

31st SESSION

Report
CG31(2016)07final

**The misuse of administrative resources during electoral processes:
the role of local and regional elected representatives and public
officials**

Governance Committee

Rapporteur: ¹ Stewart DICKSON, United Kingdom (R, ILDG/GILD)

Resolution 402 (2016)	2
Explanatory memorandum	4

Summary

Misuse of administrative resources during electoral processes has been highlighted as a matter of concern in international election reports related to a number of European countries. This phenomenon occurs both in emerging democracies and in countries with a long-standing democratic tradition. In practice, election observers encounter different varieties of this problem, ranging from pressure exerted on civil servants and public employees to the use of State resources during electoral campaigns. In general, local and regional elections share many similarities with national elections as regards this form of wrongdoing. However, due to the specific role of local and regional representatives and public officials in the election administration and because of the intrinsic link, at grassroots' level, between incumbents, candidates and public officials and the electorate, a local and regional perspective is warranted. Moreover, the Congress has engaged in activities to strengthen the commitment of local and regional elected representatives with regard to ethical conduct and the fight against corruption. The present report examines overall recurrent problems of misuse of administrative resources during electoral processes and it identifies areas with specific relevance for the local and regional level. It also looks at relevant international standards and best practices in general and presents a selection of national examples to tackle this problem.

¹ L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress-
SOC: Socialist Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Not registered

RESOLUTION 402 (2016)²

1. Today, one of the most important and recurrent issues noticed by international electoral observers is the misuse of administrative resources during electoral processes. This phenomenon occurs both in emerging democracies and in countries with a long-standing tradition of democratic elections and seems to have found its way into the established political culture in Europe and beyond, evoking the perception that such malpractice is normal. Overall, international standards and rules to prevent misuse are broad and allow States a wide margin of appreciation. Therefore, best practices and soft-law instruments seem necessary to provide guidance for implementation locally.

2. In general, local and regional elections share many similarities with national elections as regards the problem of misuse of administrative resources. However, the specific role that local and regional elected representatives and public officials may have during electoral processes as well as the intrinsic link, at grassroots' level, between incumbents, candidates and public officials on the one hand and the electorate on the other, warrant tackling this problem from the local and regional perspective.

3. The Congress' political priorities 2013-2016 include measures to strengthen the commitment of local and regional elected representatives with regard to ethical conduct and combating corruption at the grassroots' level. In this view, the Congress prepared a comprehensive Strategy on preventing corruption and promoting public ethics at local and regional levels.

4. Congress Resolution 382(2015) commends to work in liaison with the Venice Commission in order to establish criteria for standing in local and regional elections, taking into account the rules of election campaigns and good practices inspired by concern for greater transparency in political life. It also proposes follow-up to the issue of conflict of interest and campaign resources at the local and regional level.

5. In the context of its co-operation with strategic partners in the field of election observation, the Congress has contributed to the compilation of the 2016 Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes of the Venice Commission and OSCE/ODIHR.³

6. Against this background, the Congress has examined the phenomenon of misuse of administrative resources from the specific angle of electoral processes at the local and regional level. As a consequence, it:

a. requests its Governance Committee to prepare a checklist for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level;

b. asks the relevant instances of the Congress to develop a strategy for promoting the checklist among Congress' members, local and regional authorities and the respective national associations;

c. encourages the relevant instances of the Congress to make information about standards, rules and practices preventing misuse of administrative resources during electoral processes a priority in the framework of training seminars and awareness-raising activities;

d. invites associations of local and regional authorities in Council of Europe member States to engage in awareness-raising activities to develop a public ethos culture at the grassroots level, in particular with regard to the role and responsibilities of local and regional representatives in electoral processes;

² Debated and adopted by the Congress on 19 October 2016, 1st sitting (see document [CG31\(2016\)07final](#), explanatory memorandum), rapporteur: Stewart DICKSON, United Kingdom (R, ILDG/GILD).

³ Venice Commission/OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (14 March 2016), CDL-AD(2016)004

e. calls on opinion leaders in the local and regional political context, to combat misuse of administrative resources during elections through appropriate declarations, leading by example and ensuring transparency;

f. invites local and regional authorities to encourage civil servants and public officials at community level to sign voluntary declarations of neutrality, specifically aiming at their role during electoral processes.

EXPLANATORY MEMORANDUM⁴

1. Introduction

1.1 Background

1. In a number of European countries, election reports have noted a wide array of recurrent problems with regard to the misuse of administrative resources in electoral processes, ranging from pressure on public employees to the display of campaign materials on State property.⁵ These were observed both on a national level as well as with regard to local elections. Based on these reports, a number of recommendations have been made to improve the legal framework regarding the misuse of administrative resources during the electoral processes in the respective States,⁶ *inter alia* with special regard to ensuring a clear separation between State and political parties,⁷ and in order to provide a level playing field among electoral contestants.^{8, 9}

2. The potential field of possibilities for misuse of administrative resources in electoral processes is extensive, and often takes place in an environment where misuse has occurred throughout generations of elections, becoming an established political culture and evoking the perception that such 'misdirected spending' is normal.¹⁰ It has specific features in grassroots' elections where the incumbent local and regional elected representatives (and possibly also candidates) carry out specific tasks in election administration and also have specific administrative functions in their municipality which differ from national elections (e.g. local procurement). Therefore, a local and regional perspective is warranted.

3. This is in line with [Congress Resolution 382\(2015\)](#)¹¹, which proposes to work with the Venice Commission on a document on 'Good Practice for Criteria for Standing in Local and Regional Elections'. The Congress suggests that this new document should also take into account the rules of election campaigns and the good practices inspired by concern for greater transparency in political life. It also proposes that further follow-up should be given to the issues of conflict of interest and campaign resources at the local and regional level. Last but not least, 'Ethics and Transparency at Local and Regional Level' is the leading theme of the Congress in 2016 and the present report constitutes an integral part of this work.

4. Against this background, the report will, after a definition of terms, firstly highlight recurrent problems in election reports in order to identify spheres of risks related to election processes, particularly local and regional election processes. Secondly, the international framework applicable in instances of the misuse of administrative resources in electoral processes will be examined. Given the general principles which may be derived from the international framework and the wide margin of appreciation generally granted to States, selected national examples to prevent the misuse of electoral resources will be detailed thereafter. On this basis, recommendations to consider good practice examples for transparency in political life will be proposed.

4 The Rapporteur would like to thank Prof. Dr. Christina Binder for her contribution to this report.

5 See, e.g., OSCE/ODIHR Election Observation Mission Final Report, Russian Federation – Elections to the State Duma 4 December 2011 (12 January 2012); OSCE/ODIHR Election Observation Mission Final Report, Republic of Albania – Local Elections 21 June 2015 (8 September 2015); OSCE/ODIHR Election Observation Mission Final Report, Republic of Armenia – Parliamentary Elections 6 May 2012 (26 June 2012); OSCE/ODIHR Election Observation Mission Final Report, Ukraine – Local Elections 25 October and 15 November 2015 (19 February 2016).

6 See also Section 8.

7 As also contained in paragraph 5.4. of the OSCE Copenhagen Document, see particularly Section 6.1.

8 As formulated by the 2013 OSCE/ODIHR Review of Electoral Legislation and Practice: '[F]ailures to provide for a level playing field among electoral contestants and the abuse of State resources in favour of incumbents caused concern in several States, particularly when such abuse amounted to intimidation of voters.' (p. 4).

9 The need to consolidate these recommendations and to provide for guidance on establishing a functioning legal framework addressing these common problems stems from the overall objective of ensuring a functioning democratic system. Hence, the misuse of administrative resources carries with it the inherent threat of endangering the quality of government, e.g., by reducing available funds or misdirecting the spending of funds in favour of the incumbent's re-election. For example, see B Speck/A Fontana, "Milking the System" – Fighting the Abuse of Public Resources for Re-Election, August 2011, U4 Issue 7, Anti-Corruption Resource Centre.

10 Cf. Venice Commission/OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (14 March 2016), CDL-AD(2016)004, recalling the earlier 2013 Report CDL-AD(2013)033.

11 Resolution 382(2015) of the Congress of Local and Regional Authorities, on criteria for standing in local and regional elections (March 2015).

1.2. Definition of terms

5. The misuse of administrative resources may be understood to encompass the following: 'Administrative resources' include: 'human, financial, material, *in natura* and other immaterial resources enjoyed during electoral processes by both elected representatives and representatives of the public sector deriving from their control over public sector staff, finances, allocations and access to public facilities. It entails also resources enjoyed in the form of prestige or public presence that stem from their position as elected representatives or public officers and which may turn into political endorsements or other forms of support.'¹² The misuse may also include related offences, such as forms of pressure or threats exerted by public authorities on civil servants¹³ or biased reporting in State owned media.

6. 'Abuse'/'misuse'¹⁴ of such resources can be defined as the 'undue advantage obtained by certain parties or candidates, through use of their official positions or connections to governmental institutions, in order to influence the outcome of elections.'¹⁵ In this sense, the abuse of administrative resources also includes related offences, 'such as forms of pressure or threats exerted by public authorities on civil servants.'¹⁶

7. Moreover, abuse of administrative resources addresses both conduct by civil servants in their official capacity (particularly how they misuse their duties/means to induce the vote for certain electoral candidates or are by virtue of their position pressured to support/vote for such candidate or party) and conduct by elected incumbents and candidates (usually while campaigning).¹⁷ In the local context, this refers to civil servants at the local and regional level as well as to municipal employees.

8. 'Elected incumbent' in the context of local and regional elections refers to 'elected local and regional representatives' in accordance with the Charter of the Congress of Local and Regional Authorities of the Council of Europe, in particular Article 2, adopted on 19 January 2011.

2. Recurrent problems concerning the misuse of administrative resources

9. Numerous instances of misuse of administrative resources have been observed during election observation missions. The following examples stem from election observation reports by OSCE/ODIHR, the Congress of Local and Regional Authorities ('the Congress') and GRECO's Third Evaluation Round, focusing *inter alia* on transparency of party funding. They refer to local/municipal elections and certain examples also are drawn from parliamentary or presidential elections.

2.1. Campaign-related problems

10. Specific problem areas can be identified during the election campaign, such as blurring the lines between State and party. These include, for example, the use of State events and/or financial/technical resources for campaign purposes by the elected incumbent or political parties in power such as: handing out property legalisation certificates,¹⁸ identifying local infrastructure projects (in advance) that could be carried out in the pre-election period to create incentives to vote for a specific incumbent or party in power,¹⁹ disproportional spending of parts of the budget, e.g., the

12 See the definition of the Venice Commission, Report on the Misuse of Administrative Resources During Electoral Processes (16 December 2013), CDL-AD(2013)033, para. 12. While the focus of their report was on elections to parliaments, it explicitly mentioned that this could also apply to territorial and self-government bodies. (Ibid., para. 13).

13 See Venice Commission/OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (14 March 2016), CDL-AD(2016)004, para. 10.

14 The Joint Guidelines by the Venice Commission/OSCE/ODIHR use 'abuse' and 'misuse' analogously, *ibid.*, para. 11.

15 OSCE/ODIHR Handbook for the Observation of Campaign Finance, 2015, p. 22, available at <http://www.osce.org/odihr/elections/135516?download=true>.

16 See Venice Commission/OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (14 March 2016), CDL-AD(2016)004, para. 10. See also the incidents of misuse identified in numerous election observation reports mentioned in Section 2.

17 In this sense see also *ibid.*, para. 12. Who definitely qualifies as civil servant in a particular State will in the very end depend on domestic legislation.

18 OSCE/ODIHR Election Observation Mission Final Report, Republic of Albania – Local Elections 21 June 2015 (8 September 2015), pp. 2, 13.

