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PRELIMINARY DRAFT REPORT

ON

**THE USE OF ADMINISTRATIVE RESOURCES
DURING ELECTORAL CAMPAIGNS**

on the basis of comments by

Mr Manuel GONZALEZ OROPEZA (Substitute Member, Mexico)

Mr Oliver KASK (Member, Estonia)

Mr Johan HIRSCHFELDT (Substitute Member, Sweden)

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I. DEFINITION AND SCOPE

A. Scope

1. After more than twenty years of election observation in Europe and more than ten years of legal assistance to the Council of Europe member states, many improvements were observed regarding electoral legislation and practice. These improvements were materialised thanks to political will and to an overall successful implementation of international recommendations in the electoral legal framework. Nevertheless, the practical implementation of electoral laws and laws related to political parties (including financing of political parties and electoral campaigns) remains problematic to several extents. One of the most crucial, structural and recurrent challenges, raised on a regular basis in election observation missions' reports in most of the countries observed, is the misuse of administrative resources, also called public resources, during electoral campaigns. This practice is an established and widespread phenomenon in many European countries, including countries with a long-standing tradition of democratic elections. Several generations of incumbents consider this practice as normal and part of an electoral campaign. These incumbents seem even not to consider such practice as illegitimate action vis-à-vis challengers in elections, who can face more difficulties in benefiting from administrative resources. This phenomenon seems part of an established political culture.

2. Considering this widespread phenomenon, the Venice Commission decided to prepare a report on the issue, on the basis of *inter alia* the contributions of two Venice Commission members, Messrs Gonzalez Oropeza¹ and Hirschfeldt. The assumption was the following: what are the inherent weaknesses in legislation and in practice in the member states that lead to misuse of administrative resources during electoral campaigns? How to address this problem in law and in practice?

3. Based on this finding, the report proposes in this introductory part a definition of the notion of administrative resources during electoral campaigns. The report also defines in this introductory part the scope of this analysis in a comparative perspective. For the purpose of this comparative approach, the Secretariat of the Venice Commission prepared a table comparing legal provisions, opinions and election observation missions' reports dealing with this topic in the various Venice Commission member states, with the help of the members who contributed in updating this comparative table (CDL-REF(2012)025rev).²

4. In a second part, the report considers the legal environment and the practice in the member states. A third part elaborates on the distinction between legitimate or illegitimate use of administrative resources during electoral campaigns. Finally, in a third part, the report suggests recommendations in order to prevent, at least to limit, the misuse of administrative resources.

B. Sources, reference documents

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

- Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms;³
- OSCE, Copenhagen Document 1990;⁴
- Case-law of the European Court of Human Rights;⁵

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

² It should be noted that a more exhaustive table could be drawn in the near future in view of a revised report.

³ http://www.conventions.coe.int/?pg=/treaty/default_fr.asp&nd=&lg=en.

⁴ <http://www.osce.org/odihr/elections/14304>.

⁵ <http://hudoc.echr.coe.int>.

- Council of Europe, Parliamentary Assembly, election observation missions' reports;⁶
- Council of Europe, GRECO reports;⁷
- Council of Europe, Parliamentary Assembly, Lobbying in a democratic society (Doc. 11937);⁸
- Council of Europe, Venice Commission, Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev);
- Council of Europe, Venice Commission, Code of Good Practice in the field of Political Parties (CDL-AD(2009)021);
- Council of Europe, Venice Commission, Guidelines on political party regulation by OSCE/ODIHR and Venice Commission (CDL-AD(2010)024);
- Council of Europe, Venice Commission, Report on the role of the opposition in a democratic parliament (CDL-AD(2010)025);
- Council of Europe, Venice Commission, Comparative table on legislation, opinions and election observation missions' reports dealing with administrative resources, updated after consultation of the Venice Commission members (CDL-REF(2012)025rev); and
- OSCE/ODIHR, election observation missions' reports.⁹

C. Definition

6. Commonly understood, the "misuse of public resources" is the ability of political candidates and parties to use their official positions or connections to government institutions to influence the outcome of elections. Nevertheless, this definition does not cover the exact scope of this report. The report indeed highlights the problem of constant, or frequent, practice of misuse of administrative resources by incumbent candidates during electoral campaigns. Indeed the assumption is the following: there is a high risk that incumbent political parties and candidates misuse administrative resources for campaign purposes, giving them an undue advantage compared to their challengers.

7. On the contrary, the allocation of public funds for campaigning purpose provides political parties and candidates with a specific public financial support, limiting risks of unbalanced financial means for campaigning. For example, there is in Sweden a decision by the Parliament, followed up with provisions decided by the Government, that all parliamentarians and cabinet ministers have the right to travel within the country free of charge, including during electoral campaigns. If such political activities are financially supported by public funds and based on the *principle of equality*, such measures will not fall under the definition of misuse, or abuse, of administrative resources.

8. Therefore, the following definition can be retained for the purpose of this report: *administrative resources are resources enjoyed by incumbent political forces in elections, deriving from their control over public sector staff, finances and allocations* (as well as state-owned media, which will not be addressed here). The misuse of administrative resources includes therefore the use of equipment (i.e. the use of phones, vehicles, meeting rooms, etc.) as well as access to human resources (i.e. civil servants, officials...) in ministries and among territorial and local public institutions, for campaigning purposes. As a consequence, such abuses lead to inequality between candidates, particularly between incumbents and new political parties or candidates and even more for those having no representation in parliament.

⁶ The reports by country are detailed in the report.

⁷ <http://www.coe.int/t/dghl/monitoring/greco/>.

⁸ <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC11937.htm>.

⁹ <http://www.osce.org/odihr/elections/>. The reports by country are detailed in the report.

9. So confined, the notion of misuse of administrative resources during electoral campaigns should also be defined through the existing international texts and soft-laws. In this respect, the 1990 Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE (OSCE) underlines the need for "a clear separation between the State and political parties". Political parties should be provided "with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities".¹⁰

10. This requirement of equal treatment – the principle of equality of opportunity – states that there is an effective remedy against abuse of administrative resources by the incumbent political parties or forces during electoral campaigns but also during the period under which they are in power and especially during the period immediately foregoing the electoral campaign.¹¹

11. Based on the definition retained of misuse of administrative resources during electoral campaigns, this report does not cover the notion to abuse of administrative resources through state-owned media, even if it is also a widespread phenomenon. Moreover, specific provisions apply to media coverage during electoral periods, prescribing in general airtime devoted to all competitors on an equal basis. If abuses do exist, the purpose of this report is not to reflect such considerations.

