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## Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2010-2016)

1. Monitoring of the European Charter of Local Self-Government
2. Observation of local and regional elections

Monitoring Committee

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### Summary

Since 2010, the Congress has undertaken to assess, on a regular basis, the situation of recommendations addressed through the Committee of Ministers to the States adhering to the Charter. This enables the Congress to identify, in the form of a horizontal study, those areas of the Charter that member States find most challenging and to assist them in fully complying with their commitments in relation to local and regional democracy. The current reference period for identifying these recurring issues spans from 2010 to 2016 and includes both monitoring and post-monitoring reports adopted during that time. This analysis also concerns the observation of local and regional elections for which resolutions and recommendations were adopted, including through country-specific as well as transversal reports related to electoral matters which are of specific relevance at the grassroots' level.

The present report highlights recurring issues identified by the Congress over this six-year period and contains a draft resolution and a draft recommendation which include proposals to address them.

## RESOLUTION 412 (2017)<sup>2</sup>

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: Members not belonging to a political group of the Congress

2 Debated and adopted by the Congress on 28 March 2017, 1st sitting (see Document [CG32\(2017\)19](#), explanatory

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:
  - a. The European Charter of Local Self-Government (ETS No. 122, 1985);
  - b. Congress Resolution 395 (2015) on the revision of its Rules of Procedures and in particular, Chapters XVII, XVIII and XIX on the organisation of the monitoring procedures, the practical organisation of election observation missions and the implementation of the post-monitoring/post-electoral political dialogue;
  - c. The monitoring reports and recommendations adopted by the Congress with respect to the situation of local and regional democracy in member States of the Council of Europe;
  - d. The reports, resolutions and recommendations adopted by the Congress further to the observation of local and regional elections as well as reports, resolutions and recommendations on transversal issues in electoral matters;
  - e. Congress' Resolution 413 (2017) on the comparative analysis on the implementation of the European Charter of Local Self-Government in 47 member States.
2. The Congress identified the absence of direct applicability of the Charter as one of the root causes of the recurring problems in member States of the Council of Europe in the field of local and regional democracy, and notably as regards the inadequacy of financial resources for local and regional authorities, the restricted definition, allocation and exercise of local competences and the lack of consultation with regard to central government.
3. The Congress highlighted that recurring issues in electoral matters included the accuracy and quality of voters lists, the misuse of administrative resources during electoral campaigns, the professionalism and politicisation of the electoral administration at all levels and, overall, the trust of voters in electoral processes.
4. The Congress of Local and Regional Authorities of the Council of Europe:
  - a. requests that Monitoring Committee provide – every three years – an updated analysis of the recurring issues based on recent assessments resulting from Congress monitoring and election observation missions;
  - b. invites its Monitoring Committee to systematically refer to recurring issues in future assessments of the situation of local and regional democracy in the framework of the monitoring of the European Charter of Local Self-Government and election observation;
  - c. calls on all relevant instances of the Congress to participate in awareness-raising efforts and design appropriate policies and tools with regard to the recurring issues and ways of addressing them.