19 OSCE/ODIHR Election Observation Mission Report, Georgia – Municipal Elections 30 May 2010 (13 September 2010), p. 12.

cultural budget, during the pre-election phase,²⁰ using public property (e.g. ambulances, public transport) for campaign advertising,²¹ or using public funds for campaigning purposes.²²

11. The boundaries between the State and party/incumbent have also been blurred by the use of human resources (civil servants) and the mixing of campaigning and official duties, e.g., by: involving teachers and pupils in campaign events,²³ campaigning during office hours,²⁴ having employees of State institutions campaign during working hours,²⁵ or carrying out official duties such as helping people with social assistance applications while on leave to campaign.²⁶

12. The problem of exertion of pressure on (public sector) employees/civil servants includes pressure to sign letters of support or vote for a certain party,²⁷ attend campaign events and secure votes²⁸ or to not attend opponents' events,²⁹ threats of or dismissal from (public) employment if they do not vote/campaign for certain candidates,³⁰ or threats or promises to cut or increase regional funding or payments.³¹

13. A further example is the obstruction of the free and equal campaigning of opposition parties encroaching upon the principle of non-discrimination, notably through: pressure on/intimidation of candidates and their activists, e.g., to withdraw from the election,³² pressure on small business owners or owners of private premises not to rent these out to opposition candidates,³³ unequal distribution of

20 Ibid., p. 13; Congress of Local and Regional Authorities, Municipal Elections in Georgia (30 May 2010), CG(19)8, 23 September 2010, para. 37; OSCE/ODIHR Election Observation Mission Final Report, Russian Federation – Elections to the State Duma 4 December 2011 (12 January 2012), p. 10.

21 OSCE/ODIHR Election Observation Mission Final Report, Republic of Armenia – Parliamentary Elections 6 May 2012 (26 June 2012), p. 12; OSCE/ODIHR Election Observation Mission Final Report, Ukraine – Local Elections 25 October and 15 November 2015 (19 February 2016), p. 15.

22 OSCE/ODIHR Election Expert Team Final Report, Estonia – Parliamentary Elections 1 March 2015 (26 May 2015), p. 9; OSCE/ODIHR Election Assessment Mission Final Report, Spain – Parliamentary Elections 20 December 2015 (25 February 2016), p. 17; OSCE/ODIHR Election Observation Mission Final Report, Russian Federation – Elections to the State Duma 4 December 2011 (12 January 2012), p. 10; OSCE/ODIHR Election Expert Team Final Report, Romania – Parliamentary Elections 9 December 2012 (16 January 2013), p. 12.

23 OSCE/ODIHR Election Observation Mission Final Report, Republic of Armenia – Parliamentary Elections 6 May 2012 (26 June 2012), pp. 2, 12.

24 Ibid., pp. 2, 12; OSCE/ODIHR Election Observation Mission Final Report, Ukraine – Local Elections 25 October and 15 November 2015 (19 February 2016), p. 15; Congress of Local and Regional Authorities, Municipal Elections in “The Former Yugoslav Republic of Macedonia” (24 March 2013), CPL(25)4FINAL, 31 October 2013, paras. 6(b), 23.

25 OSCE/ODIHR Election Observation Mission Final Report, Republic of Azerbaijan – Parliamentary Elections 7 November 2010 (25 January 2011), p. 11; OSCE/ODIHR Election Observation Mission Report, Georgia – Municipal Elections 30 May 2010 (13 September 2010), p. 12.

26 OSCE/ODIHR Election Observation Mission Report, Georgia – Municipal Elections 30 May 2010 (13 September 2010), p. 12; Congress of Local and Regional Authorities, Municipal Elections in Georgia (30 May 2010), CG(19)8, 23 September 2010, para. 37.

27 OSCE/ODIHR Election Observation Mission Final Report, Russian Federation – Elections to the State Duma 4 December 2011 (12 January 2012), p. 10.

28 OSCE/ODIHR Election Observation Mission Final Report, Republic of Albania – Local Elections 21 June 2015 (8 September 2015), p. 13; OSCE/ODIHR Election Observation Mission Final Report, Republic of Azerbaijan – Parliamentary Elections 7 November 2010 (25 January 2011), p. 11; OSCE/ODIHR Election Observation Mission Final Report, The Former Yugoslav Republic of Macedonia – Presidential and Early Parliamentary Elections 13 and 27 April 2014 (15 July 2014), p. 14.

29 OSCE/ODIHR Election Observation Mission Final Report, The Former Yugoslav Republic of Macedonia – Presidential and Early Parliamentary Elections 13 and 27 April 2014 (15 July 2014), p. 14; Congress of Local and Regional Authorities, Municipal Elections in Georgia (30 May 2010), CG(19)8, 23 September 2010, para. 37.

30 OSCE/ODIHR Election Observation Mission Final Report, Republic of Albania – Local Elections 21 June 2015 (8 September 2015), p. 13; OSCE/ODIHR Limited Election Observation Mission Final Report, Montenegro – Early Parliamentary Elections 14 October 2012 (7 December 2012), p. 11; OSCE/ODIHR Limited Election Observation Mission Final Report, Republic of Serbia – Parliamentary and Early Presidential Elections 6 and 20 May 2012 (31 July 2012), pp. 10-11; OSCE/ODIHR Election Observation Mission Final Report, The Former Yugoslav Republic of Macedonia – Presidential and Early Parliamentary Elections 13 and 27 April 2014 (15 July 2014), p. 14; Congress of Local and Regional Authorities, Municipal Elections in “The Former Yugoslav Republic of Macedonia” (24 March 2013), CPL(25)4FINAL, 31 October 2013, para. 24.

31 OSCE/ODIHR Election Observation Mission Final Report, Russian Federation – Elections to the State Duma 4 December 2011 (12 January 2012), p. 10; OSCE/ODIHR Election Observation Mission Final Report, The Former Yugoslav Republic of Macedonia – Presidential and Early Parliamentary Elections 13 and 27 April 2014 (15 July 2014), p. 14.

32 OSCE/ODIHR Election Observation Mission Final Report, Republic of Azerbaijan – Parliamentary Elections 7 November 2010 (25 January 2011), p. 12; OSCE/ODIHR Election Observation Mission Final Report, The Former Yugoslav Republic of Macedonia – Presidential and Early Parliamentary Elections 13 and 27 April 2014 (15 July 2014), p. 14; OSCE/ODIHR Election Observation Mission Final Report, Republic of Moldova – Local Elections 5 and 19 June 2011 (28 November 2011), p. 10.

33 OSCE/ODIHR Election Observation Mission Final Report, Republic of Azerbaijan – Parliamentary Elections 7 November 2010 (25 January 2011), p. 12; OSCE/ODIHR Election Observation Mission Final Report, The Former Yugoslav Republic of Macedonia – Presidential and Early Parliamentary Elections 13 and 27 April 2014 (15 July 2014), p. 14; OSCE/ODIHR Election

campaigning space,³⁴ directed investigations against political opponents,³⁵ campaign materials not paid for from parties' campaign funds,³⁶ or the distribution of fake newspapers with wrong or libellous information about contestants.³⁷

14. As regards media coverage, a disproportionate focus on the incumbent in State-owned media was observed,³⁸ as was a lack of equitable access to the media³⁹ and bias towards the governing parties,⁴⁰ thereby undermining the standard of equal treatment.

2.2. Election Day related problems

15. Incidents of misuse of public resources may occur at any phase in the electoral cycle. While the period before the elections – the election campaign – is most at risk for incidents of misuse, also the Election Day itself can prove to be problematic.

16. Problems which have been observed during the Election Day include pressure on voters through, e.g.: the presence of supporters outside polling stations telling people not to vote⁴¹ and the presence of supporters inside polling stations taking photos and writing down the names of those who voted.⁴² Instances of 'voter bribing' were also reported, e.g., by offering incentives such as free transportation from outside the election territory.⁴³

2.3. Lack of effective complaint mechanisms and deficient enforcement

17. Finally, the general problem of a lack of effective complaint mechanisms as well as deficient enforcement has been observed, notably with delayed or no criminal investigations into complaints by opposition parties⁴⁴ and deficient enforcement to prevent, identify, investigate and prosecute proven instances of pressure and intimidation of voters, as well as the misuse of State resources for campaign purposes.⁴⁵

18. In conclusion, it can be said that, while certain particularities can be noted where local and regional elections are concerned,⁴⁶ broadly similar issues related to misuse were identified in local and regional as well as in national elections. Overall, the problems noted relate to pressure on and bribery of voters, the use of institutional resources for electoral purposes – with, e.g., civil servants being pressured to campaign or vote for a particular candidate or the use of financial and/or material means in favour of the incumbent or the ruling party, as well as unequal reporting in State media.

3. Areas of misuse with special relevance for local and regional elections

Observation Mission Final Report, Russian Federation – Elections to the State Duma 4 December 2011 (12 January 2012), pp. 10-11.

34 OSCE/ODIHR Election Observation Mission Final Report, Bosnia and Herzegovina – General Elections 12 October 2014 (7 January 2015), p. 13; OSCE/ODIHR Election Observation Mission Final Report, Russian Federation – Elections to the State Duma 4 December 2011 (12 January 2012), p. 10.

35 OSCE/ODIHR Limited Election Observation Mission Final Report, Republic of Turkey – Early Parliamentary Elections 1 November 2015 (28 January 2016), p. 12.

36 OSCE/ODIHR Election Observation Mission Final Report, Russian Federation – Elections to the State Duma 4 December 2011 (12 January 2012), p. 11.

37 Ibid., p. 11.

38 Like Azerbaijan, Belarus and Montenegro. See OSCE/ODIHR Review of Election Legislation and Practice in OSCE Participating States, 2013.

39 OSCE/ODIHR Limited Election Observation Mission Final Report, Republic of Serbia – Parliamentary and Early Presidential Elections 6 and 20 May 2012 (31 July 2012), p. 11.

40 Congress of Local and Regional Authorities, Municipal Elections in "The Former Yugoslav Republic of Macedonia" (24 March 2013), CPL(25)4FINAL, 31 October 2013, para. 6(c).

41 OSCE/ODIHR Election Observation Mission Final Report, The Former Yugoslav Republic of Macedonia – Presidential and Early Parliamentary Elections 13 and 27 April 2014 (15 July 2014), p. 14.

42 Ibid., p. 14. However, there has been an on-going debate as to the positive and negative aspects of videotaping in polling stations.

43 OSCE/ODIHR Election Observation Mission Final Report, Republic of Moldova – Local Elections 5 and 19 June 2011 (28 November 2011), p. 10.

44 OSCE/ODIHR Limited Election Observation Mission Final Report, Montenegro – Early Parliamentary Elections 14 October 2012 (7 December 2012), p. 11; OSCE/ODIHR Election Observation Mission Final Report, The Former Yugoslav Republic of Macedonia – Presidential and Early Parliamentary Elections 13 and 27 April 2014 (15 July 2014), p. 14.

45 OSCE/ODIHR Election Observation Mission Final Report, Republic of Albania – Local Elections 21 June 2015 (8 September 2015), p. 13.

46 See infra, Section 3 for details.

19. Although local and regional elections share many similarities with national elections as regards problems of misuse of State resources, they also have their own distinguishing characteristics.

20. First, local and regional elected representatives have certain community specific functions which lend themselves to particular types of misuse: for example, decisions on zoning and land use or public procurement. Also, local and regional elected representatives usually have personal ties to the territorial community in which the election takes place. Likewise, their relation to public employees and civil servants working for the municipality is often particularly close.

21. Accordingly, conflicts of interest and nepotism may be more likely to occur, given the intrinsic linkage to the community where they are living. What is more, local elected representatives and/or their employees frequently have particular functions which are relevant during the electoral campaign, such as the allocation of places for campaigning. Likewise, notifications concerning campaign related events must often be directed to local authorities that gives them certain possibilities of interference in favour of the incumbent or the party/parties in power.

22. Finally, municipal employees may also have tasks on Election Day, such as concerning the enforcement of prohibitions of electoral campaigning while polling occurs or as members in polling station commissions. This tends to be particularly problematic in local/regional elections given the frequently close ties of these employees with the local representatives to be elected. This makes local elections especially vulnerable to the misuse of administrative resources and calls for clear guidelines to strengthen the democratic system.

4. Root causes of misuse and its consequences for electoral processes

23. The causes for the observed misuse of State resources may be various, but often misuse may arise from either non-existing or overly broad legal guarantees. Hence, the lack of an appropriate legal framework regulating, e.g., the offense of abuse of official position or administrative resources for campaigning,⁴⁷ access to public premises during election campaigns,⁴⁸ clear prohibitions for State executive bodies or elected officials to directly or indirectly use administrative resources in order to ensure a level playing field for all contestants,⁴⁹ constitutes an underlying problem area.⁵⁰

24. In addition, the inadequate implementation of the legal framework is frequently problematic. This was shown, for example, by biased media coverage in favour of the incumbent. Likewise, the enforcement and handling of complaints in the context of misuse of administrative resources is a considerable concern.⁵¹ Often, the (non-)existent political will to tackle the misuse seems to be an important 'background' factor. In fact, it can be noted that a number of complaints relating to the blurring of lines between State and political party arise in elections in post-communist States. *Inter alia* this has been tied to incomplete transitions from a single-party system.⁵²

25. The negative impact of a misuse of administrative resources for the electoral process is likely to be significant. The misuse of administrative resources by the incumbent or the ruling party/parties raises concerns regarding the creation of a level playing field among the electoral contestants. The disproportionate use of administrative resources also challenges the overall integrity of the electoral process. More generally, widespread misuse raises questions of transparency and citizens' trust in electoral processes.