II. LEGAL ENVIRONMENT AND PRACTICE

A. Principles

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

13. Despite the need to regulate the use of administrative resources during electoral campaigns, domestic electoral laws do not provide with provisions and/or sanctions on the issue. As a result, the principle of balance of powers can be threatened by an abuse of administrative resources due, *inter alia*, to unbalanced electoral campaigns in favour of incumbents. The respect of a balanced electoral process and consequently of basic requirements of a democratic constitutional state implies an obligation for the State to protect such principles, notably for new political parties and candidates, especially those without representation in parliament and particularly during electoral campaigns, where the environment is the most competitive and too often the most unbalanced.

14. A distinction should therefore be done in terms of access to public facilities between political parties with and without representation in parliament; candidates without representation in parliament being far from access to such public facilities. It is therefore important to design appropriately the law in order to reflect these various situations.

¹⁰ I. 5.4 of the Copenhagen Document.

¹¹ See also Guidelines on political party regulation by OSCE/ODIHR and Venice Commission (CDL-AD(2010)024), p. 207-210, where some of the general problems concerning abuse of state resources are presented.

15. As stated previously, the misuse of administrative resources during electoral campaigns can threaten some of the basic requirements of a democratic constitutional state. The balance of powers and the freedom of opinion must be guaranteed and promoted by Parliament in its role as a legislator supervising the Government, by the Government in its executive role, by an independent Judiciary and by free media and opinions.

16. Moreover, a well-functioning democratic state under the rule of law requires that certain overarching common values within the society can be developed and maintained. The goal must be a political and legal culture of fair play, where politicians, judges, civil servants and other public officials not only comply with the law, but also seek to maintain high ethical standards in their work and where the public take part in a comprehensive and responsible social debate.

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

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

B. Comparative analysis

19. Regarding the legal environment and based on the comparative table provided,¹² at least 18 Venice Commission member states do not have specific provisions regulating the use of administrative resources during electoral campaigns. Therefore, no sanction covers misuse of such resources.¹³ For the countries providing provisions on use/misuse of administrative resources during electoral campaigns, the level of details and of effective sanctions stipulated by law is variable and does not ensure the same level of safeguards. If electoral campaigns are often regulated regarding financing of campaigns and political parties, media coverage or defamation, laws are weaker in regulating use/misuse of administrative resources during electoral campaigns, including sanctions. The law is therefore absent or insufficient in domestic electoral laws to face this long-standing practice. Subsequently, the Judiciary does not enough cover the phenomenon; additionally, other existing complaints and appeals procedures are not systematically adapted to this phenomenon. It can be noted that in countries such as Mexico, constitutional principles have helped the Judiciary to adjudicate controversies over the illegal use of administrative resources based on the equality principle.

20. For instance, the Electoral Code of **Albania** covers the use of administrative resources during electoral campaigns as follows:

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

¹² CDL-REF(2012)025rev.

¹³ List based on the – non-exhaustive – comparative table prepared by the Secretariat of the Venice Commission (CDL-REF(2012)025rev): Andorra, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Iceland, Italy, Latvia, Lithuania, Malta, Netherlands, Romania, Serbia, Slovenia and Switzerland. Regarding the method, it should be noted that the comparative table could be more exhaustive and that therefore additional countries could be added. Additionally, for different countries, no sources were found to complete the table; these countries are: Cyprus, Denmark, Germany, Greece, Liechtenstein, Norway and Poland.

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

2) For purposes of this article, movable and immovable assets provided in article 142 of the Civil Code, as well as any human resource of the institution, are considered "resources". The use of "human resources" is understood as the use of the administration of the institution during working hours for election purposes. Even hiring, dismissing from work, release, movement and transfer of duty, with the exception of motivated cases, are considered to be activities of the public institution.¹⁴

21. In this provision, assets and human resources are considered as administrative resources as soon as they are used for electoral purposes during working hours. This provision is interesting as it covers at least in the law the requirements for preventing misuse of administrative resources. Nevertheless, the last joint opinion of the Venice Commission and the OSCE/ODIHR¹⁵ on the Electoral Code of Albania underlines that the expression "with the exception of motivated cases" (Article 88.2), permitting exception to prohibition of use of administrative resources for electoral purposes "appears as very broad and needs some specification". Therefore, "the Venice Commission and OSCE/ODIHR recommend amending Article 88.2 in order to limit the scope of this exception".¹⁶

22. In practice, the OSCE/ODIHR Final Report following the 28 June 2009 parliamentary elections underlines that "[t]here were substantiated allegations of misuse of administrative resources by the [Democratic Party] for campaign purposes. Such actions blurred the distinction between state and party activities, in contravention of paragraph 5.4 of the OSCE Copenhagen Document."¹⁷ The report of the Parliamentary Assembly of the Council of Europe (PACE) following the same elections raises the same concerns:

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

39. The ad hoc committee was informed that a large number of ceremonies to open roads, hospitals and a hydro-electric plant, and other official functions had been organised during the election campaign in Tirana and in the regions by the authorities, with public servants, students and schoolchildren allegedly participating under coercion. Nevertheless, one of the main objectives of the election campaign should be to inform the citizens of the programmes and ideas of the political parties before asking citizens for a mandate."¹⁸

23. The Electoral Code of **Armenia** covers as well the use of administrative resources during electoral periods since 2011, following up recommendation from the OSCE/ODIHR and the Venice Commission to address in the law this chronic problem in Armenia of separation of state resources from party and/or candidate resources. Article 22 provides:

¹⁴ Article 88 of the Electoral Code of Albania (CDL-REF(2011)038).

Source: [http://www.venice.coe.int/docs/2011/CDL-REF\(2011\)038-e.pdf](http://www.venice.coe.int/docs/2011/CDL-REF(2011)038-e.pdf).

¹⁵ All references made to joint opinions in the report are opinions prepared jointly by the Venice Commission and the OSCE/ODIHR.