**RECOMMENDATION 395 (2017)<sup>3</sup>**

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:
  - a. The European Charter of Local Self-Government (ETS No. 122, 1985);
  - b. Article 2, paragraph 1.b. of Statutory Resolution CM/Res(2015)9 of the Committee of Ministers relating to the Congress of Local and Regional Authorities of the Council of Europe, which stipulates that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;
  - c. Congress Resolution 395(2015) on the revision of its Rules of Procedure and in particular, Chapters XVII, XVIII and XIX on the organisation of the monitoring procedures, the practical organisation of election observation missions and the implementation of the post-monitoring/post-electoral political dialogue;
  - d. The monitoring reports, resolutions and recommendations adopted by the Congress with respect to the situation of local and regional democracy in member States of the Council of Europe;
  - e. The reports, resolutions and recommendations adopted by the Congress further to the observation of local and regional elections as well as reports, resolutions and recommendations on transversal issues in electoral matters;
  - f. Congress Resolution 413 (2017) on the comparative analysis on the implementation of the European Charter of Local Self-Government in 47 member States.
2. The Congress believes that these recurrent issues point to a broader trend towards (re)centralisation in member States.
3. The Congress regrets the tendency of the absence of direct applicability of the Charter which constitutes one of the root causes of the recurring problems in member States of the Council of Europe in the field of local and regional democracy, and notably as regards the inadequacy of financial resources for local and regional authorities, the restricted definition, allocation and exercise of local competences and the lack of consultation with regard to central government.
4. The Congress stresses that the Charter, ratified by 47 member States of the Council of Europe, as an international treaty has legal force and should be directly applied in member States, each according to its legal tradition.
5. The Congress highlights that recurring issues in electoral matters include the accuracy and quality of voters lists, the misuse of administrative resources during electoral campaigns, the professionalism and politicisation of the electoral administration at all levels and, overall, the trust of voters in electoral processes.
6. It specifies the appropriate soft law instruments applicable in this respect, including the relevant Congress recommendations and the Code of Good Practice in Electoral Matters issued by the European Commission for Democracy through Law (Venice Commission).
7. The Congress points out that it has committed itself to engaging in post-monitoring and post-electoral dialogue with national authorities in order to follow-up on the above-mentioned issues and, more generally on recommendations and resolutions related to country-specific monitoring and election observation reports as well as transversal reports on electoral matters.
8. In the light of the above, the Congress asks the Committee of Ministers to invite the authorities of the members States to:
  - a. take all necessary measures to ensure direct applicability of the European Charter of Local Self-Government within their domestic legal systems and hence to ensure the full implementation of the ratified provisions of the Charter in particular as regards the identified recurring issues;

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<sup>3</sup> See footnote 2

*b.* implement Congress recommendations<sup>4</sup> related to transversal electoral issues at local and regional level as well as soft law instruments issued by other Council of Europe bodies, notably the European Commission for Democracy through Law, in order to ensure that local and regional elections are in compliance with European standards in electoral matters;

*c.* strengthen their political dialogue with the Congress, in the framework of post-monitoring and post-electoral procedures, with a view to setting up roadmaps in order to comply with their commitments under the Charter and improve the situation of local and regional democracy.

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<sup>4</sup> Recommendation 369 (2015) - Electoral lists and voters residing de facto abroad; Recommendation 375 (2015) - Criteria for standing in local and regional elections

## EXPLANATORY MEMORANDUM

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## **1. MONITORING OF THE IMPLEMENTATION OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT**

1. Since 2010, the Congress has undertaken to assess, on a regular basis, the situation of recommendations addressed through the Committee of Ministers to the States adhering to the Charter.<sup>5</sup> This enables the Congress to identify, in form of a horizontal study, those areas of the Charter that member States find most challenging and to assist them in fully complying with their commitments in relation to local and regional democracy. The current reference period for identifying these recurring issues spans from 2010 to 2016 and includes both monitoring and post-monitoring reports adopted during that time.

2. As a result of this evaluation, the Congress has identified four recurrent issues, namely:

- the inadequacy of financial resources for local and regional authorities;
- the restricted definition, allocation and exercise of local competences;
- the lack of consultation with regard to central government;
- and the absence of direct applicability of the European Charter of Local Self-Government in domestic legal systems.

3. These recurrent issues can be seen as symptomatic of a broader trend towards (re)centralisation in member States. This tendency may take many forms, ranging from the legislative nationalism, as denounced by the Secretary General of the Council of Europe, and the refusal of some courts to apply directly a number of Council of Europe Conventions, among them the European Charter of Local Self-Government, to the absence of flexibility granted to local governments in budgetary matters.

4. Through the monitoring of the Charter, the Congress' recommendations may usefully serve as an advance alert system to the Committee of Ministers with regard to developments in some member States which may include risks both to territorial self-government.

