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**(VENICE COMMISSION)**

**OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS**  
**(OSCE/ODIHR)**

**DRAFT JOINT GUIDELINES**  
**FOR PREVENTING AND TACKLING**  
**THE MISUSE OF ADMINISTRATIVE RESOURCES**  
**DURING ELECTORAL PROCESSES**

**on the basis of comments by**

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## I. Introduction

1. These Guidelines are aimed at assisting national lawmakers and authorities in adopting laws<sup>1</sup> and initiating concrete measures to prevent and act against the misuse of public administrative resources during electoral processes.
2. The purposes behind such laws and concrete measures are:
  - to ensure neutrality and impartiality in the electoral process;
  - to ensure equality of treatment between different candidates and parties in relation to administrative resources;
  - to lessen the advantage of incumbency; and
  - to ensure that administrative resources are not misused for partisan purposes.
3. The Guidelines are mainly built on the Venice Commission's Report on the misuse of administrative resources during electoral processes<sup>2</sup> and the conclusions of the 11<sup>th</sup> European Conference of Electoral Management Bodies that has dealt with this topic on 26-27 June 2014 in Helsinki. In these conclusions,<sup>3</sup> the participants to the Conference invited "the Council for Democratic Elections [...] to consider developing guidelines aimed at preventing the misuse of administrative resources during electoral processes".
4. The Guidelines are based on the following documents:
  - Venice Commission, [Code of Good Practice in Electoral Matters](#);<sup>4</sup>
  - Venice Commission, [Code of Good Practice in the Field of Political Parties](#);<sup>5</sup>
  - Organization for Security and Cooperation in Europe (OSCE), [Copenhagen Document](#), 1990, Paragraph 5.4;
  - United Nations, [International Covenant on Civil and Political Rights](#) (ICCPR), General Comment No. 25, Article 25;<sup>6</sup>
  - Venice Commission, [Report on the misuse of administrative resources during electoral processes](#);<sup>7</sup>
  - Venice Commission, [conclusions](#) of the Seminar held on 17-18 April 2013 in Tbilisi on the use of administrative resources during electoral campaigns;<sup>8</sup>
  - Venice Commission, [conclusions](#) of the 11<sup>th</sup> European Conference of the Electoral Management Bodies held in Helsinki on 26-27 June 2014 on the same topic;<sup>9</sup>
  - Council of Europe, Committee of Ministers, [Recommendation](#) of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns;<sup>10</sup>
  - Council of Europe, Committee of Ministers, [Recommendation](#) of the Committee of Ministers to member states on measures concerning media coverage of election campaigns;<sup>11</sup>

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<sup>1</sup> The term "law" and subsequently the expression "legal framework" capture any text from the Constitution to Codes and sub-legal rules. The legal framework covers therefore electoral as well as criminal laws. This has to be understood as such for the Guidelines in general.

<sup>2</sup> Adopted by the Council for Democratic Elections at its 46<sup>th</sup> meeting (Venice, 5 December 2013) and by the Venice Commission at its 97<sup>th</sup> plenary session (Venice, 6-7 December 2013; [CDL-AD\(2013\)033](#)).

<sup>3</sup> CDL-EL(2014)001syn.

<sup>4</sup> CDL-AD(2002)023rev.

<sup>5</sup> CDL-AD(2009)021.

<sup>6</sup> [International Covenant on Civil and Political Rights](#) (ICCPR), General Comment No. 25, Article 25 – Participation in Public Affairs and the Right to Vote, the Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service Adopted at the Fifty-seventh Session of the Human Rights Committee, on 12 July 1996 (ref.: CCPR/C/21/Rev.1/Add.7, General Comment No. 25).

<sup>7</sup> Report adopted by the Council for Democratic Elections at its 46<sup>th</sup> meeting (Venice, 5 December 2013) and by the Venice Commission at its 97<sup>th</sup> plenary session (Venice, 6-7 December 2013; [CDL-AD\(2013\)033](#)).

<sup>8</sup> CDL-EL(2013)003syn.

<sup>9</sup> CDL-EL(2014)001syn.

<sup>10</sup> CM/Rec(2003)4, Recommendation adopted by the Committee of Ministers on 8 April 2003 at the 835<sup>th</sup> meeting of the Ministers' Deputies.

