicial/sesion_publica/ejecutoria/sentencias/SUP-RAP-0258-2009.pdf); and

. [www.te.gob.mx/Informacion\\_judicial/sesion\\_publica/ejecutoria/sentencias/SUP-RAP-0075-2010.pdf](http://www.te.gob.mx/Informacion_judicial/sesion_publica/ejecutoria/sentencias/SUP-RAP-0075-2010.pdf).

policies will be the main criterion. There is a legitimate use of administrative resources during electoral processes by elected persons and senior civil servants when a political platform (and more precisely the events implementing this platform, such as inaugurations of public buildings, launching new public building programmes, increased salaries or pensions in the public sector, etc.) arises from a long-term established plan, i.e. established at the beginning of the legislature (or mandate) or at the latest at the beginning of the budgetary year. Moreover, the outcome of such a policy is not intended to be seen during electoral processes. The number of inaugurations of public buildings, for instance, should be on a similar level during electoral processes compared to other periods without elections. An electoral process is not the appropriate timeframe for establishing new programmes and actions with budgetary impact that were not planned before the campaign. Such programmes and actions can therefore be more easily qualified as misuse of intangible administrative resources.

103. The line – especially when the law is silent – between use and misuse of administrative resources during electoral processes concerns also human resources involved directly or indirectly in elections, insofar as their use would cause breach of the fairness commitment which should be the governing spirit of any electoral process. These resources are in particular the senior civil servants. These public officials are either politically appointed by political authorities (elected people or government) or issued by career from the Civil Service, i.e. issued from the non-political branch of the public administration. No matter their initial appointment (or promotion and position), these public officials should effectively, fairly and competently contribute in implementing policies with their knowledge and sound judgment.

104. Also, a distinction should be made whether these public officials are politically appointed or not. Then it has to be assessed whether they performed their duties in conformity with the law and impartially (i.e. in the public interest) or whether they performed them still in conformity with the law but also with loyalty and good faith vis-à-vis the public political authority which appointed them. Public officials should not perform their duties for purely political interests of the party(ies) in power. Moreover, public officials should not be subject to pressure and influence in the professional context. In order to draw a distinction between both categories, using legislation is not sufficient. There is also a need that those civil servants strive to develop and maintain high ethical standards in their work. Therefore, it is not only a question of the culture of political stakeholders but it is also a question of the professional standards of conduct of the civil servants or of a professional culture of public administration. Codes of good practice and ethical standards – particularly with regard to the issues of electoral administration and electoral disputes – should be identified and incorporated into readily available resources for public servants.

#### **B. Government versus incumbent party, majority and opposition parties with or without seats in parliament**

105. The legitimate activities of a government have to be distinguished from those of the ruling party, especially during electoral processes. Legal and ethical obligations have to be set up in order to distinguish usual governmental activities from ruling party activities during electoral processes. For measuring the balance in electoral processes, the governmental activities have to be compared with the opposition role in a democratic parliament.

106. It is therefore crucial to distinguish between the ruling party's (or coalition) internal work and preparations for reform policies on different societal matters, and the design and follow-up work of the reform programmes that the government is responsible for. For the latter, both elected persons and civil servants have their tasks and obligations and have to cooperate under certain legal and ethical principles (as proposed in the previous chapter A, above).

107. The legitimacy of the operating activities of the government may for example come under critical discussion or be seen as a mere abuse when special limited social support campaigns immediately linked to an electoral process are staged, e.g. with financial contributions, for certain specific groups of voters.

108. The issue of misuse of administrative resources also needs to be analysed from the perspective of the constitutional obligation of the state to protect the freedom of voters to form their opinion and consequently to protect and promote equality and neutrality in relation to the upcoming existence of new political parties that have not yet achieved representation in parliament and to the already established political parties. This is particularly relevant in the context of electoral processes. It can also have an impact on how legislation governs transparency of private financing of political parties and the individual interests behind the legal design of systems supporting public funding of political parties. The implementation of a specific rule should be based on the fact that the value to be protected is fairness in the elections. Such rule should gather the following characteristics: avoiding anything that could harm its efficiency, especially activities at state level; highlighting the role of the media; as well as adding provisions that impede the excessive private funding, in particular the funding coming from organised crime.