26. While these disadvantages generally apply to local and regional elections, there are certain particularities of local and regional elections likewise as regards the negative consequences of a

47 OSCE/ODIHR Election Observation Mission Final Report, Republic of Armenia – Parliamentary Elections 6 May 2012 (26 June 2012), p. 26.

48 OSCE/ODIHR Election Observation Mission Final Report, Bosnia and Herzegovina – General Elections 12 October 2014 (7 January 2015), p. 13.

49 OSCE/ODIHR Election Observation Mission Report, Georgia – Municipal Elections 30 May 2010 (13 September 2010), p. 25.

50 See also GRECO, Evaluation Report on Georgia on Transparency of Party Funding, 27 May 2011, GRECO Evaluation III Rep (2010) 12E, Theme II, para. 69; GRECO, Evaluation Report on Montenegro on Incriminations and Transparency of Party Funding, 19 January 2015, GRECO RC-III (2014) 17E, Second Compliance Report, para. 13.

51 OSCE/ODIHR Election Observation Mission Final Report, Republic of Albania – Local Elections 21 June 2015 (8 September 2015), p. 13; OSCE/ODIHR Limited Election Observation Mission Final Report, Republic of Turkey – Early Parliamentary Elections 1 November 2015 (28 January 2016), p. 11.

52 In this context, see also S Levitsky/LA Way, 'Why Democracy Needs a Level Playing Field', 21 Journal of Democracy (2010) 57-68, p. 64.

misuse of administrative resources. As incumbents are closer to the electorate in local elections, the negative impact of misuse usually relates to areas within their competence (decisions on districting, land-use etc.). Also, particular attention has to be paid to the role of local office holders in the election administration who may use their power to discriminate against opposition candidates, for example as regards the allocation of town halls or public buildings for campaigning.⁵³

5. Challenges when addressing the misuse of administrative resources

27. The prohibition of a misuse of State resources aims at protecting the integrity of electoral processes and ensuring a level playing field for all contestants. It is a complex phenomenon because of the difficult dividing line between the use of State resources in the legitimate exercise of government functions, and practices which constitute a misuse of such resources and confer an unfair advantage on the incumbent or the party in power. Criteria to address this question may be summarised as follows:

28. First, rules to prevent the misuse of administrative resources have to be examined against their impact on the necessary continuity and efficiency of government work. Accordingly, long term projects or urgent measures must be distinguished from governmental activities which are mainly election campaign related. While the former activities are generally acceptable and even required, mainly campaign related measures should be prevented. It is also to be noted that the line between pure information provided by candidates/incumbents and campaign-related activities is frequently blurred.

29. Second, the needed neutrality and impartiality of civil servants in the exercise of their functions stands in certain tension to these civil servants' fundamental freedoms and human rights, including their right to political participation. For example, the prohibition to campaign in favour of a candidate may encroach upon civil servants' freedoms of expression or assembly. Restrictions to stand for election for certain groups (e.g. police officers) may conflict with the latter's right to political participation.

30. Thus, the transparency and integrity of the electoral process and the creation of a level playing field for all contestants have to be balanced against the restrictions of the fundamental rights of individuals which the pursuance of these objectives may entail.⁵⁴ Restrictions on electoral activities will have to be graded accordingly and range from the prohibition to campaign while in office to suspension or even resignation from office when standing for election.

31. Overall, the exact dividing line between acceptable and impermissible forms of any use of State resources will be situation-specific and depend on the circumstances of each case. This warrants certain room to account for the particularities of local conditions. States need a margin of appreciation for implementation and domestic regulation. As will be shown, this is reflected in the generally broad international standards and best practices which govern the use of State resources.⁵⁵

6. International standards and best practices concerning the misuse of administrative resources in electoral processes

32. Relevant standards concerning the misuse of administrative resources in electoral processes stem from internationally guaranteed human rights, in particular the freedoms of expression, assembly and association as well as the right to political participation as incorporated in the International Covenant on Civil and Political Rights (ICCPR, Articles 19, 21, 22 and 25), regional human rights treaties (particularly Articles 10 and 11 of the European Convention of Human Rights (ECHR) and Article 3 of Protocol No. 1 to the ECHR) – in the interpretation by treaty monitoring bodies (the United Nations Human Rights Committee (HRC) and the European Court of Human Rights (ECtHR)).

53 See supra, Section 3, on the particularities of local and regional elections.

54 See case law of human rights monitoring bodies in Section 6. infra. Efforts to secure a free and equal vote also with the necessary restrictions may have to be balanced against the necessary avoidance of too drastic/counterproductive provisions which deter people from standing for office altogether.

55 The tension between measures against the misuse of State resources and necessary restrictions of individual rights to achieve that purpose is also evidenced in the case law of human rights treaty monitoring bodies.

33. There are also a number of soft law instruments such as the 1990 OSCE Copenhagen Document⁵⁶, the Venice Commission Code of Good Practice in Electoral Matters⁵⁷ and the Code of Good Practice in the Field of Political Parties,⁵⁸ the Guidelines on Political Party Regulation by the OSCE/ODIHR and the Venice Commission⁵⁹ as well as specific documents tackling the misuse of State resources – notably the 2016 Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Process of the Venice Commission and OSCE/ODIHR⁶⁰ and the 2013 Report on the Misuse of Administrative Resources during Electoral Processes of the Venice Commission.⁶¹

34. Furthermore, Council of Europe recommendations on common rules against corruption in the funding of political parties and electoral campaigns or media coverage have to be taken into account. Additional documents of particular relevance for grassroots' elections include, e.g., the Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority,⁶² the Congress of Local and Regional Authorities' recommendations on 'Equal access to local and regional elections'⁶³ and on 'Criteria for standing in local and regional elections'.⁶⁴ For severe cases of corruption and related offences, also the UN Convention against Corruption (Articles 19, 17, 7) and the Congress' Report 'Preventing corruption and promoting public ethics at local and regional levels' are of relevance.⁶⁵

35. Overall, standards and best practices relating to the misuse of administrative resources are partly overlapping and generally broad. That is why they need to be complemented by more general principles such as equality, neutrality and impartiality in order to adequately address instances of misuse.

6.1. Standards and best practices - in general

36. International law provides for certain general features of the electoral process which also give guidelines to tackle the misuse of electoral resources. In fact, the necessary integrity of the electoral process and the resulting need to prevent the misuse of administrative resources may be derived from the right to political participation as incorporated in Article 25 ICCPR (International Covenant on Civil and Political Rights)⁶⁶ which protects political rights *strictu sensu*, in particular the right to genuine and free elections (b).⁶⁷ It also applies to municipal elections.⁶⁸

37. The guarantees of Article 25 ICCPR concerning the integrity of the electoral process are further detailed in General Comment No. 25⁶⁹ by the HRC (UN Human Rights Committee). Of

56 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE (1990).

57 Venice Commission, Code of Good Practice in Electoral Matters (18-19 October 2002), CDL-AD(2002)23 rev.

58 Venice Commission, Code of Good Practice in the Field of Political Parties (12-13 December 2008), CDL-AD(2009)002.

59 OSCE/ODIHR and Venice Commission, Guidelines on Political Party Regulation (25 October 2010), CDL-AD(2010)024.

60 Venice Commission/OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (14 March 2016), CDL-AD(2016)004.

61 Venice Commission, Report on the Misuse of Administrative Resources During Electoral Processes (16 December 2013), CDL-AD(2013)033.

62 Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority, Council of Europe Treaty Series No. 207, 16 November 2009.

63 Congress of Local and Regional Authorities, Equal access to local and regional elections (15 September 2009), CG(17)12.

64 Congress of Local and Regional Authorities, Criteria for standing in local and regional elections (March 2015), Recommendation 375(2015).

65 Congress/Council of Europe Document, Preventing corruption and promoting public ethics at local and regional levels (24 May 2016), CG/GOV02(2016)02.

66 See also Art 21(3) UDHR: 'The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.', UNGA Res. 217 (III), International Bill of Human Rights, A. Universal Declaration of Human Rights, 3 UN GAOR, p. 71, 10 December 1948, UN Doc. A/810.

67 See Article 25 ICCPR: 'Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: ... (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; ...' As emphasised by Manfred Nowak, 'genuine' has been understood to mean that voters have to be able to freely choose among various alternatives, see M Nowak, U.N. Covenant on Civil and Political Rights – CCPR Commentary (2005, 2nd revised edition) p. 575. 'Genuine elections' are already protected in Article 21 of the Universal Declaration of Human Rights.

68 See *inter alia* Human Rights Committee (HRC), *Debreczeny v the Netherlands*, No 500/1992, para. 28; *Ignatane v Latvia*, No 884/1999, para. 29; see also *Mátyus v Slovakia*, No 923/2000, para. 33. Cf. M Nowak, U.N. Covenant on Civil and Political Rights – CCPR Commentary (2005, 2nd revised edition) 574.

69 CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote) – The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, UN Doc. CCPR/C/21/Rev.1/Add.7 (1996).

particular relevance are paragraphs 19⁷⁰ and 25⁷¹ thereof. Paragraph 19 points to the necessary requirements for free and fair elections⁷² which extend beyond secret ballots, in a way that the elector's opinion/intention – thus the will – is formed prior to the election and that this process must occur freely.⁷³ Ensuring the right to free elections entails that eligible voters should not be pressured or impermissibly influenced in forming and expressing their will.⁷⁴

38. Standards to circumvent misuse may also be deduced from regional human rights treaties, particularly the ECHR (European Convention of Human Rights). Article 3 of Protocol No. 1 to the ECHR⁷⁵ is applicable to regional elections insofar as regional authorities are considered 'legislatures' in the meaning of Article 3, *i.e.* when they exercise legislative powers.⁷⁶ Accordingly, 'free' elections presuppose the free formation of the electoral will.⁷⁷ A misuse of State resources in favour of the incumbent may contravene these objectives.

39. Also in the 1990 OSCE Copenhagen Document, OSCE participating States committed themselves to central standards of relevance for the misuse of administrative resources for campaign purposes. Paragraph 5.4 of the Copenhagen Document States the importance of a clear separation of State and political parties.⁷⁸ The Copenhagen Document also reaffirms core elements which are necessary to ensure that the will of the people serves as the basis of the authority of government and, therewith, the integrity of electoral processes and the prevention of a misuse of administrative resources in favour of the incumbent and ruling parties. These include respect of the principle of non-discrimination when standing for office and a level playing field as regards the establishment of and competition between political parties.⁷⁹

70 '19. In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. 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. ...'

71 '25. In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.' [Emphasis added].

72 'Free and fair elections', in today's terminology, refers to elections in accordance with international standards.

73 See in this sense M Nowak, U.N. Covenant on Civil and Political Rights – CCPR Commentary (2005, 2nd revised edition) 583-584.

74 As to the right of campaigning parties to unimpaired campaigning see *infra*, Section 6.2.2. See generally M Nowak, U.N. Covenant on Civil and Political Rights – CCPR Commentary (2005, 2nd revised edition) p. 584.

75 Art. 3 of Prot. No 1 to the ECHR: 'The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.'

76 Note, however, that the European Charter on Self Government expands the guarantees of Art. 3 of Prot. No. 1 to the ECHR also to local elections.

77 *Communist Party of Russia and Others v Russia*, ECtHR, App. No. 29400/05, Judgment of 19 June 2012: '79. The Court reiterates that free elections are inconceivable without the free circulation of political opinions and information (see, for example, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 44, Reports of Judgments and Decisions 1998-I). Article 3 of Protocol No. 1 will not attain its goal (which is to establish and maintain the foundations of an effective and meaningful democracy governed by the rule of law – see *Hirst v. the United Kingdom* (no. 2) [GC], no. [74025/01](#), § 58, ECHR 2005-IX) if candidates cannot disseminate their ideas during the electoral campaign.'