- Council of Europe, Committee of Ministers, [Recommendation](#) of the Committee of Ministers on protection of whistleblowers;<sup>12</sup>
- Council of Europe, Group of States against Corruption (GRECO), Horizontal Review “[Fighting Corruption – Political Funding](#)”,<sup>13</sup> as well as country evaluation reports especially those of the Third Evaluation Round;<sup>14</sup>
- OSCE, Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and Venice Commission, [Guidelines on Political Party Regulation](#);<sup>15</sup>
- OSCE/ODIHR, [Handbook for the Observation of Campaign Finance](#);<sup>16</sup>
- OSCE/ODIHR, [Review of Electoral Legislation and Practice in OSCE Participating States](#).<sup>17</sup>

5. Other international institutions have issued publications directly or indirectly related to the issue of administrative resources during electoral processes, which are not referenced in the present Guidelines. The following publications can however be quoted: International Foundation for Elections Systems, Training in Detection and Enforcement (TIDE) program – [Political Finance Oversight Handbook](#); and Organization of American States (OAS), [Observing Political-Electoral Financing Systems: A manual for OAS Electoral Observation Missions](#).

6. Before going through the Guidelines, it is useful first to recall the definition of 'administrative resources' used by the Report of 2013 on the misuse of administrative resources during electoral processes and second to briefly recall the situation regarding the misuse of administrative resources during electoral processes in Europe.

7. The 2013 Report defines the administrative resources as follows:<sup>18</sup> “administrative resources are human, financial, material, *in natura*<sup>19</sup> and other immaterial resources enjoyed by both incumbents and civil servants in elections, deriving from their control over public sector staff, finances and allocations,<sup>20</sup> access to public facilities as well as resources enjoyed in the form of prestige or public presence that stem from their position as elected or public officers and which may turn into political endorsements or other forms of support”.<sup>21</sup>

8. The misuse of administrative resources may also include related offences, such as forms of pressure or threats exerted by officials on civil servants. Similarly, the OSCE/ODIHR has defined ‘abuse of state resources’ (terminology used as well by other international institutions) as the “undue advantage obtained by certain parties or candidates, through use of their official positions or connections to governmental institutions, in order to influence the

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<sup>11</sup> CM/Rec(2007)15, Recommendation adopted by the Committee of Ministers on 7 November 2007 at the 1010<sup>th</sup> meeting of the Ministers’ Deputies.

<sup>12</sup> CM/Rec(2014)7, Recommendation adopted by the Committee of Ministers on 30 April 2014 at the 1198<sup>th</sup> meeting of the Ministers’ Deputies.

<sup>13</sup> Council of Europe, Group of States against Corruption, Fighting Corruption – Political Funding, by Yves-Marie Doublet, Deputy Director at the National Assembly, France – Thematic Review of GRECO’s Third Evaluation Round.

<sup>14</sup> The third round evaluation reports deal with the transparency and supervision of political financing; see [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp) ; the reports of the Fourth Evaluation Round sometimes also contain some pertinent information as they deal i.a. with the prevention of corruption of parliamentarians: see [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ReportsRound4\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ReportsRound4_en.asp).

<sup>15</sup> Guidelines adopted by the Venice Commission at its 84<sup>th</sup> Plenary Session (Venice, 15-16 October 2010, CDL-AD(2010)024).

<sup>16</sup> Publisher: OSCE/ODIHR. Date: 21 January 2015.

<sup>17</sup> Publisher: OSCE/ODIHR. Date: 15 October 2013.

<sup>18</sup> Paragraph 12 of the Report.

<sup>19</sup> Like some benefits from social programmes, including goods and in kind resources.

<sup>20</sup> As well as state-owned media, which will not be addressed here.

<sup>21</sup> This definition aims at harmonising various expressions that can be found in domestic legislation such as “public resources” or “state resources”. Both expressions are synonyms with “administrative resources”.

outcome of elections”.<sup>22</sup> For the purposes of these Guidelines, the term ‘abuse of state resources’ should be understood as analogous to ‘misuse of administrative resources’. It should also be noted that in election observation missions reports as well as documents issued by international institutions, references to ‘use’ of administrative resources relate to misuse. For such quotations of external sources, this should be understood that it refers to misuse of administrative resources.