### **1.1 Reports adopted in 2010-2016**

5. Monitoring and post-monitoring reports:

2010:

- Local democracy in Iceland, Rec. 283 (2010)
- Local democracy in Switzerland, Rec. 285 (2010)
- Local democracy in Montenegro, Rec. 293 (2010)
- Local democracy in Estonia, Rec. 294 (2010)
- Local and regional democracy in the Russian Federation, Rec. 297 (2010)

2011:

- Local and regional democracy in Romania, Rec. 300 (2011)
- Local and regional democracy in Turkey, Rec. 301 (2011)
- Local and regional democracy in Austria, Rec. 302 (2011)
- Local democracy in Malta, Rec. 305 (2011)
- Local and regional democracy in Slovenia, Rec. 308 (2011)
- Local and regional democracy in Bulgaria, Rec. 310 (2011)
- Local and regional democracy in Finland, Rec. 311 (2011)
- Local and regional democracy in Serbia, 316 (2011)
- Local and regional democracy in Latvia, Rec. 317 (2011)

2012:

- Local and regional democracy in Czech Republic, Rec. 319 (2012)
- Local and regional democracy in Germany, 320 (2012)
- Local and regional democracy in Lithuania, Rec. 321 (2012)
- Local and regional democracy in Republic of Moldova, Rec. 322 (2012)
- Local democracy in Portugal, Rec. 323 (2012)
- Local and regional democracy in Bosnia and Herzegovina, Rec. 324 (2012)
- Local and regional democracy in Azerbaijan, Rec. 326 (2012), Res. 345 (2012)

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<sup>5</sup> Since 2013 this concerns all member States of the Council of Europe.

- Local democracy in “The former Yugoslav Republic of Macedonia”, Rec. 329 (2012)

2013:

- Local and regional democracy in Georgia, Rec. 334 (2013)
- Local and regional democracy in Spain, Rec. 336 (2013)
- Local and regional democracy in Italy, Rec. 337 (2013)
- Local and regional democracy in Hungary, Rec. 341 (2013)
- Local democracy in Ireland, Rec. 342 (2013)
- Local and regional democracy in Ukraine, Rec. 348 (2013)
- Local and regional democracy in Albania, Rec. 349 (2013)
- Local and regional democracy in Denmark, Rec. 350 (2013)

2014:

- Local democracy in Armenia, Rec.351 (2014)
- Local and regional democracy in the Netherlands, Rec.352 (2014)
- Local and regional democracy in the United Kingdom, Rec. 353 (2014)
- Post-monitoring of local and regional democracy in Bosnia and Herzegovina, Rec.356 (2014)
- Local and regional democracy in Sweden, Rec.357 (2014)
- Local and regional democracy in Belgium, 366 (2014)

2015:

- Local and regional democracy in Greece, Rec. 372 (2015)
- Local and regional democracy in Poland, Rec. 373 (2015)
- Local and regional democracy in Norway, Rec. 374 (2015)
- Local democracy in Luxembourg, Rec.379 (2015)

2016:

- Local and regional democracy in France, Rec. 384 (2016)
- Local and regional democracy in the Slovak Republic, Rec. 387 (2016)
- Local democracy in Cyprus, Rec. 389 (2016)
- Local and regional democracy in Croatia, Rec. 391 (2016)

## **1.2 Inadequate financial resources for local and regional authorities**

6. Implementation of Article 9 of the Charter is clearly one of the most contentious issues. In nearly all of its recommendations, the Congress identified the following concerns, either alternatively or concomitantly:

- over-centralised system of financing of local authorities;
- limited level of own income, in particular through the setting of tax rates by local authorities;
- inadequacy of financial resources freely available to local and regional authorities to exercise their powers;
- lack of concomitant financing for delegated tasks;
- lack of transparent and predictable financial equalisation mechanisms;
- lack of appropriate consultation on local finance matters.