78 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE (1990), para. (5.4): 'a clear separation between the State and political parties; in particular, political parties will not be merged with the State'. [Emphasis added].

79 The Copenhagen Document also refers to campaigning as well as equal access to the media on a non-discriminatory basis. This includes particularly paragraphs 7.5-7.8 of the Copenhagen Document: '(7.5) — respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination; (7.6) — respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations 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; (7.7) — ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor *intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution*; (7.8) — provide that *no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis* for all political groupings and individuals wishing to participate in the electoral process;' Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990).

40. Likewise, the Venice Commission Code of Good Practice in Electoral Matters (2002) provides important criteria to prevent a misuse of State resources.⁸⁰ It specifically deals with the equality of opportunity for parties and candidates and in this regard highlights three areas where a neutral attitude by State authorities must be maintained: election campaign, (public) media coverage, and public funding of parties and campaigns.⁸¹

41. Standards for the local level are contained in the Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority.⁸² The Protocol expands on Article 3(2) of the European Charter of Local Self-Government which contains the right to free elections at the local level.⁸³ Article 1(4.1) provides that '[e]ach Party shall recognise by law the right of nationals of the party to participate, as voters or candidates, in the election of members of the council or assembly of the local authority in which they reside.' This extends the protection afforded by Article 3 of Protocol No. 1 to the ECHR to all types of local and regional elections and formulates it as an individual right.⁸⁴

42. Conditions may and must be imposed as to prevent challenges to the transparency and integrity of the exercise of participation in local authority as set out in Article 1, especially paragraph 5.2., of the Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority, which establishes that: 'The law shall impose such formalities, conditions and restrictions as are necessary to ensure that the *ethical integrity and transparency of the exercise of local authorities' powers and responsibilities are not jeopardised* by the exercise of the right to participate....'⁸⁵

43. These can be understood as minimum requirements of transparency and integrity and as an obligation to prevent cases of bribery and the like, thus providing for an obligation to prevent most severe cases of misuse of State resources in electoral processes.⁸⁶

44. More generally, misuse-related requirements concerning elections and the right to political participation are to be linked also with freedoms of expression, assembly and association. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential, and for these purposes also a number of other rights in the ICCPR (International Covenant on Civil and Political Rights) are fundamentally important for a functioning democratic process, notably Article 19 (freedom of opinion, expression and information), Article 21 (freedom of assembly) and Article 22 (freedom of association)^{87, 88}. The same holds true for the ECHR (European Convention of Human Rights), where Article 10 (freedom of expression) and Article 11 (freedom of assembly and freedom of association) in combination with the principle of non-discrimination may be at stake. This, in particular, where the misuse of electoral resources disproportionately restricts or disadvantages opposition parties in their freedom to campaign and access to the media.

80 See para. 7(a) of Resolution 382(2015) of the Congress of Local and Regional Authorities, Criteria for standing in local and regional elections (March 2015).

81 Venice Commission, Code of Good Practice in Electoral Matters (18-19 October 2002), CDL-AD(2002)23 rev, para. 2.3.a. See *infra*, different sections, for details.

82 Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority, Council of Europe Treaty Series No. 207, 16 November 2009, as of June 2016, eight States have ratified this Protocol, see <http://www.coe.int/de/web/conventions/full-list/-/conventions/treaty/207/signatures>.

83 European Charter of Local Self-Government, Coe Treaty Series No. 122, 15 October 1985.

84 See also the Explanatory report to the Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority.

85 Emphasis added. The Explanatory report States in this regard that: 'This paragraph requires the Party to establish formalities, conditions and restrictions necessary to ensure that the ethical integrity and transparency of the exercise of local authorities' powers and responsibilities are not jeopardised by the exercise of the right to participate. The inclusion of this provision demonstrates the determination of the parties to safeguard against wholly inappropriate actions such as bribery or the use of force or coercion forms of participation and requires them to take appropriate action. Any formalities conditions and restrictions introduced in this respect must meet the standard set out in paragraph 5.1. [Any formalities, conditions or restrictions to the exercise of the right to participate in the affairs of a local authority shall be prescribed by law and be compatible with the party's international legal obligations. ...]'

86 See also the guarantees contained in the UN Convention against Corruption; *infra*.

87 See also paragraph 25 of General Comment No. 25; see likewise the several times reiterated Statement by the ECtHR: 'there is a direct relationship between democracy, pluralism and the freedom of association'.

88 M Nowak, U.N. Covenant on Civil and Political Rights – CCPR Commentary (2005, 2nd revised edition) p. 565.

45. Finally, the general notion of 'misuse of administrative resources' results in the applicability of international treaties from further fields and their setting of specific standards and best practices for electoral processes. More particularly, the United Nations Convention against Corruption (UNCAC)⁸⁹ constitutes part of the international legal framework against the abuse of administrative resources in electoral processes.⁹⁰ In this regard, especially Article 19 UNCAC (abuse of functions) is relevant, which establishes the intentional abuse of functions for the purpose of obtaining an undue advantage, calling on States to take according action.⁹¹ States are thus required to take measures to prevent corruption including the establishment of criteria for candidature to prevent any misuse of State resources.

46. This is reiterated and detailed in the Roadmap of activities for preventing corruption and promoting public ethics at local and regional levels which was prepared by the Congress of Local and Regional Authorities.⁹² Among the other areas addressed in the Roadmap are transparency which includes, for instance, opening decision making for public scrutiny; conflicts of interest and clientelism to ensure that public interests are put ahead over personal interests (registers of the financial and non-financial interests of elected representatives and their families are proposed as tools to reduce such risks); the protection of whistle blowers to avoid intimidation, harassment, dismissal or violence in case of reporting over malpractice; nepotism, favouritism – hiring and awarding contracts on the basis of personal connections rather than on merit; as well as public procurement and the abuse of administrative resources in election campaigns. A comprehensive and detailed list of possible measures against misuse is thus especially provided for in the Congress' Roadmap.

6.2. Specific standards and best practices

47. International instruments furthermore establish more area or situation specific standards and best practices which can be drawn upon to prevent the misuse of State resources. Areas of interest include candidate rights (the right to stand for election), the election campaign, campaign and political party finance, media, general features of the domestic legal framework as well as complaints and appeals.

6.2.1. Candidate rights

48. International standards on the right to stand as candidate on a non-discriminatory basis are of certain (limited) importance in relation to the misuse of State resources. This importance is two-fold: International standards refer, on the one hand, to the need to establish a level playing field for all electoral contestants. This also requires measures to prevent any misuse of State resources. On the other hand, candidate rights may be encroached upon as result of measures to prevent the misuse of State resources, more particularly to avoid conflicts of interest, e.g., by restricting the right to stand for certain groups. These will be addressed in turn.

89 United Nations Convention Against Corruption, 11 December 2003, 2349 UNTS 41 (as of June 2016 178 State parties); including all Council of Europe member States. See https://www.unodc.org/documents/treaties/UNCAC/Status-Map/UNCAC_Status_Map_Current.pdf.

90 See below for Congress/Council of Europe Document, Preventing corruption and promoting public ethics at local and regional levels (24 May 2016), CG/GOV02(2016)02.

91 Article 19 UNCAC: 'Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.'

Article 17 UNCAC (embezzlement, misappropriation or other diversion of property by a public official) calls on State parties to adopt legislative and other measures to establish such acts as criminal offences: '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.'

Article 7 UNCAC (Public sector) also, *inter alia*, addresses the necessity to prescribe criteria concerning candidatures for and election to public office: '2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.' As to the transparency requirements in Art 7.3 UNCAC see *infra*.

92 Congress' Document, Preventing corruption and promoting public ethics at local and regional levels (24 May 2016), CG/GOV02(2016)02.

49. First, relevant international standards forbid a misuse of State resources which would discriminate against opposition candidates/parties, e.g., by cumbersome registration procedures (see for example the de-registration of an unwanted opposition party in *Republican Party of Russia v Russia*).⁹³ They include the right to seek political and public office as stipulated in paragraph 7.5 of the 1990 OSCE Copenhagen Document, which provides that citizens should be given the opportunity to stand for election individually or as a representative of a political party without discrimination.⁹⁴ In this vein, Articles 25 and 2 of the ICCPR (International Covenant on Civil and Political Rights) provide that the right to stand in election shall extend to all citizens without any distinction related to 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

50. Therefore, while candidacy rights may be subject to certain restrictions, procedures for candidate registration must be non-discriminatory. The grounds for rejecting registration applications should be based on objective criteria and be clearly Stated in the law.⁹⁵ A misuse of State resources in terms of, for example, an unequal registration procedure which discriminates against opposition parties or candidates would therewith violate international standards on the right to stand for elections.

51. Conversely, as Stated, measures to enhance the integrity of the electoral process and to prevent conflicts of interest may also require restrictive criteria to stand as candidate and therewith encroach upon the candidacy rights of those prevented to stand. The tension is evidenced in Recommendation 375(2015) of the Congress, which establishes the right to stand for election as one of the chief mainstays of any democracy⁹⁶ and, consequently, underlines the necessity to clearly define any rules pertaining thereto.⁹⁷ In order to ensure the 'sincerity' of the ballot, the Recommendation points to the fact that the function performed might constitute a ground of ineligibility, particularly where he/she is in a position to have an 'unjustified advantage over competitors'.⁹⁸ In a similar manner, the Congress' Document on equal access to local and regional elections names – among the key elements for ensuring a fair electoral process – the necessity to establish a framework outlining incompatibilities of a political mandate with other public functions.⁹⁹

52. While measures to tackle the misuse of State resources may thus have an impact on the right to stand as candidate, international standards and best practices establish criteria under which conditions measures to prevent the use of State resources are permissible. In fact, candidate rights may be subject to restrictions if these restrictions are provided by law as well as reasonable and proportionate to the objectives and aims of the law.¹⁰⁰ In this respect, human rights institutions have maintained that States enjoy a margin of appreciation to establish according criteria for candidacy.

53. In *Ahmed and Others v UK*, the ECtHR (European Court of Human Rights) had to deal with restrictions on standing for local government officers. More particularly, the Court was concerned with the question whether restrictions on the involvement of senior local government officers in certain

93 *Republican Party of Russia v Russia*, ECtHR, App. No. 12976/07, Judgment of 12 April 2011; see below for further details.

94 See also paragraphs 7.6 and 9.3 of the 1990 OSCE Copenhagen Document which provide for freedom of association and the right to establish political parties and organizations.

95 Section I.1.3 of the 2002 VC Code of Good Practice provides detailed guidance on the submission and verification of supporting signatures, as well as requirements regarding the use of financial deposits and their reimbursement.

96 Congress of Local and Regional Authorities, Criteria for standing in local and regional elections (March 2015), Recommendation 375(2015), para. 1. See also, Congress of Local and Regional Authorities, Equal access to local and regional elections (15 September 2009), CG(17)12. In light of lower voter turn-out in local/regional elections than in national elections, the latter affirms that ensuring equal access to local and regional elections is understood as a key concern to ensure the legitimacy of democracy. *Inter alia*, the link between the potential candidate and the territorial community in respect of which he/she seeks votes plays an important role in defining who may be eligible to run. Congress of Local and Regional Authorities, Equal access to local and regional elections (15 September 2009), CG(17)12, Explanatory Memorandum, para. 1.

97 Congress of Local and Regional Authorities, Criteria for standing in local and regional elections (March 2015), Recommendation 375(2015), para. 1.

98 *Ibid.*, para. 10.

99 Congress of Local and Regional Authorities, Equal access to local and regional elections (15 September 2009), CG(17)12, Explanatory Memorandum, paras. 39-40. As listed in the memorandum, for example, in Sweden the leading official of local authorities is not eligible to run for elections. In Azerbaijan, military, judges, public servants and clergy cannot run for elective office.