¹⁶ CDL-AD(2011)042, par. 85-86.

¹⁷ Republic of Albania Parliamentary Elections, 28 June 2009 OSCE/ODIHR Election Observation Mission Final Report page 2

¹⁸ Observation of the parliamentary elections in Albania (28 June 2009), Report, 16 September 2009 (Doc. 12007), par. 38-39.

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

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

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

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

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

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

24. The joint opinion on the Electoral Code of Armenia (as of 26 May 2011) underlines that "[t]he separation of state resources from party and candidate resources has been a problem cited in every OSCE/ODIHR election report since 1996. The governing party network exercises influence on national government, but also the governors' offices and local self-government in most regions. During a national election, the resources under the control of these offices are called on to campaign on behalf of the government candidates. This creates a disparity in resources available with the added problem of creating the perception that employees are obligated to work for, attend rallies on behalf of and vote for the government candidates for fear for their employment. This practice is neither in conformity with the Code of Good Practice in Electoral Matters, where the principle of equality of opportunity entails a neutral attitude by state authorities, nor with OSCE commitments which call for a separation of party and State and campaigning on the basis of equal treatment. The changes to Article 19 and 22, if implemented fully and properly, could contribute significantly to address problems noted in past elections."²⁰

25. In practice, criticisms remain. Following the last parliamentary elections of 6 May 2012, the OSCE/ODIHR Election Observation Mission Final Report stresses that "[s]ome violations of campaign provisions by electoral contestants, including the use of administrative resources and attempts to limit voters' freedom of choice, created an unequal playing field."²¹ Following the same elections, the PACE underlines that "administrative resources were misused, in direct contradiction with the Electoral Code. The RPA [Republican Party of Armenia, ruling party] actively involved teachers and pupils in campaign events, including during school hours. In one case, teachers and local authorities even asked parents to

¹⁹ Electoral Code of Armenia adopted on 26 May 2011.

Source: [http://www.venice.coe.int/docs/2011/CDL-REF\(2011\)029-e.pdf](http://www.venice.coe.int/docs/2011/CDL-REF(2011)029-e.pdf).

²⁰ CDL-AD(2011)032, par. 50.

²¹ Republic of Armenia Parliamentary Elections, 6 May 2012 OSCE/ODIHR Election Observation Mission Final Report, page 1.

attend an RPA event. RPA campaign material and party flags were present on a number of school buildings.”²²

26. The Electoral Code of **Azerbaijan** prohibits the misuse of administrative resources during electoral campaigns as well. Article 55 aims at “Ensuring Equal Status for Candidates during their Nomination”. This provision underlines that “[a]ll candidates shall have equal rights and responsibilities” (Article 55.1); the provisions develop the actions considered by the Electoral Code as abuse of position (Article 55.2) and a list of persons and institutions prohibited to implement charitable activities during electoral campaigns (Article 55.3).

27. In practice, the OSCE/ODIHR Final Report following the parliamentary elections of 7 November 2010 underlines that *inter alia* “misuse of administrative resources as well as interference by local authorities in favor of candidates from the ruling party created an uneven playing field for candidates.” The Report details that “[t]he misuse of administrative resources was reported from 20 constituencies where employees of state institutions were involved in campaigning for a particular candidate during working hours.” The OSCE/ODIHR Report recommends that “[t]he continuous problems regarding undue interference of local executive authorities in the election process, in particular regarding [...] the misuse of administrative resources in favour of certain candidates, should be resolutely addressed as it is the responsibility of the State to enable contestants to compete on a basis of equal treatment...”²³ The PACE Report following the same elections also underlines “allegations of abuse of administrative resources.”²⁴

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

“Section 185 - *Criminal responsibility of an election official*

If a member of an election district committee, central election committee of a municipality, election committee or an electoral commission or an election assistant or any other person functioning as an election official as defined in this Act, neglects his or her duties, he or she is punished as if he or she had committed an offence.”²⁵

29. In practice, the OSCE/ODIHR did not recommend deploying an election-related activity for the last presidential election (22 January 2012) as “[a]ll interlocutors met by the OSCE/ODIHR NAM [Needs Assessment Mission] expressed a high level of confidence in all aspects of the electoral process.” The remaining recommendations made in previous missions do not refer to the issue of use of administrative resources during electoral campaigns.²⁶

30. The Election Code of **Georgia**, newly enacted in 2011, provides for exhaustive provisions both on “prohibition of the abuse of administrative resources during the pre-election agitation and campaign” (Article 48) and on “prohibition of the use of budget funds, occupational status or official capacity” (Article 49). Article 48.1 allows the use of administrative resources for campaign purposes – that is, the provision allows the use of state-funded buildings, communication means, and vehicles provided that equal access is

²² Observation of the parliamentary elections in Armenia (6 May 2012), Report (22 May 2012, AS/Bur/ARM (2012) 5), par. 30.

²³ Republic of Azerbaijan Parliamentary Elections, 7 November 2010, OSCE/ODIHR Election Observation Mission Final Report, pages 1, 11 & 24.

²⁴ Observation of the parliamentary elections in Azerbaijan (7 November 2010), Report, Doc. 12475 24 January 2011, par. 30 & 49.

²⁵ Source: <http://www.finlex.fi/en/laki/kaannokset/1998/en19980714.pdf>.