7. Financial autonomy is an essential corollary of local autonomy as it enables local authorities to perform their tasks and engage in long-term planning. The Charter provides in particular that local governments shall be entitled to adequate and sufficiently diversified financial resources of their own that shall be commensurate with their competences. For the purpose of reducing financial disparities between local authorities, the Charter also calls for a transparent and predictable financial equalisation mechanism which shall be reactive to changes in the economic climate. Lack of financial autonomy renders local authorities vulnerable to the economic climate and may lead to economic and political dependency on the government. A tendency to stricter government control over local finance and the increase of delegated tasks without concomitant funding is also noticeable. The Congress therefore recommends the allocation of sufficient financial resources to local authorities, commensurate with their powers and responsibilities. This should be implemented, in particular, through revising legislation concerning fiscal decentralisation and developing or reviewing the criteria and formula of the equalisation mechanisms, on the basis of fiscal capacities and financial needs of communities.

**Article 9 of the Charter – Financial resources of local authorities**

- 1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
- 2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
- 3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
- 4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
- 5 The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
- 6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
- 7 As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
- 8 For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

**1.3 Limited definition, allocation and exercise of local competences**

8. The Congress has stressed in its recommendations concerns relating to local and regional competences. The following are regularly identified:

- limitation of competences conferred on local authorities – and particularly the lack of genuine local government functions – thereby limiting their scope to act as well as the quality of service they can deliver in the interest of the citizens;
- imprecise delimitation of competences at central, regional and local level – which can give rise to ambiguity and an overlapping of responsibilities;
- excessive government supervision over local governments, in law or in practice, which places considerable limits on local authorities' discretion to manage their own affairs.

9. The Charter prescribes the ability of local authorities to regulate and manage a substantial share of public affairs within the limits of the law. According to its provisions, local authorities shall have full discretion to exercise their initiative with regard to any matter within their competences. Such competences shall normally be full and exclusive. In principle, they should not be undermined or limited by another, central or regional, authority. Any administrative supervision of the activities of the local authorities shall normally aim only at a control of legality and must be proportionate. The definition of local competences shall strive to achieve clarification of the respective areas of competence of the different levels of governance without, however, limiting the local authority's scope of action and allowing them the discretion to develop and improve services.

10. In almost all recommendations adopted in the reference period, the Congress called on national authorities to clarify the areas of competence in line with the principle of subsidiarity so as to avoid ambiguity and overlapping of responsibilities. In many cases, the Congress recommended to reconsider and limit administrative supervision over local authorities solely to a control of legality so as to avoid a recentralisation of transferred powers.

**Article 3 of the Charter – Concept of local self-government**

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

**Article 4 – Scope of local self-government**

2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.

**Article 8 – Administrative supervision of local authorities' activities**

2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

**1.4 Lack of consultation**

11. The Congress documented numerous cases where the consultation between local and regional authorities (mostly through their associations) and the central government was problematic. In this respect, the Congress identified the following issues:

- absence of a formal mechanism of consultation;
- inadequate consultation of local and regional authority representatives or insufficient use in practice of the existing consultation mechanisms;
- controversial nature of the means of consultation and the (limited) time-frame

12. The Charter provides that local authorities should be consulted, insofar as possible, in due time and in an appropriate way during the process of planning and decision making in all matters directly affecting them. Here the Congress would like to underline the significant contribution that a unified national association of local authorities can make in discussions with the government on behalf of local governments or their local and regional associations. The Congress has asked national authorities to develop more institutionalised and legally guaranteed consultation mechanisms - within uniform time - so as allow local authorities and their representative associations to input into those decisions taken at State level which might limit the autonomy of territorial authorities. It also called for the greater involvement of the local authorities or their representatives in financial matters, including the estimation of cost implications of any new State legislation that is to be implemented at local level.