100 See also Article 29 of the UNCPRD. There is no international instrument that exhaustively lists the admissible limitations on candidate rights, although section I.1 of the 2002 VC Code of Good Practice includes some guidance in relation to age, nationality, and residence.

types of political activity were in line with Article 10 ECHR (freedom of expression), Article 11 (freedom of assembly) and with Article 3 of Protocol No. 1 to the ECHR.¹⁰¹

54. In its reasoning, the ECtHR first assessed whether the interference with Article 10 ECHR was justified.¹⁰² It referred, in particular, to local elections and noted that the

*'notion of effective political democracy is just as applicable to the local level as it is to the national level bearing in mind the extent of decision-making entrusted to local authorities and the proximity of the local electorate to the policies which their local politicians adopt. It also notes in this respect that the Preamble to the Council of Europe's European Charter of Local Self-Government (European Treaty Series no. 122) proclaims that "local authorities are one of the main foundations of any democratic regime". The Court observes that the local government system of the respondent State has long rested on a bond of trust between elected members and a permanent corps of local government officers who both advise them on policy and assumed responsibility for the implementation of the policies adopted. That relationship of trust stems from the right of council members to expect that they are being assisted in their functions by officers who are politically neutral and whose loyalty is to the council as a whole.'*¹⁰³

55. Thus, the ECtHR concluded that the aim pursued by the regulatory act was legitimate and – as there had been reported instances of abuse of power by certain local government officers – it was found to 'respond to a pressing social need'¹⁰⁴, making the interference therefore justified. A similar conclusion was reached with regard to Article 11 ECHR, as the Court remarked that it had to be considered also in the light of Article 10 ECHR.¹⁰⁵

56. With regard to Article 3 of Protocol No. 1 to the ECHR, the ECtHR recalled that the rights contained in said provision were not absolute. The restriction therefore had to be assessed 'in the context of the aim pursued by the legislature [...], namely, to secure their political impartiality.'¹⁰⁶ As the aim was considered legitimate, there was also no breach of Article 3 of Protocol No. 1 to the ECHR. Put differently, the Court accepted restrictions on the right to standing for the sake of the integrity of the electoral process.

57. At United Nations' level, more particularly, restrictions on the political activity of civil servants were at stake. The HRC (Human Rights Committee) clarified in this context in *Debrecezeny v. The Netherlands*¹⁰⁷ with regard to local elections that the right to take part in the conduct of public affairs and to be elected was not an absolute right but could be subject to 'reasonable restrictions' in order to safeguard the democratic decision-making process by avoiding conflicts of interest.¹⁰⁸

58. In the case at hand, Dutch legislation provided that membership in the municipal council was incompatible with employment as a civil servant in subordination to local authorities. On this basis, the credentials of a national policy sergeant elected to the local council were refused by the council.

59. In contrast, local firemen and teaching staff were not prevented from membership to the local council. In this regard, the HRC pointed out that volunteer firemen lacked a similar income

101 *Ahmed and Others v the United Kingdom*, ECtHR, App. No. 65/1997/849/1056, Judgment of 2 September 1998, para. 8. A regulatory act had been adopted in light of 'the increasing politicisation of local government and attendant problems in respect of the relationship between elected members and local government officers'. It aimed at strengthening the democratic process and was issued in response to cases where power had been abused, *inter alia* restricting the political activities of certain categories of local government officers. These categories applied to all four complainants who were employed in different capacities by various local authorities.

102 *Ibid.*, para. 52. With regard to the regulation's legitimate aim, the ECtHR rejected the applicants' argument that the protection of effective democracy could only be invoked where there was a threat to the stability of the constitutional or political order. It pointed instead to the 'interests served by democratic institutions such as local authorities and the need to make provision to secure their proper functioning where this is considered necessary to safeguard those interests.'

103 *Ibid.*, paras. 52-53 [emphasis added]. The ECtHR continued: 'Members of the public also have a right to expect that the members whom they voted into office will discharge their mandate in accordance with the commitments they made during an electoral campaign and that the pursuit of that mandate will not founder on the political opposition of their members' own advisers; it is also to be noted that members of the public are equally entitled to expect that in their own dealings with local government departments they will be advised by politically neutral officers who are detached from the political fray.'

104 *Ibid.*, para. 62.

105 *Ibid.*, para. 70.

106 *Ibid.*, para. 75.

107 HRC, *Debrecezeny v the Netherlands*, No 500/1992.

108 *Ibid.*, paras. 9.2.-9.3.

dependency, and that teaching staff was not under the direct supervision by the municipal authority.¹⁰⁹ As the restrictions on the right to be elected were regulated by law and based on objective criteria, the Committee concluded that the facts, the restrictions on municipal council membership for civil servants, did not reveal a breach of the ICCPR. The Dutch measures to prevent conflicts of interests – a misuse of State resources – were thus accepted by the Human Rights Committee as legitimate restrictions of individual rights.

60. In conclusion, the case-law of the HRC (*Debreczeny*) and of the ECtHR (*Ahmed*) illustrates the clear tension between opposing objectives: The necessary integrity of the electoral process and the equality of playing field between candidates (*i.e.* between incumbent and opposition) calling for neutrality in the use of State resources and according restrictions of individual rights of those persons who are barred from elected office in order to prevent conflicts of interests. In this respect again, human rights institutions have made it clear that States enjoy a margin of appreciation as regards the possibility to tackle the misuse of administrative resources, also if this implies restrictions of the right to stand for elections.

6.2.2. The electoral campaign

61. Election campaigns allow electoral contestants to convey their messages to the public and, thus, provide voters with the opportunity to make an informed choice. They are essential to level the playing field between the candidates and key to restrict any misuse for State resources.¹¹⁰ Article 25 of the ICCPR (International Covenant on Civil and Political Rights) and General Comment No. 25 by HRC provide for standards of relevance for electoral processes

62. Measures to ensure a level playing field for candidates are also elaborated in the 1990 OSCE Copenhagen Document. In particular, paragraph 7.7 commits OSCE participating States ‘to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution’, with similar language provided in paragraph 19 of General Comment No. 25.

63. Furthermore, paragraph 5.4 of the 1990 OSCE Copenhagen Document commits OSCE participating States to ensure ‘a clear separation between the State and political parties’, thereby protecting against the abuse of State resources in favour of the ruling party or incumbent.

64. The 2002 Venice Commission Code of Good Practice in Electoral Matters recommends that equality of opportunity for campaigning be provided either on a strict or proportional basis and therewith likewise provides rules of relevance to prevent the misuse of State resources. As already mentioned, also the Congress has drawn up a Roadmap of activities for preventing corruption and promoting public ethics at local and regional levels.¹¹¹ It thereby also addresses the abuse of administrative resources in election campaigns.¹¹² More generally, clear domestic regulations for the election campaign are essential to restrict any misuse of State resources.¹¹³ Accordingly, election campaign related international standards and best practices establish criteria to deal with instances of misuse of State resources.

6.2.3. Campaign and party finance

65. A sound system of campaign and political party finance is a central tenet for democratic elections and should help to prevent any misuse of State resources. A transparent and effectively regulated system can provide candidates with independence from undue influence and enable voters

¹⁰⁹ Ibid., para. 9.4.

¹¹⁰ In line with relevant provisions of the 1990 OSCE Copenhagen Document and 1966 ICCPR, this presupposes respect for fundamental freedoms, most importantly freedoms of expression, association, assembly, and movement.

¹¹¹ Congress’ Document, Preventing corruption and promoting public ethics at local and regional levels (24 May 2016), CG/GOV02(2016)02.

¹¹² Regional and local authorities sometimes use their forces to exert pressure on undesired election participants (para. 47). Thus, a clear distinction should be made between use and misuse of administrative resources, with practices of misuse being sanctioned and punished by law. (para. 48) It mentions observation of elections and the need for tighter control as regards the use of campaign funds as possible means (paras. 50, 51).

¹¹³ The Human Rights Committee has specified in General Comment No. 25, para. 19 that ‘[r]easonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.’ See also below, Section 6.2.3, campaign and political party finance.

to make a more informed choice before voting. While international standards and best practices are minimal and general with regard to campaign and political party finance – paragraphs 7.6 and 7.7 of the OSCE Copenhagen Document call for equal and fair treatment of candidates before the law – paragraph 19 of General Comment No. 25 by the HRC (UN Human Rights Committee) provides, more concretely, guidance on campaign expenditure limits.¹¹⁴

66. Sections I.2.3 and I.3.1 of the 2002 Venice Commission Code of Good Practice in Electoral Matters recommend transparency and neutrality in the funding of candidates and parties. With respect to funding, the Code of Good Practice further details that any '[p]olitical party, candidates and election campaign funding must be transparent.'¹¹⁵ Also Article 7.3 of the 2003 UNCAC calls on countries to take appropriate legislative and administrative measures to enhance the transparency of campaign and party financing.¹¹⁶

67. Similarly, and somewhat more detailed, the Venice Commission Code of Good Practice in the Field of Political Parties¹¹⁷ lists among the guiding principles for political parties transparency and openness¹¹⁸ alongside the rule of law, democracy, and non-discrimination. Additionally, the text emphasises that even if the abuse of the ruling position is not explicitly spelt out in the national legal framework, it goes against the underlying principles enshrined in the Code and may thus be considered illegal.¹¹⁹

68. Also the Council of Europe Committee of Ministers, in Recommendation Rec(2003)4, suggests common rules against corruption in the funding of political parties and electoral campaigns.¹²⁰ Article 1 thereof provides that '[o]bjective, fair and reasonable criteria should be applied regarding the distribution of State support.' Article 3 lays out general principles to prevent conflicts of interests, ensure transparency, avoid prejudice to the activities of political parties and to ensure the independence of political parties. Regarding donations by legal entities, the Recommendation proposes that 'States should prohibit legal entities under the control of the State or of other public authorities from making donations to political parties.' Additionally, Section IV of the document is dedicated to the principle of transparency regarding accounts and donations more specifically (Articles 11-13).

69. The aspect of transparency in political financing is also emphasised in the Guidelines on Political Party Regulation by the OSCE/ODIHR and the Venice Commission (2010), referring to political finance disclosure as the main policy instrument in this regard.¹²¹ Furthermore, concerning the abuse of State resources, the Guidelines stipulate that '[w]hile 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

114 '... Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.' CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote) – The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, UN Doc. CCPR/C/21/Rev.1/Add.7 (1996).

115 Venice Commission, Code of Good Practice in Electoral Matters (18-19 October 2002), CDL-AD(2002)23 rev, para. 2.3.d.

116 Art. 7.3 UNCAC: 'Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.'

117 Venice Commission, Code of Good Practice in the Field of Political Parties (12-13 December 2008), CDL-AD(2009)002.

118 *Ibid.*, para. 19: 'The parties should offer access to their programmatic and ideological documents and discussions, to decision-making procedures and to party accounts in order to enhance transparency and to be consistent with sound principles of good governance.'

119 *Ibid.*, para. 52.

120 Council of Europe, Recommendation Rec(2003)4 of the Committee of Ministers to member States on common rules against corruption in the funding of political parties and electoral campaigns, 8 April 2003.

121 OSCE/ODIHR and Venice Commission, Guidelines on Political Party Regulation (25 October), CDL-AD(2010)024, paras. 201-206. The Guidelines further detail the abovementioned criteria with focus on political parties. [especially 5.4 of the Copenhagen Document] Certain criteria can be also drawn in relation to misuse: See, e.g., para. 210: 'Public employees (civil servants) should not be required by a political party to make payments to the party. This is a practice the law should prohibit as an abuse of State resources.'

contracts, transportation, employees) to their own advantage.¹²² The need for a clear and concise legal framework addressing issues of concern in this regard is repeatedly stressed.¹²³

70. The Congress' Report on 'Equal access to local and regional elections' also establishes that in order to ensure equal access this entails *inter alia* the necessity for States 'to ensure effective control over fair election finance and the transparent and lawful use of administrative resources in elections.'¹²⁴ Likewise, the Congress has issued recommendations on the financial transparency of political parties.¹²⁵

71. While there are only few substantive standards, rules on transparency – particularly when combined with audits by independent bodies – may be especially important to tackle the misuse of State resources in the field of campaign and political party finance.