²⁶ Republic of Finland, Presidential Election, 22 January 2012, OSCE/ODIHR Needs Assessment Mission Report, page 2 and conclusions on page 8.

given to all election subjects. The joint opinion on the draft Election Code of Georgia raises once again concerns regarding continuous risk of misuse of administrative resources. The opinion states that “this provision appears to adhere to the equal opportunity principle. However, in practice such equality may quickly be undermined as political parties in government have easier access to such resources (government facilities, telephones, computers and vehicles). Moreover, Article 48(2) allows civil servants to use their official vehicles for purposes of campaigning, provided the fuel costs are reimbursed.”²⁷

31. In practice and as recalled in the last joint opinion, “OSCE/ODIHR election observation mission reports from past elections have consistently identified the use of administrative resources in Georgian elections as a significant problem. This problem is due in part to the lack of clarity and specificity in the legislation, as reproduced in the draft Code. The draft Code provisions blur the line between the state and political parties and fall short of OSCE commitments. The Venice Commission and the OSCE/ODIHR recommend revising the provisions on the use of administrative resources. Additionally, the last Evaluation Report by the Council of Europe Group of States against Corruption (GRECO) on transparency of party funding in Georgia raises similar concerns and “recommends to take further measures to prevent the misuse of all types of administrative resources in election campaigns”.²⁸

32. Additionally, Article 49.1 of the Election Code of Georgia prohibits persons “holding offices in state or local authorities” from combining campaign activities in support of (or against) electoral subjects with the conduct of their official duties, specifically by using subordinates in campaigning, gathering signatures during an official business trip, or conducting “pre-election agitation.” The joint opinion criticises this provision as “[p]ersons ‘holding offices in state or local authorities’ are not listed in Article 49 and there are varying interpretations among stakeholders as to which public officials are legally considered to be persons ‘holding offices in state or local authorities’.” The opinion recommends to clarify the list of officials concerned by this provision and to include governors and mayors, who are entitled to campaign. According to the joint opinion, “[t]he Code should further prohibit such individuals from directly or indirectly using administrative resources and from engaging in electoral campaign activities on behalf of any party/candidate, in order to ensure a level playing field for all contestants.”²⁹ On the contrary, the joint opinion welcomes the provision “which stipulates that state and local governments, between the day of announcement of the elections and the day of determining the election results, are not allowed to launch any special programs apart from those envisaged in their annual budgets.”³⁰

33. In its Statement of Preliminary Findings and Conclusions on the 1 October 2012 parliamentary elections, the International Election Observation Mission underlines the possibility given by the law to “use [...] some administrative resources for campaign purposes, in particular state-funded buildings, provided that equal access is given to all election subjects.” Nevertheless, the report relays the concerns expressed in the joint opinion as “[i]n practice, such equality may be undermined as political parties in government have easier access.”³¹

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

²⁷ CDL-AD(2011)043, par. 11 & 60 ss.

²⁸ CDL-AD(2011)043, par. 61.

Additional reference, from the joint opinion: GRECO, Evaluation Report on Georgia on Transparency of party funding, Third Evaluation Round, Strasbourg, 27 May 2011, Adopted by GRECO at its 51st Plenary Meeting (Strasbourg, 23-27 May 2011; Greco Eval III Rep (2010) 12E), paragraph 69.

²⁹ CDL-AD(2011)043, par. 62.

³⁰ CDL-AD(2011)043, par. 63.

³¹ International Election Observation, Georgia, Parliamentary Elections, 1 October 2012, Statement of Preliminary Findings and Conclusions, page 4.

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

35. In practice, the OSCE/ODIHR underlines in its Needs Assessment Mission Report following the 25 February 2011 early parliamentary elections that “[t]here is [...] a very high level of confidence of all stakeholders in the electoral process and the election administration” and does not raise concerns regarding use of administrative resources during electoral campaigns.³²

36. The **Kazakhstan** Constitutional Act on elections stipulates that (Article 27.5):

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

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

37. In practice, the OSCE/ODIHR report following the 15 January 2012 early parliamentary elections does not explicitly refer to administrative resources. Nevertheless, the electoral process as a whole was assessed as not having met “fundamental principles of democratic elections.”³³

38. According to the Constitutional Law of the **Kyrgyz Republic** on the Presidential and Parliamentary Elections in the Kyrgyz Republic, “[m]embers of election commissions, observers, international observers, judges, representatives of religious organizations, charity organizations, individuals under 18 years of age, foreign citizens and organizations have no right to carry out election campaign, issue and disseminate any campaign materials. Officers of government and self-governance bodies can carry out campaign and disseminate any campaign materials when they are outside of their official positions” (Article 22.15). The joint opinion on the electoral law underlines that by prohibiting certain groups from campaigning, Article 22.15 introduces ‘unreasonable restrictions on individual citizens’ and may be considered as ‘overly restrictive’.³⁴

39. In practice, the OSCE/ODIHR report following the 30 October 2011 presidential election underlines that “[a]llegations of misuse of institutional authority in the form of pressure and intimidation were raised throughout the pre-election period, which undermined confidence in the electoral process.” The report also indicates that “[o]n 29 September the parliament adopted a decree on “Measures to ensure the implementation of the Law on Presidential and Parliamentary Elections”, reinforcing the electoral law and imposing strict measures in cases such resources are misused.”³⁵

³² Ireland, Early parliamentary Elections, 25 February 2011, OSCE/ODIHR Needs Assessment Mission Report, page 11.

³³ Republic of Kazakhstan, Early Parliamentary Elections, 15 January 2012, OSCE/ODIHR Election Observation Mission Final Report, page 1.

³⁴ CDL-AD(2011)025, par. 73.

³⁵ The Kyrgyz Republic, Presidential Election, 30 October 2011 OSCE/ODIHR Election Observation Mission Final Report, pages 2 & 10.

