

32nd Session of the Congress of Local and Regional Authorities – 28 -30 March 2017 - Checklist for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level

Speaking Notes – Stewart DICKSON, United Kingdom (R, ILDG)

Dear colleagues,

As you know, for quite some time now, the Congress has been engaged in a series of activities to make local and regional politicians more aware of European standards for ethical conduct and transparency in our everyday work. The fight against corruption has become a political priority for our Congress. As part of our strategy in this field of action, the new “Checklist” for preventing misuse of administrative resources during local and regional elections is of particular importance.

It is my pleasure to present this report today to you (and Richard Barrett, member of the Venice Commission, will examine the problem also in the broader perspective of the Council of Europe).

Dear friends, if we look at what is happening in Europe these days, we can see that there is an urgent need for ambitious programmes to fight against corruption – at all levels of government.

- In Romania, week-long protests against the Government’s plans to water down regulations against embezzlement and abuse of office underline the increased public awareness about corruption and show that people do no longer accept these malpractices.
- In France, the on-going scandal over one of the Presidential candidates and the discussion about gaps in the legal framework - which allows elected representatives to offer publicly funded jobs to members of their families – confirm the need for legislative adjustments. In addition, and this seems to be even more important, this requires a change of awareness and attitude among policy-makers.
- In Austria, only a few days ago, there was an interesting court’s decision on illegal financing of an election campaign brochure of the BZÖ (the party of the former Governor of Carinthia Jörg Haider) – and it resulted in suspended prison sentences and fines for regional politicians.

These examples show how complex the topic of our debate, on misuse of administrative resources, nowadays is. What appears to be a misuse in one system, such as the use of State vehicles during the election campaign, might be quite legitimate in the tradition of a different State system. The same applies to the employment of family members by elected representatives. Everything seems to depend on traditions, problem awareness and the level of transparency.

Let me recall that the Congress, over the last 10 or 15 years, has been identifying several, so called recurring problems during elections (we had a debate in this Assembly on recurring issues on Tuesday). Among them, misuse of administrative resources is particularly striking – because, you can find it in well-established and emerging democracies alike. It has somehow made its way into the political culture, pretty much everywhere. And those of you who have already participated in election observation missions are well-aware of this phenomenon. Given the close links that exist in municipalities between incumbents, candidates, public employees and the voters, misuse of State resources during elections is of particular concern at the grassroots’ level.

The foundation of the present “Checklist” was laid by Congress’ Resolution 402 which was adopted in October 2016 and has dealt with misuse of administrative resources during electoral processes and the specific role of local and regional elected representatives and public officials. Our Checklist also complements the work carried out by the Venice Commission and ODIHR and their “Joint

Guidelines for Preventing and Responding to the Misuse of Administrative Resources during electoral Processes" which were also adopted last year.

I should like to highlight, at this point, that the Venice Commission has prepared a legal Opinion on our Checklist which was the first Opinion with regard to a Congress' text on electoral matters. We appreciated this co-operation very much. It allowed us to reflect about the structure and content of the document and it will enable us to make this Checklist more easily accessible to different target groups, - first and foremost to local and regional politicians; at a later stage, also to other interested groups such as electoral experts and observers.

My special thanks in this respect go to Richard Barrett, whom I mentioned already, and who was – together with his colleague Oliver Kask from Estonia – Rapporteur on the side of the Venice Commission.

Let me now turn to the very substance of the Checklist. Overall, it aims at providing guidance for the implementation of standards and reference points, in order to assess concrete situations of misuse of administrative resources. Since the existing standards and rules are generally quite broad and give States a wide margin of appreciation, there was a particular need for further guidance as far as the local implementation is concerned.

In particular, the Checklist is pursuing four main objectives:

- First, it helps identifying risk areas of potential misuse of administrative resources during electoral processes, with a specific focus on the legal framework.
- Second, it aims at assessing the implementation of the legal framework, legal remedies and sanctions. Clear rules, independent monitoring and oversight as well as appropriate sanctions are critical in this respect.
- Third, the Checklist enables to identify and qualify specific instances of misuse, with a special focus on the local and regional level. It helps make the distinction between the inappropriate use of administrative resources which constitutes an unfair advantage for the incumbent or the party in power on one side and the necessary exercise of governmental functions during electoral processes on the other.

It also takes into account risk areas related to measures against the misuse of administrative resources, such as restrictions of fundamental freedoms (of expression, assembly etc.) of certain groups of persons (civil servants, candidates etc.); such measures should always be proportional to the potential risk.

- Lastly, it deals with preventive action on the grassroots' level, including the adoption of voluntary declarations, codes of conduct and awareness-raising activities.

As mentioned, based on this document which aims at providing orientation and guidance and looks into existing standards, regulations and practices, the Congress will work now on a user-friendly edition for specific target groups, which has been also recommended by our colleagues from the Venice Commission and OSCE/ODIHR. In the very first place, this will be local and regional elected representatives and authorities at the respective levels.

It is our objective to help elected representatives in the Europe's cities and regions to better understand the real dimension of misuse of administrative resources during electoral processes. Misuse of public resources during elections – in its manifold forms – can be equated with the abuse of an elected position and, as such, constitutes a threat to our common understanding of the democratic mandate.

The "Checklist" is a concrete answer to this threat and it invites policy-makers to be better informed about this phenomenon and to develop their own strategies at the local and regional level. It is high time to face this problem.

Thank you for your attention!