6.2.4. Media

72. The media play an essential role during an election period, since they provide for citizens' informed participation in public and political affairs. They are of according importance when attempting to deal with instances of misuse of State resources. Article 19 of the ICCPR (International Covenant on Civil and Political Rights) enshrines the freedom of expression and paragraph 20 of the 2011 General Comment No. 34 by the HRC (UN Human Rights Committee) elaborates on the importance of freedom of expression for the conduct of public affairs and the effective exercise of the right to vote.¹²⁶

73. Similar guarantees can be derived from Article 10 of the ECHR (European Convention of Human Rights). In line with paragraph 7.8 of the 1990 OSCE Copenhagen Document, unimpeded and non-discriminatory media access during an election campaign is essential for political parties and candidates to inform the electorate about their policies and programmes. Also from the Congress' perspective, freedom of expression and access to the media are key elements for ensuring a fair electoral process at local and regional level.¹²⁷

74. These standards and best practices on non-discriminatory access, especially to public media, are thus key elements to tackle the misuse of electoral resources. Section I.2.3.a of the 2002 Venice Commission Code of Good Practice in Electoral Matters goes into further detail when it affirms the necessary neutrality of publicly-owned media as crucial for the equal level playing field among electoral contestants. With regard to the media coverage of electoral campaigns, the Code entails two obligations: States should arrange for a sufficiently balanced amount of airtime/advertising space ('access to the media obligation') and a 'neutrality of attitude obligation', particularly by publicly owned media.¹²⁸

75. In addition, pertinent recommendations by the Council of Europe Committee of Ministers concern the issue of media coverage of election campaigns which should be fair, balanced and

122 Ibid., para. 207. 'The abuse of State resources is universally condemned by international norms. 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...'

123 Ibid., paras. 208-209: '208. To allow for the effective regulation of the use of State resources, legislation should clearly define what is considered abuse. For instance, while incumbents are often given free use of postal systems (seen as necessary to communicate their acts of governance with the public), mailings including party propaganda or candidate platforms are a misuse of this free resource. Legislation must address such abuses. 209. The abuse of State resources may include the manipulation or intimidation of public employees. It is not unheard of for a government to require its workers to attend a pro-government rally. Such practices should be expressly and universally banned by law.'

124 Congress of Local and Regional Authorities, Equal access to local and regional elections (15 September 2009), CG(17)12, Explanatory Memorandum, para. 2.

125 Congress of Local and Regional Authorities, Recommendation 86(2000) on the Financial Transparency of Political Parties and their Democratic Functioning at Regional Level (25 May 2000), para. 11: 'Ensure that their respective national laws include adequate provision for transparency in political party financing and for appropriate supervisory measures.'

126 Unreasonable limitations on media access and coverage are prohibited in line with paragraph 24 of the 1990 OSCE Copenhagen Document and paragraph 13 of the 2011 UNHRC General Comment No. 34.

127 Congress of Local and Regional Authorities, Equal access to local and regional elections (15 September 2009), CG(17)12, Explanatory Memorandum, paras. 47-48. In this regard see also the case explained below, *Communist Party of Russia and Others v Russia*.

128 Venice Commission, Code of Good Practice in Electoral Matters (18-19 October 2002), CDL-AD(2002)23 rev, para. 2.3.d.

impartial.¹²⁹ This is reiterated in the recently adopted OSCE – Venice Commission Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes which State: ‘The legal framework should ensure the objective, impartial and balanced coverage of election-related events by publicly-owned media. Law and practice should both ensure that publicly-owned media are not involved in “hidden” campaigning for or against particular political competitors.’¹³⁰

76. Likewise the ECtHR (European Court of Human Rights) dealt with the issue of media coverage during election campaigns. *Communist Party of Russia and Others v Russia* – a case related to parliamentary elections, but of equal relevance to local elections –, exemplifies the wide margin of appreciation enjoyed by States as to unequal media coverage in the context of misuse of State resources. The complainants alleged before the ECtHR that their right to free elections had been breached on account of biased media coverage by major TV stations during the 2003 parliamentary elections campaign in Russia. They also alleged that – as opposition candidates – they had been discriminated against. A report by a Moscow-based research affiliate of the international NGO Transparency International noted more than 500 instances of abuse of administrative resources, particularly with regard to the media coverage.¹³¹

77. The Court first turned to clarify the general principles which fell under Article 3 of Protocol No. 1 to the ECHR and related to effective political democracy. Hence, in order to ensure the ‘free expression of the opinion of the people’, the freedom of expression and the principle of equality treatment were recognised as core elements.¹³² Moreover, as held in *Yumak and Sadak v Turkey*¹³³, this included the obligation to ‘adopt positive measures to organise elections ‘under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature’.^{134,135}

78. In this regard, the allegations concerned a Russian law which *de jure* ensured neutrality but *de facto* was not complied with.¹³⁶ The ECtHR held that while media coverage had at least some effect on the voting preferences, it was hard to quantify.¹³⁷ On this point, the Court concluded that as it only had a subsidiary role in such matters.¹³⁸

79. Related to the positive obligations States have under Article 3 of Protocol No. 1, the ECtHR Stated that this entailed, *inter alia*,¹³⁹ substantive positive obligations of the State in the context of media coverage, namely the requirement of striving for pluralism of views.¹⁴⁰ On the one hand, this

129 Council of Europe, Recommendation CM/Rec(2007)15 of the Committee of Ministers to member States on measures concerning media coverage of election campaigns, 7 November 2007, emphasising in its preambular paragraphs that ‘the coverage of elections by the broadcast media should be fair, balanced and impartial’ and containing *inter alia* provisions on non-inference by public authorities, transparency of ownership and access to media.

130 Venice Commission/OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (14 March 2016), CDL-AD(2016)004, 4.4.

131 *Communist Party of Russia and Others v Russia*, ECtHR, App. No. 29400/05, Judgment of 19 June 2012, paras. 20-21. The campaign had been observed by international organisations (*inter alia* an OSCE/ODIHR mission) and NGOs. See generally also *Republican Party of Russia v Russia*, ECtHR, App. No. 12976/07, Judgment of 12 April 2011, which dealt with the deregistration of a political party (Article 11 ECHR). The ECtHR established a violation because ‘the measures taken by the registration authority in this case lacked a sufficiently clear legal basis.’

132 *Communist Party of Russia and Others v Russia*, ECtHR, App. No. 29400/05, Judgment of 19 June 2012, para. 107.

133 *Yumak and Sadak v Turkey*, ECtHR, App. No. 10226/03, Judgment of 8 July 2008.

134 *Communist Party of Russia and Others v Russia*, ECtHR, App. No. 29400/05, Judgment of 19 June 2012, para. 107 [emphasis added].

135 While the ECtHR was mindful that Article 3 of Protocol No. 1 was not a code on electoral matters and States enjoyed a wide margin of appreciation in how to organise and run electoral systems, it still was tasked to determine whether the requirements of Article 3 of Protocol No. 1 had been complied with. *Inter alia* due to the historical development, cultural diversity and political thought within Europe (para. 108).

136 *Communist Party of Russia and Others v Russia*, ECtHR, App. No. 29400/05, Judgment of 19 June 2012, paras. 112ff. In part, these allegations were confirmed by the reports of international observers. Findings by the Supreme Court holding that there was no proof and no causal link between media coverage and the results of the election were alleged to be arbitrary.

137 *Ibid.*, paras. 120-121.

138 *Ibid.*, para. 122. The ECtHR further detailed that and it was not its task to substitute itself for the domestic courts and conduct a fresh assessment of evidence, the applicants’ allegations of abuse by the Government were not sufficiently proven.

139 *Ibid.*, para. 124.

140 ‘[T]here can be no democracy without pluralism’ (*ibid.*, para. 125). In addition, the ECtHR maintained that States also had procedural obligations, namely to establish a domestic system of effective examination of individual complaints and appeals in matters concerning electoral rights. See respectively also remedies and sanctions (Section 6.2.6) *infra*.

included opening up media to different viewpoints, and on the other hand, the State should ensure neutrality of the audio-visual media ('duty of neutrality').¹⁴¹

80. As the Court found that Russia had taken 'certain steps to guarantee some visibility of opposition parties and candidates on Russian public TV and secure editorial independence and neutrality of the media', it concluded that it could not establish that Russia had failed to meet its positive obligations. Thus, there was no violation of Article 3 of Protocol No. 1 to the ECHR on account of the media coverage of the 2003 elections.¹⁴² Put differently, a wide margin of appreciation was granted to Russia as regards one-sided media reporting in favour of the incumbent. *Communist Party of Russia* therewith exemplifies the broad international standards which give only limited guidance to deal with instances of misuse of State resources.

6.2.5. Legal framework

81. An adequate legal framework is essential to effectively address the misuse of State resources. Relevant standards on how the legal framework for elections should look like are contained in general human rights instruments including Article 25 of the ICCPR and are further elaborated in paragraph 5 of General Comment No. 25 by the HRC.¹⁴³ The legal framework for elections should be clearly written, consistent, and accessible. Also, the legal framework should be stable with a view to provide certainty among electoral stakeholders regarding the electoral process. As regards the misuse of electoral resources, the legal framework should spell out what is permitted and what is prohibited in a clear and predictable manner.¹⁴⁴

6.2.6. Remedies and sanctions

82. Of central relevance to address incidents of misuse of administrative resources is likewise a system of adequate remedies. Possible complaints before independent and impartial institutions with final appeal to court are a major tenet to prevent and tackle incidents of misuse. More particularly, electoral stakeholders must be able to complain before the competent administrative or judicial institution and to appeal to the relevant court.¹⁴⁵

83. Key OSCE commitments in this respect are contained in paragraphs 5.10 and 5.11 of the Copenhagen Document, guaranteeing effective redress against administrative decisions, as well as in paragraph 5.12 that enshrines the independence and impartiality of the judiciary. Additional details on these issues are provided in paragraphs 18-21 of the 1991 OSCE Moscow Document, while further specifications can be drawn from the right to fair trial in Article 14 of the ICCPR.

84. Also, proportionate, predictable and clear sanctions have to be provided for infringements of the prohibition of the misuse of administrative resources. As outlined, *inter alia*, in the 2016 Joint

141 Ibid., para. 127; see also para. 72 of *Russian Conservative Party of Entrepreneurs and Others v Russia*, ECtHR, App. No. 55066/00, 55638/00, Judgment of 11 April 2007: 'As regards the freedom of voters to form an opinion, the Court notes that the Council of Europe's institutions have primarily described it in terms of the State authorities' obligation to honour their duty of neutrality, particularly where the use of the mass media, billposting, the right to demonstrate and the funding of parties and candidates are concerned (see, for example, the Guidelines on Elections, § 3.1 (a), and the Explanatory Report, § 26 (a)). In addition, this freedom has been considered to imply certain positive obligations on the part of the authorities, such as the obligation to submit the candidatures received to the electorate and to make information about candidates readily available (see the Guidelines on Elections, § 3.1 (b), and the Explanatory Report, § 26 (b)).'

142 *Communist Party of Russia and Others v Russia*, ECtHR, App. No. 29400/05, Judgment of 19 June 2012, paras. 128-129.

143 In addition, international good practice, particularly the 2002 Venice Commission Code of Good Practice (Section II.2), recommends that the law contain explicit procedures for democratic elections and all components of an overall electoral system. The 2002 Venice Commission Code of Good Practice recommends that the fundamental elements of electoral law should not be amended less than one year before an election.

144 Cf. OSCE/ODIHR and Venice Commission, Guidelines on Political Party Regulation (25 October), CDL-AD(2010)024, paras. 208-209; Venice Commission/OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (14 March 2016), CDL-AD(2016)004. See also the Venice Commission, Report on the Misuse of Administrative Resources During Electoral Processes (16 December 2013), CDL-AD(2013)033. The 2016 Joint Guidelines establish among the relevant principles to tackle the misuse of administrative resources *inter alia* the rule of law including a legal framework which prohibits the misuse of administrative resources during electoral processes in a clear and predictable manner with the rules being accessible to the relevant stakeholders.

145 Respectively, the 2016 Joint Guidelines establish in terms of remedies the need of an effective system of complaints and appeals before a competent, independent and impartial court or an equivalent judicial body; with a final appeal to a court; insurance of the independence of the electoral management bodies in their decisions over disputes of administrative resources; impartial application of the law timely and effective investigation of cases on the misuse of State resources by authorized law enforcement bodies; public, written and reasoned decisions. An effective system includes complaint mechanisms that are easily accessible and not too costly.

Guidelines of the Venice Commission and OSCE/ODIHR,¹⁴⁶ sanctions can include formal warning, fixed monetary penalties, reduction in public financing and referral for criminal prosecution.

6.3. Summary

85. In conclusion, a number of international standards and best practices provide obligations and guidelines to address the misuse of administrative resources. They establish rules for candidates' rights, election campaigns, campaign and political party finance as well as the media. Also, more general guidelines for the legal framework and a system of remedies and sanctions are foreseen. The applicable rules include the duty of neutrality on the part of the State and the necessary integrity of the electoral processes allowing for a free expression of the will of voters.