40. The Electoral Code of “**the former Yugoslav Republic of Macedonia**” stipulates that:
“(1) As an election campaign is considered: public gathering and other public events organised by the campaign organiser, public display of posters, video presentations in public areas, electoral media and internet presentation, dissemination of printed materials and public presentation of confirmed candidates by official electoral bodies and their programmes.
(2) The election campaign commences 20 days prior the Election Day and in the first and the second round of election cannot continue 24 hours before elections and on the Election Day” (Article 69-a).
41. The joint opinion on the Electoral Code underlines that “[t]his definition could be considered as limiting regular political activities held prior to the start of the official campaign period” and that “[t]he Code should specify what political activity is not permissible before the start of the official campaign period.”³⁶
42. In practice, the OSCE/ODIHR report following the 5 June 2011 early parliamentary elections reports that “certain aspects [of the elections] require attention”, including “measures to ensure an adequate separation of state and party structures.” Moreover, “[t]he OSCE/ODIHR EOM received a number of allegations that party activists had requested civil servants to list a certain number of voters who would vote for the ruling party. According to these allegations, employees of state and public institutions were intimidated and threatened with loss of their jobs if they did not comply with these requests. Other allegations included threats that citizens would lose their pensions or social services if they did or did not support certain parties or candidates. The overwhelming majority of these allegations concerned actions by state officials and activists of the principal governing party. Any partisan actions by state employees taking place during working hours represent a misuse of state resources for party purposes.”³⁷
43. Apart from Article 134 of the Constitution, the specific relevant piece of legislation for **Mexico** is the Federal Code of Electoral Institutions and Procedures. Article 134.8 of the Constitution states that popular representatives, either federal or local, as well as senators and parliamentary groups are subject to prohibitions governing governmental advertising. The catalogue of restrictions on officials is large as it includes the Human Rights Commissions, the Elections Commissions, the National Institute of Statistics, Geography and Informatics and the Bank of Mexico. This catalogue also includes any other entity or agency of government, which at all levels of government, federal, state or city, is subject to any legal system of public status. This legislation is completed by Article 212 of the Federal Criminal Code, which prohibits offenses committed by public officials.³⁸ In the 2012 presidential election, it was alleged that the winning candidate’s party distributed bank and store cards in order to favour the presidential candidate; however the evidence presented was not sufficient to determine the final results.
44. The Election Code of **Moldova** states in Article 47.6 that “[c]andidates may not use public means and goods (administrative resources) during the electoral campaigns, and public authorities/institutions and other related institutions may not send/grant to the electoral competitors public goods or other benefits unless on a contract basis, providing equal terms

³⁶ CDL-AD(2011)027, par. 46.

³⁷ “The former Yugoslav Republic of Macedonia”, Early Parliamentary Elections, 5 June 2011, OSCE/ODIHR Election Observation Mission Final Report, pages 1, 6 & 11.

³⁸ For a more exhaustive report on the use of public funding for election purposes and practice in the filed in Mexico, including electioneering expenditure and case-law of the Supreme Court on public resources, see the report of Mr Manuel Gonzalez Oropeza (CDL(2012)076).

to all electoral competitors.” The 2010 joint opinion underlines that “this new paragraph is welcomed and addresses previous recommendations.”³⁹

45. In practice, the OSCE/ODIHR communicates in its report following the 2011 local elections (5 and 19 June 2011) distribution of illegal electoral gifts to voters during the electoral campaign.⁴⁰ The report also indicates that interlocutors “complained about the misuse of administrative resources at the local level, especially by incumbents running for re-election, although the scale was difficult to determine.”⁴¹ In its 2010 report following early parliamentary elections, the PACE states that “[a] number of people expressed anxiety about the use of administrative resources during the election campaign.” The document reports allegations of gifts to voters bearing the names of political leaders, including food and sundry items.⁴²

46. In **Montenegro**, Article 22 of the Law on the election of the President provides:
“The candidate for President of Montenegro may not use the facilities, financial resources, vehicles, technical means and other state property for the purpose of the electoral campaign.”

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

48. In practice, the statement of preliminary findings and conclusions issued by the International Election Observation Mission following the early parliamentary elections of 14 October 2012 underlines that “[a]llegations of abuse of state resources and reported violations of the public sector recruitment ban during the electoral campaign blurred the line between state activities and the campaign of the ruling coalition.”⁴³ The PACE report following the early parliamentary elections of 14 October 2012 reports misuse of administrative resources and in particular pressure and intimidations on civil servants to vote in favour of ruling political forces.⁴⁴

49. In **Portugal**, the Law on election to the parliament prohibits the abuse of public functions for campaigning purposes (Article 153). In practice, the OSCE/ODIHR did not mention misuse of administrative resources in its report following the parliamentary elections of 27 September 2009.⁴⁵

50. In the **Russian Federation**, Article 46 of the Law on State Duma Elections imposes several restrictions to avoid the use of public means in favour of any political party that contends for elections. In practice, the OSCE/ODIHR notes in its report following the presidential election of 4 March 2012 that “[t]here was an evident mobilization of individuals and administrative resources in support of Mr Putin’s campaign, which was observed by the OSCE/ODIHR EOM [Election Observation Mission]. In several regions, participants in campaign events reported that they had been ordered to take part by their superiors. Various levels of public institutions instructed their subordinate structures to organize and facilitate

³⁹ CDL-AD(0201)014, par. 37.

⁴⁰ It should be taken into account that the financing of campaigns in Moldova is mainly public.

⁴¹ OSCE/ODIHR Limited Election Observation Mission, Republic of Moldova, Local Elections, 5 and 19 June 2011, Final Report, pages 10-11.

⁴² PACE, Observation of the early parliamentary elections in Moldova (28 November 2010), Report (Doc. 12476, 24 January 2011), par. 40.

⁴³ International Election Observation, Montenegro, Early Parliamentary Elections, 14 October 2012, Statement of Preliminary Findings and Conclusions, page 1.

⁴⁴ PACE, Observation of the early parliamentary elections in Montenegro (14 October 2012), Report (Doc reference in progress, 17/10/2012), par. 5, 33, 41 & 44.

⁴⁵ Portugal, Parliamentary Elections, 27 September 2009, OSCE/ODIHR Election Assessment Mission Report.

Mr Putin's campaign events. Local authorities also used official communication, such as their institutional websites or newspapers, to facilitate Mr Putin's campaign."⁴⁶ The PACE Report following the same elections recommends "strict rules [...] with regard to the use of administrative resources in campaign periods."⁴⁷

51. In **Spain**, the Law on the Regime of General Elections includes different provisions regarding misuse of administrative resources: Article 52, which prohibits officials from campaigning; Article 139, which sanctions infractions committed by civil servants during electoral campaigns; and Article 140, which sanctions civil servants misusing their positions for campaigning purposes. In practice, the OSCE/ODIHR did not report misuse of administrative resources in its report following the early parliamentary elections of 20 November 2011.⁴⁸

52. In **Turkey**, the Law on Basic Provisions on Elections and Voter Registers prohibits in Articles 63-65 the misuse of administrative resources during electoral campaigns by public authorities. In practice, the last OSCE/ODIHR report following the 2001 parliamentary elections does not refer to misuse of administrative resources during electoral campaign.⁴⁹

53. In **Ukraine**, the Law on elections of people's deputies of Ukraine prohibits misuse of administrative resources during campaign by public authorities. In practice, the International Election Observation Mission reported in its preliminary conclusions following the 28 October 2012 parliamentary elections a "lack of a level playing field, caused [*inter alia*] primarily by the abuse of administrative resources." The report also underlines that this misuse of administrative resources during the electoral campaign "demonstrated the absence of a clear distinction between the State and the ruling party in some regions, contrary to paragraph 5.4 of the 1990 OSCE Copenhagen Document."⁵⁰

54. In a number of states, there are no explicit provisions on the use of administrative resources during electoral campaigns but implicit rules, which may be intended at dealing with this issue. This will be developed hereafter.