**Article 4 of the Charter – Scope of local self-government**

6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

**Article 5 of the Charter – Protection of local authority boundaries**

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

**Article 9 of the Charter – Financial resources of local authorities**

6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

### **1.5 Absence of direct applicability of the European Charter of Local Self-Government**

12. In the course of this period of reference, the Congress pointed to a trend towards weakening the legal status of the European Charter of Local Self-Government in the domestic legal system of member States and, particularly, the absence of direct applicability of its ratified provisions.

13. The Charter, as an international treaty, has legal force and should be directly applied in member States, each according to its legal tradition. Present practice indicates however that the Charter is not seen as a self-executing legal norm and this could also offer an explanation for the rare references of the Charter in court rulings in member States. Some highest courts have declared that the Charter, even though ratified by law, was not directly applicable, because its wording had been considered “too vague” to give rise to concrete rights and obligations recognised by domestic law. However, these States, by signing and ratifying this Convention, undertook a commitment to implement its provisions, and therefore no internal decision or specific legal interpretation could justify the non-compliance with its provisions.

14. In this regard, the Congress draws the attention of the national authorities to the fact that the relevant jurisprudence of the highest courts declaring the Charter as a directly non-applicable legal tool violates Article 12 paragraph 1, as each signatory country under this provision undertook the implementation of all articles of the Charter, with the exceptions of reservations they made at the time of signature and ratification and have maintained since then. The Congress has therefore recommended that national authorities ensure the direct applicability of the European Charter of Local Self-Government within their domestic legal systems and in particular, that the Charter be given due consideration in court proceedings.

#### **Article 12 – Undertakings**

- 1 Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
- Article 2,
  - Article 3, paragraphs 1 and 2,
  - Article 4, paragraphs 1, 2 and 4,
  - Article 5,
  - Article 7, paragraph 1,
  - Article 8, paragraph 2,
  - Article 9, paragraphs 1, 2 and 3,
  - Article 10, paragraph 1,
  - Article 11.

## **2. OBSERVATION OF LOCAL AND REGIONAL ELECTIONS IN COUNCIL OF EUROPE MEMBER STATES**

15. Pursuant to its Resolution 395(2015) which includes post-electoral activities, the Congress has opened the possibility of introducing a post-electoral dialogue further to the observation of local and regional elections. Such dialogue may be put in place at the joint request of the Congress and the national authorities to which the Committee of Ministers addressed a Congress recommendation on local/regional elections. It may also involve other competent stakeholders (c.f. central election commissions, political forces, national associations of local government) and aims at ensuring a more systematic follow-up to recommendations and resolutions adopted through country-specific as well as transversal reports related to electoral matters which are of specific relevance at the grassroots' level. Transversal recurring issues identified by the Congress between 2010 and 2016, during its missions to observe local and regional elections, include in particular:

- the accuracy and quality of voters' lists;
- the misuse of administrative resources during electoral campaigns;
- the professionalism and politicisation of the electoral administration at all levels; and, overall,
- the trust of voters in electoral processes.

16. In order to address such issues in a coordinated and comprehensive manner, co-operation by the Congress with strategic partners (notably PACE, Venice Commission and OSCE/ODIHR, Division of Electoral Assistance and Census of the Council of Europe) has been pursued during the current reference period.

## 2.1 Reports adopted in 2010-2016

### 17. Country-specific reports:

2010:

- Local Elections in Georgia (30 May 2010), Resolution 311 (2010) and Recommendation 291 (2010)
- Local Elections in Ukraine (31 October 2010), Resolution 322 (2011) and Recommendation 303 (2011)
- Elections of the Bashkan (Governor) of the Autonomous Territorial Unit of Gagauzia, Republic of Moldova (12 December 2010), Information note

2011:

- Local Elections in Albania (8 May 2011), Resolution 328 (2011) and Recommendation 312 (2011)
- Local Elections in the Republic of Moldova (5 June 2011), Resolution 329 (2011) and Recommendation 313 (2011)
- Test on E-voting in the framework of Local Elections in Norway (12 September 2011), Information note
- Local Elections in Bulgaria (23 October 2011), Resolution 338 (2012) and Recommendation 318 (2012)