86. Still, relevant international standards demonstrate the difficulties to tackle the (mis)use of State resources. Generally, a wide margin of appreciation is granted to States. International standards and best practices thus provide only limited yardsticks to assess a situation of misuse.

87. Broader principles on impartiality, neutrality, transparency and equal access should valuably complement the international framework at stake. These principles contribute to the shaping of a legal framework responding to possible areas of misuse. In fact, the 2016 Joint Guidelines of the Venice Commission and OSCE/ODIHR for Preventing and Responding to the Misuse of Administrative Resources During Electoral Process¹⁴⁷ – which are understood as essential prerequisites 'to ensure the foundations of a legal framework to regulate the use of administrative resources'¹⁴⁸ –, refer, *inter alia*, to such principles including impartiality and professionalism for civil servants, neutrality of civil service as regards campaign activities, transparency and accountability concerning the use of public money and public goods as well as equality of opportunity for all candidates.

88. Furthermore, additional means to secure the implementation of international standards and best practices seem to be necessary in order to effectively address the misuse of State resources. Given the frequent grey area and difficult distinction between what is allowed and what is prohibited, a clear legal framework is not sufficient. Also codes of conduct and ethics to draw respective distinctions are warranted. These may provide essential guidelines for civil servants as well as incumbents. More generally, information and awareness-raising by authorities (including electoral management bodies) in view of distinguishing electoral campaign activities from official governmental information activities seems necessary.¹⁴⁹

89. Procedurally, audits – which are linked to transparency requirements as mentioned above – are of central relevance, especially in certain areas such as campaign or political party finance.¹⁵⁰ Relevant reports should be opened to public scrutiny, enabling the electorate – supported by civil society and election observers – to receive the necessary information in order to prevent possible misuse. Intrinsicly related to all these measures is the necessary political will – the implementation of restrictions on the use of administrative resources in good faith.¹⁵¹

90. Given the broad international standards and large margin of appreciation left to domestic authorities, it comes of no surprise that national legislation varies considerably.

146 Venice Commission/OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (14 March 2016), CDL-AD(2016)004, C.2.

147 Ibid. See also the Venice Commission, Report on the Misuse of Administrative Resources During Electoral Processes (16 December 2013), CDL-AD(2013)033.

148 Venice Commission/OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (14 March 2016), CDL-AD(2016)004, Part II Guidelines.

149 See Venice Commission/OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (14 March 2016), CDL-AD(2016)004, B.4.

150 For example, the 2016 Joint Guidelines call for according transparency requirements with reporting requirements of political parties and candidates on the origin and purpose of campaign finance transactions. These are joined to according audits of political parties and candidates in their use of administrative resources by an independent body which is sufficiently empowered and resourced.

151 See Venice Commission/OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (14 March 2016), CDL-AD(2016)004, B.3. In addition, the protection of civil servants against pressure is also necessary; a pluralist political culture characterized by transparency towards the electorate; and civil society, including domestic election observers for reporting on potential misuse of administrative resources and proposing recommendations to strengthen legislation and practice.

7. Different ways to tackle the misuse of administrative resources in electoral processes – selected national examples

91. Domestic legislation from selected countries reveals different rules and shows a variety of domestic approaches to address the misuse of State resources. Especially as regards the need for legal regulation, different domestic approaches may be distinguished. Some countries mainly provide for laws which explicitly deal with the misuse of administrative resources during the electoral process in one form or another (e.g. Albania, Armenia, Belgium, Georgia, Russian Federation and Turkey).¹⁵² Conversely, there are other States with only implicit rules, such as Finland and United Kingdom. Austria is also an example of the latter.¹⁵³ Nordic countries, in particular, rather rely on self-regulation and voluntary regulation of parties. In any case, effective implementation and enforcement of relevant laws as well as the well-functioning of institutions providing for self-regulation is of key importance.

92. In a study of 2013, the Venice Commission has analysed the different domestic approaches on respective prevention and sanction and established several categories.¹⁵⁴

- legislation which does not distinguish between material and human resources (Albania, Georgia, Turkey, Ukraine, Russian Federation);
- legislation which emphasises particular types of resources (Armenia, Georgia, Kazakhstan [misuse of public real estate], Republic of Moldova, Montenegro);
- legislation which prohibits any kind of intervention by public servants in favour of a candidate (Greece, Ireland, Kyrgyz Republic, Portugal, Spain);
- legislation which refers to temporary circumstances where public servants cannot campaign while in office or only during workdays (Albania, Armenia, Kyrgyz Republic, Ukraine);
- legislation which focuses on the preservation of free suffrage against possible influence of public servants through gifts, donations or promises (Belgium, France, Luxembourg, Monaco);
- legislation which includes media coverage as a possible misuse of public funds (Armenia, Georgia);
- and States without any explicit provisions on the misuse of administrative resources during electoral processes but only implicit rules which may be intended at dealing with this issue.¹⁵⁵

93. The study concludes that while most often there are satisfactory criminal laws against the misuse of administrative resources in place, their effective implementation remains troublesome, an issue which can be traced *inter alia* to a lacking understanding of principles of equality and neutrality in electoral processes.¹⁵⁶

94. The following survey draws on the categorisation of the 2013 Venice Commission study when exemplifying domestic approaches to rule out the misuse of State resources. However, it deviates from this study since it adapts the examples according to subject matters rather than categorising countries as such. Countries thus can be mentioned more than once but this will be done on an exemplary basis. The survey intends by no means to be exhaustive.

95. Also, the subject matters which are covered by the survey below have been chosen in view of their particular relevance for local and regional elections. They include restrictions on standing for election to prevent conflicts of interest, neutrality/impartiality of civil servants (and similar groups of persons) and their protection from pressure, protection of voters from pressure and bribery as well as general prohibitions concerning the misuse of administrative resources.

¹⁵² See respectively Venice Commission, Report on the Misuse of Administrative Resources During Electoral Processes (16 December 2013), CDL-AD(2013)033, para. 22.

¹⁵³ According to the Venice Commission (*ibid.*), Austria, Croatia and the Czech Republic. In more detail, e.g., in Austria this implicitly follows *inter alia* from the Code on Political Parties (Federal Law Gazette No. 56/2012), the Austrian Criminal Code, the Austrian Federal Regulations on National Council Elections (Federal Law Gazette No. 471/1992), the Public Sector Employment Law (Federal Law Gazette No. 333/1979).

¹⁵⁴ See particularly the comparative table prepared by the Venice Commission, The Use of Administrative Resources During Electoral Campaigns, Study No. 585/2010, 29 November 2012, CDL-REF(2012)025rev. Note that since these categories were established in 2013, certain categorizations may have changed due to legal reforms since.

¹⁵⁵ Venice Commission, Report on the Misuse of Administrative Resources During Electoral Processes (16 December 2013), CDL-AD(2013)033, paras. 19ff.

¹⁵⁶ *Ibid.*, para. 22.

7.1. Restrictions on standing for election

96. A first category of legal provisions intends to prevent conflicts of interest by excluding or restricting certain categories of persons from standing for election or by providing for temporary suspension.

97. For example, in Sweden the chief executive of a local authority cannot be elected to the local government while in office (Section 6 of the Swedish Local Government Act)¹⁵⁷; and in Italy, members of bodies that exercise institutional control over public administrations are excluded (Article 98 of the Italian Constitution).¹⁵⁸ The Federal Law on the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation (in the following ‘Russian Election Code’) establishes that registered candidates who are State or municipal civil servants have to be temporarily relieved from their duties (Article 46.2).¹⁵⁹ The Election Code of Moldova States that candidates may not be employed or involved in the administration of the elections where they are running (Article 44).¹⁶⁰

7.2. Protection of voters

98. Other domestic legal provisions address voters and aim at preventing any pressure exercised on them. The Electoral Code of Portugal, for example, prevents the abuse of public or equivalent functions to induce electors to vote for a particular list (Article 153).¹⁶¹ The Belgian Election Code prohibits that voters are threatened in order to influence their opinion (Article 183).¹⁶²

99. Domestic laws likewise prevent the bribery of voters with gifts. The Electoral Code of Georgia, *inter alia*, prohibits the ‘bribery of voters’ from the moment of calling for elections until the publication of results by funds, gifts or other material possessions irrespective of their value (Article 47).¹⁶³ The Election Code of Armenia forbids giving money or promising gratuitously (or on preferential conditions) food, securities or goods to electors (Article 18.7).¹⁶⁴ The Election Code of Portugal prevents electoral corruption – *i.e.* to offer promises, gifts or grants to persuade a person to vote or to refrain from voting (Article 155) (in general terms, also including public functions).¹⁶⁵ The Election Code of Belgium prevents promises (money, valuables etc.) of voters in exchange for a vote (Article 181).¹⁶⁶ The Election Code of France (Article 106)¹⁶⁷ and Luxembourg (Article 95)¹⁶⁸ likewise prohibit the bribery of voters.

7.3. Civil servants

100. Again other provisions and laws relate to civil servants and similar groups. They either aim at their neutrality in general terms or attempt to protect these persons from pressure.

101. Some laws establish the neutrality of civil service and/or judges, military and persons in similar positions. The Election Code of Armenia prohibits that civil members of the constitutional court,

157 Swedish Local Government Act, as amended on 1 September 2003 (translation available at <http://www.government.se/contentassets/9577b5121e2f4984ac65ef97ee79f012/the-swedish-local-government-act>).

158 Art. 51 Constitution of the Italian Republic (translation available at http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf).

159 Russian Federation, The Federal Law on the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation, 18 May 2005, translation available at <http://www.cikrf.ru/eng/law/FL-51-FZ.html>.

160 Electoral Code of the Republic of Moldova, as of 2014, translation available at <http://www.legislationline.org/topics/country/14/topic/6>.

161 Portuguese Assembly of the Republic Electoral Law, Law No. 14/79 of 16 May 1979, as amended 2011, translation available at <http://aceproject.org/ero-en/regions/europe/PT/portugal-electoral-law-english-2011/view>.

162 Electoral Code of Belgium, Version of 31 January 2014, translation available at <http://www.parliament.am/library/norelectoral%20law/Belgia.pdf>.

163 Election Code of Georgia as of 27 October 2015 (translation available at <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF%282016%29004-e>).

164 Electoral Code of the Republic of Armenia (as adopted on 26 May 2011), available at www.legislationline.org/download/.../Armenia_Electoral_Code_2011.pdf.

165 Portuguese Assembly of the Republic Electoral Law, Law No. 14/79 of 16 May 1979, as amended 2011, translation available at <http://aceproject.org/ero-en/regions/europe/PT/portugal-electoral-law-english-2011/view>.

166 Electoral Code of Belgium, Version of 31 January 2014, translation available at <http://www.parliament.am/library/norelectoral%20law/Belgia.pdf>.

167 Code electoral (as amended 2013), available at <http://www.legislationline.org/topics/country/30/topic/6>.

168 Electoral code in Luxembourg (as amended 2011), French translation available at <https://ec.europa.eu/migrant-integration/index.cfm?action=furl.go&go=/librarydoc/electoral-code-in-luxembourg>.

judges, prosecutors, police, military servants and members of electoral commissions disseminate campaign material while on duty (Article 18.6.1-3).¹⁶⁹ The Greek Constitution requires neutrality of civil service and prevents magistrates, armed forces or security corps to manifest their preferences for a particular candidate (Article 29).¹⁷⁰ The Election Code of Ireland requires electoral administrators not to act in favour of a candidate (Article 144).¹⁷¹ The Election Code of Spain establishes a similar rule *inter alia* for the military and security service, judges and magistrates (Article. 52).¹⁷² In Germany, the Constitutional Court established that civil servants (*Staatsorgane in amtlicher Funktion*) must not influence the public opinion with the aim to remain in power.¹⁷³ The Election Code of Turkey provides for the necessary impartiality of those in office (Article 63).¹⁷⁴

102. Other domestic regulations prohibit the exercise of any pressure on subordinates, such as the Election Code of Georgia, which prevents pressure on subordinates in addition to requiring according neutrality of persons in official position (Article 49).¹⁷⁵ Also, the Russian Election Code tries to tackle pressure exercised on subordinates (Article 46.4.1).¹⁷⁶ The Election Codes of Portugal, in more general terms, protects persons (also including civil servants) from dismissal or threat from dismissal to make him/her vote for a particular candidate (Article 154).¹⁷⁷

103. In the United-Kingdom, during the so-called “period of Purdah” – between the time an election is called and the date the election is held –, a specific set of rules provides for restrictions on the activity of civil servants during the election campaign.¹⁷⁸

7.4. General prohibitions concerning the misuse of administrative resources

104. Other laws prohibit the misuse of State resources as such. The time period aimed at is usually the election campaign.