55. The **Canadian** Elections Act refers to gifts of other advantages that candidates may accept during campaigns:

"92.2 (1) No candidate shall accept any gift or other advantage that might reasonably be seen to have been given to influence him or her in the performance of his or her duties and functions as a member, were the candidate to be elected, during the period that

(a) begins on the day on which he or she becomes a candidate; and

(b) ends on the day on which he or she withdraws, in the case of a candidate who withdraws in accordance with subsection 74(1), on the day on which he or she becomes a member, in the case of a candidate who is elected, and on polling day, in any other case."⁵¹

56. Article 92.2 defines "*gift or other advantage*" as "(a) an amount of money if there is no obligation to repay it; and (b) a service or property, or the use of property or money, that is provided without charge or at less than its commercial value."

⁴⁶ Russian Federation, Presidential Election, 4 March 2012, OSCE/ODIHR Election Observation Mission Final Report, page 1.

⁴⁷ Observation of the presidential election in the Russian Federation (4 March 2012), Election observation report (Doc. 12903, 23 April 2012), par. 61.

⁴⁸ Spain, Early Parliamentary Elections, 20 November 2011, OSCE/ODIHR Election Assessment Mission Final Report.

⁴⁹ Republic of Turkey, Parliamentary Elections 2011, OSCE/ODIHR Election Assessment Mission Report.

⁵⁰ Ukraine – Parliamentary Elections, 28 October 2012 – International Election Observation Mission, Statement of Preliminary Findings and Conclusions, pages 1-2.

⁵¹ Source: <http://laws-lois.justice.gc.ca/eng/acts/E-2.01/page-25.html#docCont>.

57. In practice, the OSCE/ODIHR, following the observation of the 2006 parliamentary elections did not notice misuse of administrative resources⁵²

58. The Electoral Code of **Belgium** sanctions persons who promise jobs in public or private sectors (Article 182). The Code also prohibits promises made to persons against their vote or their abstention (Article 187).⁵³ In practice, the OSCE/ODIHR underlines in its report following the 10 June 2007 federal elections that the legal framework “is in some aspects advantageous to established parties, but this has not hindered new parties from emerging in the last decades, contributing to an already heterogeneous political landscape”.⁵⁴

59. The Electoral Code of **France** prohibits any gifts, donations and promises aiming at influencing the vote as well as those accepting such gifts, donations or promises.⁵⁵ In practice, the OSCE/ODIHR did not mention misuse of administrative resources in its report following the parliamentary elections held on 10 and 17 June 2012.⁵⁶ Nevertheless, France’s National Commission for Campaign Accounts and Political Financing (CNCCFP)⁵⁷ underlines in its 2011 annual activity report⁵⁸ that the Commission took 2,899 decisions of approbation with reformation of candidates’ accounts (for a total of accounts of 7,047 scrutinised). The accounts approved with reformation represent a bit more than 40% of all accounts (twice more than for the 2008 elections), which tends to demonstrate the inclusion by many candidates of costs qualified as electoral expenses that are not considered by the Commission as expenses for electoral purposes. These candidates’ accounts were approved mainly after reformation of the following expenses: interest rates, equipment, receptions, phone and communication costs.⁵⁹

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

61. The Electoral Law of **Monaco** on national and municipal elections prohibits gifts and promises in the electoral context (Article 69). There is no report of election observation mission to assess practice so far. The forthcoming 2013 national elections should be observed by the Parliamentary Assembly of the Council of Europe and will therefore lead to a report following the observation process.

62. Finally, the Political Parties, Elections and Referendums Act 2000 of the **United Kingdom** regulates the expenses qualifying where incurred for election purposes.⁶⁰ Plus,

⁵² Parliamentary Elections, 23 January 2006, Canada, OSCE/ODIHR Election Assessment Mission Final Report.

⁵³ Source: <http://www.droitbelge.be/codes.asp>.

⁵⁴ Belgium, Federal Elections, 10 June 2007, OSCE/ODIHR Election Assessment Mission Final Report, page 1.

⁵⁵ (Only into French) Article L106 (modifié par Ordonnance n°2000-916 du 19 septembre 2000 - art. 1 (V) JORF 22 septembre 2000 en vigueur le 1er janvier 2002) :

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

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

⁵⁶ Republic of France, Parliamentary Elections, 10 and 17 June 2012, OSCE/ODIHR Election Assessment Mission Final Report.

⁵⁷ http://www.cnccfp.fr/presse/kit/cnccfp_en.pdf.

⁵⁸ http://www.cnccfp.fr/docs/commission/cnccfp_activite_2011.pdf.

⁵⁹ CNCCFP 2011 Activity Report, Pages 54-55.

⁶⁰ SCHEDULE 8 (Section 72) – Campaign expenditure: qualifying expenses, Part I – Qualifying expenses – Expenses qualifying where incurred for election purposes and Exclusions.

Source: <http://www.legislation.gov.uk/ukpga/2000/41/schedule/8>.

the Electoral Administration Act 2006⁶¹ includes rules on breach of official duty that might include the issues at stake (Article 63). In practice, the OSCE/ODIHR did not report misuse of administrative resources during the electoral campaign following the 6 May 2010 general election.⁶²

C. Outcomes

63. This overview of the existing legislation on misuse of administrative resources during electoral campaigns on the one side and the practice observed during elections on the other side demonstrates that the implementation of legal provisions in the field remains difficult in many countries. Practice too often shows a contradiction between incumbents' interests and fairness of the electoral process.