2012:

- Local Elections in Serbia (6 May 2012), Resolution 348 (2012) and Recommendation 330 (2012)
- Local by-elections in Armenia (9 and 23 September 2012), Recommendation 338 (2013)
- Local Elections in Bosnia and Herzegovina (7 October 2012), Resolution 355 (2013) and Recommendation 339 (2013)

2013:

- Municipal elections in "The former Yugoslav Republic of Macedonia" (24 March 2013), Resolution 360(2013) and Recommendation 345 (2013)
- Elections for the Agavani (Assembly) of the City of Yerevan, Armenia (5 May 2013), Resolution 359 (2013) and Recommendation 344 (2013)

2014:

- Municipal elections in the Netherlands (19 March 2014), Recommendation 358 (2014)
- Pre-term local elections in Ukraine (25 May 2014), Recommendation 359 (2014)
- Local elections in Georgia (15 June 2014), Recommendation 360 (2014)

2015:

- Local elections in Albania (21 June 2015), Resolution 388 (2015) and Recommendation 377 (2015)
- Local elections in the Republic of Moldova (14 June 2015), Recommendation 378 (2015)
- Elections of the Governor (Bashkan) and partial elections in the People's Assembly of the Autonomous Territorial Unit of Gagauzia, Republic of Moldova (22 March 2015), Information report
- Local elections in Ukraine (25 October 2015), Recommendation 386 (2016)

2016:

- Local and provincial elections in Serbia (24 April 2016), Information Report
- Local by-elections in Armenia (18 September 2016), Information Report
- Elections of the Popular Assembly of the Autonomous Territorial Unit of Gagauzia, Republic of Moldova (20 November 2016), Information Report
- Local elections in Bosnia and Herzegovina (2 October 2016), Recommendation under preparation

### 18. Post-electoral dialogue:

Fact-finding Mission to Albania in the framework of the post-electoral dialogue (24 to 26 February 2016), Information Note

19. Transversal reports:

2015:

- Electoral lists and voters residing *de facto* abroad – Recommendation 369 (2015) and Resolution 378 (2015)
- Voting at 16 – Consequences on youth participation at local and regional level – Resolution 387 (2015)
- Recommendation 375 (2015) and Resolution 382 (2015) - Criteria for standing in local and regional elections

2016:

- Resolution 402 (2016) - The misuse of administrative resources during electoral processes and the role of local and regional elected representatives and public officials.

## **2.2 Electoral lists and voters residing *de facto* abroad**

20. The inaccuracy of electoral lists is a major issue encountered in most member States in which local and regional elections have been observed by the Congress. Residency requirements for voting rights at local and regional level as well as other criterion enshrined in the electoral legislation may vary from country to country.

21. However, the Congress has repeatedly made reference to the particular problem of voters who live *de facto* abroad but remain registered as residents, stay on the electoral lists in their country of origin and thus may exercise their right to vote at grassroots' level if they are in the country on Election Day. The presence of voters residing *de facto* abroad on electoral lists causes challenges with regard to effective electoral management, the integrity and transparency of electoral processes and the prevention of fraud or manipulation.

22. The Congress has committed itself to raise awareness of the importance of this issue for local and regional self-government bodies, rooted in the conviction that local questions should be decided by the electorate actually living in a specific community. A genuine link between a voter and the place where he/she casts a ballot at local level should therefore exist, according to the Congress.

### **Congress Resolution 378 (2015) – Electoral lists and voters residing *de facto* abroad**

#### **Code of Good Practice in Electoral Matters (Venice Commission) - the principle of universal suffrage**

This principle includes certain conditions with regard to the right to vote and to stand for elections such as age, nationality and residence requirements. Residence in this case means habitual residence. A length of residence requirement may be imposed on nationals solely for local and regional elections. The requisite period of residence should not exceed six months, a longer period may be required only to protect national minorities. The right to vote and to be elected may be accorded to citizens residing abroad.