105. For example, the Electoral Code of Albania prohibits the use of public resources for the support of electoral subjects.¹⁷⁹ The Electoral Code of Georgia forbids the use of administrative resources during the election campaign (Article 48).¹⁸⁰ The Election Code of Moldova prevents *inter alia* State budget organisations to fund or support election campaigns (Article 38.5).¹⁸¹ It also States

169 Electoral Code of the Republic of Armenia (as adopted on 26 May 2011), available at www.legislationline.org/download/.../Armenia_Electoral_Code_2011.pdf.

170 Constitution of Greece, as revised 2008, translation available at <http://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma/>.

171 Irish Electoral Act, 1992, available at <http://www.irishstatutebook.ie/eli/1992/act/23/section/144/enacted/en/html>.

172 Ley Orgánica 5/1985, de 19 de junio, del Régimen Electoral General, esta revisión vigente desde 01 de Abril de 2015 available at http://noticias.juridicas.com/base_datos/Admin/lo5-1985.html.

173 Germany: 1977 BVerfGE 44, 125, para. 49: ‘In höchstem Maße der Integrität bedürftig ist der Grundakt demokratischer Legitimation, die Wahl der Abgeordneten der Volksvertretung. Im Wahlakt muss sich - dieser Sinn ist in Art. 20 Abs. 2 GG angelegt - die Willensbildung vom Volk zu den Staatsorganen hin vollziehen, nicht umgekehrt von den Staatsorganen zum Volk hin. So sehr von dem Verhalten der Staatsorgane Wirkungen auf die Meinungsbildung und Willensbildung des Wählers ausgehen und dieses Verhalten selbst mit Gegenstand des Urteils des Wählers ist, so sehr ist es den Staatsorganen in amtlicher Funktion verwehrt, durch besondere Maßnahmen darüber hinaus auf die Willensbildung des Volkes bei Wahlen einzuwirken, um dadurch Herrschaftsmacht in Staatsorganen zu erhalten oder zu verändern. Es ist ihnen von Verfassungswegen versagt, sich als Staatsorgane im Hinblick auf Wahlen mit politischen Parteien oder Wahlbewerbern zu identifizieren und sie unter Einsatz staatlicher Mittel zu unterstützen oder zu bekämpfen, insbesondere durch Werbung die Entscheidung des Wählers zu beeinflussen.’

174 Election Code of Turkey, Turkey, Law No. 298, Law on Basic Provisions on Elections and Voter Registers, translation available at www.legislationline.org/documents/id/7010.

175 Election Code of Georgia as of 27 October 2015 (translation available at <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF%282016%29004-e>), Article 49.

176 Russian Federation, The Federal Law on the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation, 18 May 2005, translation available at <http://www.cikrf.ru/eng/law/FL-51-FZ.html>.

177 Portuguese Assembly of the Republic Electoral Law, Law No. 14/79 of 16 May 1979, as amended 2011, translation available at <http://aceproject.org/ero-en/regions/europe/PT/portugal-electoral-law-english-2011/view>.

178 The Cabinet Office is issuing specific guidance prior to each election. <https://www.gov.uk/government/publications/election-guidance-for-civil-servants>

179 Electoral Code of the Republic of Albania, Law No. 10019, as amended by Law No. 31/2015 (translation available at <http://www.osce.org/albania/159501?download=true>).

180 Election Code of Georgia as of 27 October 2015 (translation available at <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF%282016%29004-e>).

181 Electoral Code of the Republic of Moldova, as of 2014, translation available at <http://www.legislationline.org/topics/country/14/topic/6>.

that candidates may not use public means or goods during electoral times (Article 47.6).¹⁸² The Election Code of Armenia (Article 22.2)¹⁸³ prohibits that *inter alia* candidates with political positions or civil servants use, for example, transportation and communication means for campaign purposes.¹⁸⁴

106. Several electoral codes and legal provisions prevent also the use of public buildings for campaigning (see, e.g., Article 46 of the Electoral Code of Georgia¹⁸⁵). The Russian Election Code prevents the use of premises occupied by State bodies for campaign purposes (Article 46.4.2).¹⁸⁶ It also prohibits the use of State material (telephone, fax, other means of communication; transport facilities etc.) for campaigning (Article 46.4.3, 4).¹⁸⁷

107. Likewise, some domestic regulations prevent reference to governmental programmes, policies and similar publicity for campaign purposes. The Electoral Code of Georgia, for example, prohibits implementing such programmes which have not previously been included in State budget later than 60 days before the elections (Article 49(3)ff).¹⁸⁸ Also the Election Code of Turkey (Article 64) prohibits reference to works or services performed from State resources during the election campaign.¹⁸⁹ The Russian Election Code States, in general terms, that candidates who occupy State or elective municipal offices shall not take advantage of their official position (Article 46.1).¹⁹⁰

108. The above-mentioned selected references to domestic provisions show the diversity of domestic approaches, which attempt to tackle the misuse of State resources and highlight their diversity. Still, given the grey area and difficulties of judgement in identifying abuse, more generally, the need for political will and the implementation of additional – other than legal – measures are relevant.

8. Conclusion

109. In general, the misuse of administrative resources is a complex phenomenon. This holds even more true for instances of such abuse during elections at the grassroots' level where the intrinsic linkage between local and regional elected representatives and a given community plays a specific role and relations between incumbents or candidates, civil servants and public officials working for the municipality and the electorate are generally close. Therefore, attempts to address it have to take a variety of complementary approaches.¹⁹¹

110. At first, essential requirements to tackle instances of misuse include an adequate legal framework which clearly outlines what is allowed and what is forbidden.¹⁹² Legitimate must be distinguished from illegitimate campaign activities.¹⁹³ The legal framework has to be accessible to

182 Ibid.

183 Electoral Code of the Republic of Armenia (as adopted on 26 May 2011), available at www.legislationline.org/download/.../Armenia_Electoral_Code_2011.pdf.

184 This was also discussed by the Armenian Constitutional Court: Constitutional Court, 31 May 2012, English summary available at [http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/arm/arm-2012-2-002?f=templates\\$fn=document-frameset.htm\\$g=field.GRP%3A\[orderedprox.0%3ACCCOCND\]\]%20\\$x=server\\$3.0#LPHit1](http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/arm/arm-2012-2-002?f=templates$fn=document-frameset.htm$g=field.GRP%3A[orderedprox.0%3ACCCOCND]]%20$x=server$3.0#LPHit1).

185 Election Code of Georgia as of 27 October 2015 (translation available at <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF%282016%29004-e>).

186 Russian Federation, The Federal Law on the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation, 18 May 2005, translation available at <http://www.cikrf.ru/eng/law/FL-51-FZ.html>.

187 Ibid.

188 Election Code of Georgia as of 27 October 2015 (translation available at <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF%282016%29004-e>).

189 Turkey, Law No. 298, Law on Basic Provisions on Elections and Voter Registers, translation available at www.legislationline.org/documents/id/7010.

190 Russian Federation, The Federal Law on the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation, 18 May 2005, translation available at <http://www.cikrf.ru/eng/law/FL-51-FZ.html>.

191 See also Venice Commission/OSCE/ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes (14 March 2016), CDL-AD(2016)004.

192 OSCE/ODIHR and Venice Commission, Guidelines on Political Party Regulation (25 October), CDL-AD(2010)024, paras. 208-209.

193 Venice Commission, The Ministry of Justice, The Parliament and the National Audit Office of Finland, 11th European Conference of Electoral Management Bodies 'Combating the Misuse of Administrative Resources During Electoral Processes', Helsinki, 26-27 June 2014, p. 11f.

those concerned and it has to be consistently applied. Crucial areas of domestic regulation are, in particular, the election campaign, campaign and political party finance and the media sector.¹⁹⁴

111. In addition, codes of conduct, internal guidelines and ethical rules have to be developed in order to promote ethical conduct.¹⁹⁵ These should include self-regulation of political parties and of the media, notably publicly-owned media, so that they are not involved in “hidden” campaigning for or against political competitors. Also, there could be pacts between candidates to abide by rules in electoral times.

112. The principle of neutrality should apply to civil servants while performing their professional duties as well as to public and semi-public bodies.¹⁹⁶ More generally, the political will¹⁹⁷ to combat abuse should be made manifest and demonstrated by appropriate declarations of leading figures.

113. Relevant transparency requirements, including, for example, reporting on campaign and political party finances – especially where coupled with audits – appear crucial. Oversight institutions which could engage in such audits may include the election administration, ombudspersons, the auditor general, an independent auditor’s office, parliamentary oversight committees, domestic courts or high-level courts.

114. Appropriate actions have to be complemented by civil society scrutiny and by awareness-raising activities in order to develop a public ethos culture. In cases of alleged violations of rules on misuse, clear complaint avenues and remedies (in final instance to courts) have to be provided for. Complaint mechanisms have to be accessible and must not be too costly. Likewise, adequate, proportionate and foreseeable sanctions have to be established. They may include administrative sanctions against civil servants or the public impeachment of elected officials. In serious cases, abuse of official position and misuse of administrative resources for campaigning should be made a criminal offence.¹⁹⁸

115. Finally, law enforcement bodies should take resolute steps to prevent, identify, investigate, and prosecute instances of pressure and intimidation of voters as well as the misuse of State resources for campaign purposes.¹⁹⁹ To ensure an open campaign environment and protect citizens from pressure and intimidation, law enforcement bodies should investigate *ex officio* all violations of the electoral legal framework.²⁰⁰

194 See generally OSCE/ODIHR Handbook for the Observation of Campaign Finance, 2015, p. 22, available at <http://www.osce.org/odihr/elections/135516?download=true>: ‘To allow for the effective regulation of the use of State resources, legislation should clearly define what use is permitted and what is prohibited. As the State and its institutions are involved in administering elections, providing public finance and regulating the campaign, there should be a strong requirement for equal treatment, impartiality and fairness of the system for all parties and candidates. Common problems that may be observed include the use of government offices or vehicles for campaigning and the campaigning of public sector employees during work hours. Rules to prevent abuses include requirements that public employees campaign outside of working hours or step down from office to campaign. Any permissible use of State resources should be treated as a type of campaign finance contribution and be reported accordingly.’

195 Cf. Venice Commission, The Ministry of Justice, The Parliament and the National Audit Office of Finland, 11th European Conference of Electoral Management Bodies ‘Combating the Misuse of Administrative Resources During Electoral Processes’, Helsinki, 26-27 June 2014, p. 11f.

196 Cf. *ibid.*

197 See also, *e.g.*, OSCE/ODIHR Election Observation Mission Final Report, The Former Yugoslav Republic of Macedonia – Presidential and Early Parliamentary Elections 13 and 27 April 2014 (15 July 2014), p. 14.

198 OSCE/ODIHR Election Observation Mission Final Report, Republic of Armenia – Parliamentary Elections 6 May 2012 (26 June 2012), p. 26. See also Articles 17 and 19 UNCAC.

199 See also, *e.g.*, of the OSCE/ODIHR Election Observation Mission Final Report, Republic of Albania – Local Elections 21 June 2015 (8 September 2015), p. 13.

200 See also, *e.g.*, of the OSCE/ODIHR Limited Election Observation Mission Final Report, Montenegro – Early Parliamentary Elections 14 October 2012 (7 December 2012), p. 11.

116. In the local and regional context, the abovementioned guarantees and recommendations generally apply. Still, it may be useful to develop ethical standards for the specific needs of local and regional representatives which stress their responsibilities in relation to a possible misuse with focus on their specific functions in electoral processes. It seems also advisable to further develop mechanisms to more closely monitor the implementation of the laws on misuse at the grassroots' level, as proposed by the Congress.²⁰¹ Further concrete instruments would be beneficial. Awareness-raising and training seminars, including training on relevant standards, rules and practice, with special focus on possible misuse in the local and regional context, seem also important.

201 See, e.g., Congress of Local and Regional Authorities, Recommendation 86(2000) on the Financial Transparency of Political Parties and their Democratic Functioning at Regional Level (25 May 2000); Congress/Council of Europe Document, Preventing corruption and promoting public ethics at local and regional levels (24 May 2016), CG/GOV02(2016)02.