109. It is also important to respect the role of the opposition in a democratic parliament.<sup>123</sup> Opposition parties clearly do not have the same possibilities to use the competent services of the non-political public branch of government as the parties in power, including among the local and regional administrations. Opposition can be subject to discrimination in terms, *inter alia*, of premises' facilities, staff and communication sources. However, it is possible to introduce some balancing structures within the constitutional system. The opposition parties in parliament may be given the equivalent resources through participation in committees and access to investigative resources that parliament makes available for individual members of parliament or political parties represented in parliament. The internal rules of parliaments should provide for such guarantees as well as for an equal access to facilities proper to parliaments as well as to local and regional administrations.

110. The objective of laws providing measures tackling the misuse of administrative resources is in principle to secure a free and equal vote. However, the risk of too drastic provisions is that they may conflict with other principles or be unworkable or counter-productive in practice, or may deter some people from seeking public office altogether. Electoral laws and elections-related texts should therefore seek to strike a balance. Such balance can be reached by providing enough safeguards to persons holding political offices against the risk of being prosecuted after losing elections. Such laws should also ensure continuity and efficiency of on-going policies even during electoral periods while providing opposition parties – including those outside the parliament – with sufficient resources to carry out their electoral campaigns.

111. The report, based on the comparative analysis of legislation and practice developed above, will suggest preliminary recommendations in Part IV, before drawing guidelines (Part V).

## **V. Towards Recommendations**

### **A. Self-regulation – A first step**

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<sup>123</sup> Report on the role of the opposition in a democratic parliament (CDL-AD(2010)025), see especially p. 116 – 124. Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)025-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)025-e).

112. The use of standards of ethical conduct could be looked upon as a first important step against misuse of political power. In this respect, political parties can informally agree – i.e. without going through legal provisions – on charts of ethics or agreements related to electoral processes including concerning the misuse of administrative resources. According to the principles of transparency, such agreements should be publicly discussed so that citizens can also discuss the issue and hold back possible sanctions agreed by the convention in case of breach of the assumed commitments. If such agreements are not respected or if abuses are observed in practice, this has to be reported, including in the media. Such self-regulation models are widely applied in the Scandinavian countries. They could be defined as belonging to a concept of consensual approach. The parties may organise themselves very freely.<sup>124</sup>

113. The alternative model, which is less developed, is a strategy where legislation plays an important role in regulating the political parties.

### **B. Legislation sanctioning bribery and corruption**

114. In its worst form, the misuse of administrative resources in electoral processes (where services and favours are exchanged) is a crime and a very serious form of corruption in a country. Satisfactory criminal laws against misuse of administrative resources are in force in most countries, contributing to prevent issues such as embezzlement and breach of trust. These criminal laws can or should be directed against the most serious forms of misuse of administrative resources during electoral processes. The huge problem of providing an effective enforcement or implementation remains in general. Costs in enforcement and pervasive behaviours, clearly unethical but perhaps legal, represent additional challenges in this respect.

115. The integrity of all relevant stakeholders, *inter alia* police, prosecutors, courts, judges, as well as auditors, is clearly vital to tackle the misuse of administrative resources. Media, under the principle of freedom of information, can also play an important role in countering abuses and support the effective administration of justice in this field. It seems fruitful to build similar perspectives on abuses during electoral processes as on corruption in general.

### **C. Other legislative measures**

116. The basic instrument against abuse is the law and its enforcement. This includes not only criminal law but also legislation in general, as it is the case in many European countries. In order to fully understand the implications of these provisions, it also seems necessary to be informed about the overall context where these provisions are inserted into the legislation as a whole. Otherwise it is not possible to thoroughly evaluate the effects of these provisions. This question requires to take into account several areas of law.