## **2.3 Misuse of administrative resources**

23. Misuse of administrative resources has been highlighted by the Congress as an issue further to a number of electoral observation missions. Unlike other types of electoral fraud and despite the fact that it is wide-spread, misuse of administrative resources has made its way into the established European political culture. It can be found in emerging democracies and in countries with a long-standing democratic tradition.

24. Due to the specific and close link that exists in the field between incumbents, candidates, public officials and voters, misuse of administrative resources is of particular concern at local and regional level. It prevents the creation of a level playing field and thus undermines the right of all candidates to stand for election on an equal basis and the right of voters to make choices without being unduly influenced.

25. For this purpose, the Congress works in close co-operation with its strategic partners of the Venice Commission and OSCE/ODIHR on this topic. Further to Resolution 402 (2016), a checklist for compliance with international standards and best practices preventing misuse of administrative

resources during electoral processes at local and regional level will be prepared in order to facilitate the implementation of such standards and best practices locally.

**Congress Resolution 402 (2016) The misuse of administrative resources during electoral processes and the role of local and regional elected representatives and public officials**

**Code of Good Practice in Electoral Matters (Venice Commission) – funding**

Transparency operates at two levels. The first concerns campaign funds, the details of which must be set out in a special set of carefully maintained accounts. In the event of significant deviations from the norm or if the statutory expenditure ceilings are exceeded, the election must be annulled. The second level involves monitoring the financial status of elected representatives before and after their term in office. A commission in charge of financial transparency takes formal note of the elected representatives' statements as to their finances.

The latter are confidential, but the records can, if necessary, be forwarded to the public prosecutor's office.

**2.4 Politicisation of election administration**

26. The politicisation of the election administration has been often identified as a matter of concern by the Congress' observers. Professionalism and independence at all levels of electoral management bodies is a major condition of public trust and confidence in electoral processes and results of elections.

27. The election administration has regulatory authority with regard to sensitive parts of the electoral process including voters' and candidates' registration. Moreover, it is in charge of the whole practical management of voting and counting that has thus direct influence on the quality of the process.

28. In order to improve the situation, the Congress recommends, in particular, revising modalities of appointment and withdrawal of members of election commissions at all levels. In addition, it underlines that consistent and substantial training provided to members of election administration is instrumental to the strengthening of the professionalism of electoral bodies and therefore to their independence and impartiality.

**Code of Good Practice in Electoral Matters (Venice Commission) – organisation of elections by an impartial body**

Only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results.

This is why independent, impartial electoral commissions must be set up from the national level to polling station level to ensure that elections are properly conducted, or at least remove serious suspicions of irregularity.

**2.5 Public confidence in electoral processes**

29. The freedom of voters to cast their votes according to their convictions, opinions and wishes has been an issue closely followed by the Congress during election observation missions. Voters must be protected from threats or constraints liable to prevent them from casting their vote or from casting them as they wish, whether such threats come from the authorities or from individuals.

30. In particular, voters' freedom to form an opinion may be infringed by practices such as vote-buying, pressure from the employer and other forms of intimidation, including the presence of people loitering around polling stations as to controlling the turnout of voters. Despite the fact that infringements of voters' freedom are difficult to monitor by international observers, the State is obliged to prevent or punish effectively violations of the law.

31. Therefore, Congress' recommendations include measures to increase public confidence in elections, in particular through legal provisions with regard to the penalisation of all forms of pressure unduly exerted on voters. Where already existing, such provisions need to be effectively implemented by the authorities.

**Code of Good Practice in Electoral Matters (Venice Commission) – the principle of free suffrage**

This principle comprises two different aspects –free formation of the elector's opinion and free expression of this opinion (the freedom of the voting procedure and the accurate assessment of the result). State authorities must observe neutrality (e.g. concerning media, billposting, demonstration rights, funding of parties and candidates) and have a number of positive obligations concerning candidatures, lists of candidates, national minorities etc.