64. The report dealt up to now with existing provisions on misuse/use of administrative resources during electoral campaigns. It did not address the Venice Commission member states which do not have specific legal provisions or other specific means against the use of administrative resources during electoral campaigns. At this stage, the report does not refer to practice in these countries. However, provisions in general criminal or administrative legislation against misuse of administrative resources could be as effective as a narrower or specific legislation when appropriately implemented to politicians or civil servants. *It is proposed to develop this analysis in a more exhaustive version of the report, at a later stage.*

65. In some of these countries without provisions on misuse of administrative resources during electoral campaigns,⁶³ constitutional courts (or equivalent bodies) interpreted the law through a corpus of decisions, giving a judicial interpretation on constitutional principles about equality in electoral campaigns. *It is proposed to develop this analysis at a later stage of the report as well.*

III. LEGITIMATE USE OR MISUSE OF ADMINISTRATIVE RESOURCES DURING ELECTORAL CAMPAIGNS

A. Assessing a situation of use or misuse of administrative resources during electoral campaigns

66. Based on the laws observed and the practice assessed (Part II.), it appears legitimate to adopt legislation relating to the use of administrative resources during electoral campaigns as well as provisions prohibiting misuse of such resources. This is necessary in order to ensure continuity in implementation of policies and platforms established far before electoral campaigns.

67. For instance, the Supreme Court of Mexico considered that the sole assistance of civil servants on non-working days to political campaigning events in support of a particular party, primary election candidate or election candidate does not imply by itself the misuse of State funds.⁶⁴

68. Therefore, in order to establish a visible distinction between use and misuse of administrative resources during electoral campaigns in implementing political platforms, the

⁶¹ http://www.legislation.gov.uk/ukpga/2006/22/pdfs/ukpga_20060022_en.pdf.

⁶² United Kingdom of Great Britain and Northern Ireland, General Election, 6 May 2010, OSCE/ODIHR Election Assessment Mission Report.

⁶³ Austria, Croatia and Czech Republic (CDL-REF(2012)025rev).

⁶⁴ Jurisprudence 14/2012, under the heading of "Acts Electioneering. The sole presence of public officials at non-working days at such acts is not restricted by law", derived from the appeals SUP-RAP-14/2009 and cumulative, SUP-RAP-258/2009 and SUP-RAP-75 / 2010. *Gaceta de Jurisprudencia y Tesis en Materia Electoral* Mexico City, number 10, 2012, pages 11-12. More details in the report of Mr Gonzalez Oropeza.

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

69. The line - especially when the law is silent – between use and misuse of administrative resources during electoral campaigns concerns also human resources involved directly or indirectly in elections. These resources are in particular the senior civil servants. These public officials are either politically appointed by political authorities (elected people or government) or issued by career from the Civil Service, i.e. issued from the non-political branch of the public administration. Whatever their initial appointment (or promotion and position), these public officials should effectively, fairly and competently contribute in implementing policies with their knowledge and sound judgment.

70. First, a distinction should then be made whether these public officials are politically appointed or not. Then it has to be assessed whether they performed their duties in conformity with the law and impartially (i.e. in the public interest) or they performed them still in conformity with the law but also with loyalty and good faith vis-à-vis the public authority which appointed them. In order to draw a distinction between both categories, using legislation is not sufficient. There is also a need that those civil servants strive to develop and maintain high ethical standards in their work. So it is a question of the culture of political stakeholders and on the other hand the professional standards of conduct of the civil servants or of a professional culture of public administration.

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

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

72. It is therefore crucial to distinguish between, on the one side the ruling party's (or coalition) internal work and preparations for reform policies on different societal matters and, on the other side the design and follow-up work of the reform programmes that the Government is responsible for. For the latter, both politicians and civil servants have their tasks and obligations and have to co-operate under certain legal and ethical principles (as proposed in the previous part A above).

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

74. The issue of use of administrative resources also needs to be analysed from the perspective of the constitutional obligation of the State to protect the freedom of voters to form their opinion and consequently to protect and promote equality and neutrality in relation to the upcoming existence of new political parties that have not yet achieved representation in Parliament and to the already established political parties. This is particularly relevant in the context of electoral campaigns. It can also have an impact on how legislation governs transparency of private financing of political parties and the individual interests behind that and the legal design of systems of public financial party support.

75. It is also important to respect the role of the opposition in a democratic parliament.⁶⁵ Opposition parties obviously do not have the same possibilities to use the competent services of the non-political public branch of government as the parties in power. However, it is possible to introduce some balancing structures within the constitutional system. The opposition parties in Parliament may be given the equivalent resources through participation in Committees and access to investigative resources that Parliament makes available for individual members of Parliament or political parties represented in Parliament.

76. Based on the environment as compared in Part II and on the distinction between use and misuse of administrative resources during electoral campaigns, this report suggests preliminary recommendations that might require further reflexion and development at a later stage.

IV. TOWARDS RECOMMENDATIONS

A. Political self-regulation - A first step

77. The use of standards of ethical conduct for and within different parts of the society and its branches and members could be looked upon as a first important step against abuse or misuse of political power. In this respect, political parties can informally agree - i.e. without going through legal provisions - on charts of ethics or agreements related to electoral campaigns, including concerning the use of administrative resources. Such agreements should reach the public in order for citizens to publicly discuss the issue. If such agreements are not respected or if abuses are observed in practice, this has to be reported, including in the media. Such self-regulation models are widely applied in the Scandinavian countries. They could be defined as belonging to a concept of consensual approach. The parties may organise themselves very freely. The alternative model, which in the international perspective is not so much developed, is a strategy where legislation plays an important role in regulating the political parties.

B. Legislation against bribery and corruption

78. In its worst form, the abuse of public resources in election campaigns (where services and favours are exchanged) is definitely criminal and a very serious, if not the most serious, form of corruption in a country. Although criminal law on this and related problems (embezzlement and breach of trust) is in place and of good legal quality in most countries and can, or should be, directed also against the most serious forms of abuse of administrative resources during electoral campaigns, the huge problem of providing an effective enforcement or implementation remains in general and perhaps especially in this area.

79. The integrity of the police and prosecutors and judicial independence of courts and judges as well as auditors towards the political forces is of course of crucial importance in

⁶⁵ Report on the role of the opposition in a democratic parliament, CDL-AD(2010)025, see especially p. 116 – 124.

society. Media under the principle of freedom of information can also play an important role in countering abuses and support the effective administration of justice in this field. It seems fruitful to build similar perspective on abuses in election campaigns as on corruption in general.