117. First, it is crucial to emphasise the constitutional provisions in this respect in order to determine how the constitution deals with the separation of powers, the rule of law, the supervision of the government by parliament and parliamentary committees, the constitutional court (or equivalent body), electoral courts or commissions, the Ombudsman and the Auditor General. Such bodies and institutions should therefore perform their duties with regard to the principle of equality of all citizens before the Law. Furthermore, in their decisions and actions, they should ensure objectivity and impartiality. Such principles should clearly apply to electoral processes as a whole as well as to the supervision of such processes. Indeed, the equal access for political parties to public resources and to media

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<sup>124</sup> See also para. 104 of the report.

should prevail. Moreover, the State should be constantly neutral throughout the electoral process.<sup>125</sup>

118. Abuses of administrative resources in electoral processes that originate in or that could be seen as typical general crimes should preferably be left to the general criminal code and not be regulated in special electoral acts. Different kinds of unauthorised actions before elections (improper reward for voting, etc.) should be seen as severe general crimes in the same way as bribery and corruption, severe misconduct or malpractice by public officials and economic crime, such as embezzlement of administrative resources and breach of trust. Political parties, candidates, media and public officials that incur misuse of administrative resources should be subject to sanction. Ensuring the implementation of standards in the various levels of government within the federal systems shall also be an important aspect to be contemplated by legislation.

119. In public law, it may be important to set up provisions establishing clear distinctions between politically active officials and civil servants and to determine how tasks and responsibilities should be distributed between them. Furthermore, well-developed, detailed and transparent legal regulations on the state budget and its allocation and proper use are needed. Otherwise, internal and external auditing controls will not be an effective countermeasure against abuse. It is also important to decide on detailed provisions on certain budgetary matters such as the use of official premises, communications and transport and other technical resources, complemented by the adoption of values and good practices in the area.

120. Public officials who breach the rules governing the conditions of the civil service must be sanctioned either for crimes or for breaches of their duties with disciplinary sanctions (including dismissal from office). Different provisions are appropriate for political positions (ministers, political staff of the government institutions, staff of parliament factions, etc.).<sup>126</sup> In this area, there is also a need for an independent review, and ultimately decisions pronounced by the courts. In addition to the criminal charges and the considerations expressed earlier in this report, the application of administrative sanctions seems to be a convenient solution compared to political impeachments when misuse of administrative resources is conducted by public officials.

#### **D. The correct and effective implementation of legislation**

121. To effectively implement the legislation, a mutual understanding and a sense of responsibility is required among all political stakeholders. There is a need for a shared understanding and consensus on the importance of constitutional values. There is a need, for example, to share a common view on the role of the opposition within society and an explicit reference to good practice.

122. If there is such a consensus, it opens up for the possibility to exercise a more effective parliamentary supervision in parliamentary standing committees bearing responsibility for constitutional and related issues such as electoral matters. Similarly, in presidential regimes, the opposition finds more incentives to participate through institutional channels where certainty prevails with regard to the interpretation and implementation of laws.

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<sup>125</sup> In Latin America, Bolivia, El Salvador, Mexico and Uruguay are examples of countries with specific constitutional provisions against misuse of administrative resources for political purposes. For instance in Mexico, the Electoral Court of the Federal Judiciary is the highest authority in the application of constitutional principles in electoral matters.

<sup>126</sup> See for instance the Venice Commission Opinion on the draft Law on conflict of interest in Moldova (CDL-AD(2007)044). Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2007\)044-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2007)044-e).



123. An independent national audit office reporting to the parliament can also play an important role by supervising spending and financial management of the Government. It can also investigate and take action against financial irregularities within the Government.

124. In the end, it is of course crucial that constitutional courts or equivalent bodies, electoral courts or bodies, prosecutors and ordinary courts take the ultimate responsibility for the administration of justice in matters of abuse of administrative resources during electoral processes.

125. It is also important that the functions mentioned here are performed with transparency and respect the principle of freedom of information.

#### **E. The requirement for transparency and freedom of information**

126. The fundamental principles of transparency – in electoral processes – and of freedom of information are *sine qua non* pre-conditions for preventing misuse of administrative resources. The statutory system and its implementation through various institutions must also be subject to public reporting and discussion. It is essential that any shortcomings and errors can be debated openly in the media and in public. Behaviours of ministers, elected persons, civil servants and public officials as a whole, as well as judges and auditors, are therefore liable before the citizens, with possibly further consequences like investigations and political, civil or criminal actions against abusers. In addition to these liabilities, in case where the interference of the state in the elections is so strong that it jeopardises the fairness between the different political contenders and the liberty of the citizens, the ultimate sanction is the cancellation of the election as long as the own legal tradition and the specificities of electoral legislation provide for this ultimate option.

#### **F. Public grants to political parties<sup>127</sup>**

127. One recurrent problem is the risk of mismatch of possibilities, that is to say an inequality between the government party(-ies) and the opposition party(-ies). Such imbalances can be somehow counteracted by a system of public financing of parties' activities. This system must be established under a thorough legislation on public grants to political parties based on the principle of equality. On another related issue, the report also highlights the need to provide proper conditions for parties without representation in parliament (see para. 13). This report provided a number of examples on public grants to political parties. However, it does not cover in depth the topic.<sup>128</sup>

128. In the context of a system of financial grants to political parties, it may be envisaged to establish some financial compensation so that the opposition parties would have an additional contribution in the course of a legislature, compared to the ruling parties. This is intended to compensate them up to a certain extent for the advantage in resources the party(-ies) in power get by having access to the human resources of the government as well as local and regional administrations.

129. In such context, another important element can also be the establishment of a public system of financing. This system could permit printing of ballot papers and provide financial support, e.g. free or subsidised facilities and office services.

130. Legislation could also provide for members of parliament and ministers the right to free domestic travels at public expense, and this even during electoral campaigns.

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<sup>127</sup> See the Venice Commission - OSCE/ODIHR Guidelines on political party regulation, para. 176-192.

<sup>128</sup> Parts III and IV of the report.

131. Finally, a system of public grants to political parties could provide a good starting point for a certain public inspection and auditing of the economic conditions of the parties. There is here an opportunity to implement different protective mechanisms against misuse of administrative resources for electoral processes. Such a grant system based on the principle of equality, ultimately reviewed by courts or specific bodies, may fulfil legitimate aims within a democratic society, like in Mexico, where rules are exhaustive and judicial review is guaranteed in every step of the public financing.

132. The report suggests considering the coming guidelines, based on the analysis of the phenomenon of the misuse of administrative resources during electoral processes, and aimed at improving the legal framework and the relevant practice of the member states in this field.

## VI. Guidelines

### I. Principles

1. The **principles of transparency and of freedom of information** are *sine qua non* pre-conditions for preventing the misuse of administrative resources.
2. The **principle of equality of opportunity** is also a key principle in order to ensure fair electoral processes. This entails two prerequisites:
  - Firstly, a neutral and ethical attitude should be adopted by state authorities – including public and semi-public bodies –, in particular with regard to: the pre-electoral period, including through the candidates' registration process; the coverage by the media, in particular by publicly owned media; and the funding of political parties and electoral campaigns, in particular public funding;
  - Secondly, incumbents should ensure non-discrimination towards their challengers by providing equal access to administrative resources.
3. The **principle of neutrality** should apply to civil servants while performing their professional duties as well as to public and semi-public bodies.

### II. Legal framework for implementing the principles

1. The **electoral and criminal laws** as well as **the laws on funding of political parties and electoral campaigns** are the core texts which should provide measures for tackling the misuse of administrative resources during electoral processes.
2. Such measures must be **proportionate, clear and foreseeable** for all contestants.
3. For this purpose, these provisions have to **distinguish activities** inherent to the state's responsibility from those of political parties and candidates, notably incumbents.

### III. Measures for implementing in good faith principles and provisions aimed at tackling the misuse of administrative resources<sup>129</sup>

1. **Charters of ethics or agreements** could be appropriate steps to tackle the misuse of administrative resources during electoral processes. In this respect, political parties would agree on such charters or agreements. Publicity and the thorough dissemination of these instruments are crucial to increase their effectiveness.

<sup>129</sup> Beyond the principles and the legal framework, political willingness remains a key factor for effectively implementing measures aimed at tackling the misuse of administrative resources.

2. 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.
3. An **independent national audit office** reporting to the Parliament 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.
4. 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.
5. Political parties, candidates, public media and public officials who misuse administrative resources should be subject to **sanctions**.
6. In this respect, an **independent judiciary** is a *sine qua non* condition for sanctioning the misuse of administrative resources.
7. It is therefore crucial that **constitutional courts, electoral courts, or equivalent bodies, as well as prosecutors and ordinary courts** take the ultimate responsibility for the administration of justice dealing with the misuse of administrative resources.
8. 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.