C. Other legislative measures

80. The basic instrument against abuse is the law, not only criminal law but also legislation in general, as it is the case in many European countries. In the comparative table analysed earlier, the electoral laws usually seem to have a similar general and standardised content. In order to fully understand the implications of these provisions, it also seems necessary to get informed about the more general and overall context where these individual provisions are inserted into the legislation as a whole. Otherwise it is not possible to fully evaluate the effects of these provisions. This question requires therefore taking into account of several areas of law.

81. First, the constitutional provisions are of interest. It is important to determine how the constitution deals with matters such as the separation of powers, the rule of law, the supervision of the government by parliament and parliamentary committees, the constitutional court (or equivalent body), electoral courts or commissions, the Ombudsman and the Auditor General. Such bodies and institutions should therefore perform their duties with regard to equality of all citizens before the Law and by observing objectivity and impartiality in their decisions and actions. Such principles should obviously apply to electoral processes as a whole.

82. Abuses of administrative resources in electoral campaigns that originate in or could be seen as typical general crimes should preferably be left to the general criminal code and not be regulated in special electoral acts. Different kinds of unauthorised action before elections (improperly acting in voting and improper reward for voting, etc.) should be seen as severe general crimes in the same way as bribery and corruption, severe misconduct or malpractice by public officials and economic crime, such as embezzlement of administrative resources and breach of trust.

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

84. Public officials breaching the rules governing the conditions of the civil service must be sanctioned either for crimes or for breaches of their duties with disciplinary sanctions (including dismissal from office). Specific provisions might be appropriate for political positions (ministers, political staff of the government institutions, staff of parliament factions, etc.). Here too, there is a need for an independent review, and ultimately decisions by the courts.

D. The implementation of the legislation through correct and effective application

85. To effectively implement the legislation, a mutual understanding and a sense of responsibility is required among all political interest groups. There is a need for consensus

on the importance of a common understanding of certain constitutional values. For example there is a need to share a common view on the role of the opposition within the society.

86. If there is such a consensus, it opens up for the possibility to exercise a more effective parliamentary supervision in parliamentary standing committees bearing responsibility for constitutional and related issues such as electoral matters.

87. For instance, in Sweden, it is accepted practice within Parliament that a representative of the opposition parties is in charge of the office of President of the Constitutional Committee, while the majority of the committee stays in the hands of the party(-ies) in Government. This committee is responsible for the control of the Government and the electoral legislation. The committee has the authority to criticise the ministers in Cabinet and ultimately take decisions on prosecution of ministers (sitting or former) who committed crimes when performing their tasks as ministers in the Cabinet. The committee also reviews the procedures of the Government and its offices on the use of public funds. Misuse or other errors, for example in connection with election campaigns, that have occurred in the management and use of human, financial, information and technical resources allocated for the Government can be investigated by the committee. This kind of control has in practice also been applied (with or without criticism in a reasoned public statement) on certain issues, such as the use of state aircrafts, the use of the official website of the Government in matters that are presenting the view of a minister as a member of a party rather than policy matters of the Government and the use of official letters (free of charge) by a Cabinet minister for the purpose of informing members of his party in his electoral district on political matters. The mere existence of this power of the committee to investigate and publicly criticise matters like this has obviously a chilling effect also against infringements of a more serious nature.

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

89. An ombudsman could also have authority to take action against civil servants and other public officials who abuse their official functions by committing a crime or otherwise behaving improperly or injudiciously in their relation to ministers or other politicians also during an electoral campaign.

90. In the end, it is of course crucial that constitutional courts, certain electoral courts or bodies, prosecutors and ordinary court take the ultimate responsibility for the administration of justice in matters of abuse of public resources during election campaigns.

91. It is of course important that the functions mentioned here are performed with transparency and respect for the principle of freedom of information.

E. The requirement for transparency and freedom of information

92. It cannot be emphasised enough how important transparency and freedom of information and expression are to prevent abuse of administrative resources. The statutory system and its implementation through various institutions must also be subject to public reporting and discussion. It is essential that any shortcomings and errors can be debated openly in the media and in public. Behaviours and acts of ministers, elected people, civil servants and public officers as a whole as well as judges and auditors are therefore liable before the citizens, with possibly further consequences like investigations and political, civil or criminal actions against abusers.

F. Public grants to political parties

93. One general problem is the risk of mismatch of possibilities, or in other words inequality, between the government party(-ies) and the opposition party(-ies). Such imbalances can be somewhat counteracted by a system of public financing of parties' activities under a thorough legislation on public grants to political parties based on the principle of equality. One problem here is the need also to provide proper conditions for parties without representation in Parliament (see para. 8). This and other problems shall not be discussed further in the report. Just a couple of observations will take place.

94. In the context of a system of financial grants to political parties it is possible to build in some financial compensation so that the opposition parties will have an additional contribution per term compared to parties in Government. This is intended to compensate them up to a certain extent for the advantage in resources the party(ies) in power get by having access to the human resources of the Government.

95. An important element in the public funding of political parties can also be a public system of financing and printing of all ballot papers as well as a support in resources in the form of free or subsidised facilities and office services.

96. As mentioned earlier, in Sweden, legislation provides that both Members of Parliament and Cabinet ministers have a right to free domestic travels at public expense, and this even during election campaigns. The Parliamentary Constitutional Committee can ultimately review how these rules have been applied in practice in certain situations.

97. Finally, a system of public grants to political parties could provide a good starting point for a certain public inspection and auditing of the economic conditions of the parties. There is here an opportunity to implement different protective mechanisms against misuse of public resources for election campaigns. Such a grant system based on the principle of equality ultimately under review by courts or specific bodies may fulfil legitimate aims within a democratic society.

98. At the same time, one must be aware of the importance of correctly balancing the interests of the parties to keep internal sensitive information for them. According to the consensual approach of the self-regulation model in the Nordic countries, the parties shall continue to enjoy significant protection against interference from the public. This is important, not least from the perspective of the freedom sphere of the parties but also to protect the freedom of voters to form their opinion.