9. According to the 2013 Report on the misuse of administrative resources during electoral processes, an electoral process should be understood as a period much longer than the electoral campaign as strictly understood in electoral law. It covers the various steps of an electoral process as starting from, for example, the definition of the electoral constituencies, the recruitment of election officials or the registration of candidates or lists of candidates for competing in elections. This whole period leads up to the election of public officials. It includes all activities in support of or against a given candidate, political party or coalition by incumbent government representatives before and during the election day.<sup>23</sup>

10. Regarding the situation in Europe concerning electoral processes, it has been observed that “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. However, the practical implementation of electoral laws and laws related to political parties (including financing of political parties and electoral processes) remains problematic up to a certain extent. Today, one of the most important and recurrent challenges observed in Europe and beyond, is the misuse of administrative resources, also called public resources, during electoral processes. This practice is an established and widespread phenomenon in many European countries, including countries with a long-standing tradition of democratic elections. Several generations of both incumbents and civil servants consider this practice as normal and part of an electoral process. They seem even not to consider such practice as illegitimate action *vis-à-vis* challengers in elections. It may be consequently harder for these challengers to take advantage of administrative resources. This phenomenon seems part of an established political culture and keeps a relation not only with practices potentially regarded as illegal but also with the ones caused by the lack of ethical standards related to the electoral processes of the public authorities in office.”<sup>24</sup>

11. Similarly, GRECO has observed on different occasions, during the country evaluations conducted to date concerning transparency of political financing (and to a lesser extent, concerning the prevention of corruption of parliamentarians), a variety of situations where public resources are being misused. This concerns property and means owned at State level or by local authorities (human, financial, material and technical means), especially – but not only – in the context of election campaigns. It was also occasionally observed that funds managed by the ministries for the use of which members of the executive or legislature have broad discretion are particularly exposed to risks of being partly used for political financing purposes. The absence of clear demarcation lines specifying that the material resources and – where these exist – financial means allocated to political groups in parliament are meant to support exclusively the work of the legislature, has also occasionally led to questionable contributions from such groups to parties and candidates before, during or after elections (to co-finance certain events or to repay certain debts). Moreover, the misuse of administrative resources may be widespread even where the law provides for a ban on donations from public institutions and public companies, as well as from institutions and companies with State capital share. In some post-communist countries, the widespread misuse of public

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<sup>22</sup> OSCE/ODIHR Handbook for the Observation of Campaign Finance.

<sup>23</sup> Paragraph 9 of the Report. Whilst the ruling majority could influence election results by amending the electoral system before elections, such action cannot be considered as misuse of administrative resources. However, it has to be avoided as recommended by the Code of Good Practice in Electoral Matters (II.2.b).

<sup>24</sup> 2013 Report, para. 1.

resources may reflect a persisting lack of distinction between the State and the governing party. This also explains occasional allegations of widespread abuse of the public media and of public facilities in connection with election campaigns, even where equal and unbiased coverage of political parties and of (outgoing) candidate parliamentarians by the State-owned media is guaranteed by the existing detailed legislative provisions. Controversies have also been occasionally triggered at domestic level by situations where the ruling parties manage to attract additional indirect financial resources, for instance by arranging for public authorities to purchase in the newspapers under their control substantial amounts of advertisement space (or by making fictitious contracts with a similar purpose). Policy information published in such a way in the wake of an election campaign can ultimately amount to a form of disguised propaganda, paid from the State budget, for the outgoing political majority / elected officials concerned. Depending on the seriousness of the problem and the overall situation and context, GRECO has sometimes issued recommendations to the country concerned. Examples include “to take appropriate measures to ensure that the regulation of party and election campaign financing is not undermined by the misuse of public office” or “to provide clear criteria on the use of public facilities for party activity and election campaign purposes”.

12. Some of the elements in the Guidelines may require a formal legislative or constitutional basis in national orders, while other elements can be achieved through codes of ethics or public/civil service codes of practice and interpretation of national legislation by competent courts. In all cases, it is important that legislation, regulations and judicial decisions, are well aligned, avoiding gaps, ambiguities and contradictory provisions.

13. Stability of the law<sup>25</sup> is also a crucial element for the credibility of electoral processes. It is therefore important that stability of electoral law be ensured, for instance through the constitutionalism of the fundamental provisions on elections, in order to protect it against party political manipulation, which should include the misuse of administrative resources.

14. It should also be underscored that even where the legal framework provides a solid foundation to safeguard against the misuse of administrative resources, legislation will only be effective if the public bodies involved implement such legislation in good faith. This also includes the political will to impartially uphold the letter and the spirit of the law.

15. On the basis of these preliminary considerations and of the relevant documents previously quoted, fundamental principles and prerequisites have first of all to be recalled (part II./I.). The Guidelines' first objective is to prevent the misuse of administrative resources specifically during electoral processes by suggesting improvements to the electoral or general legal framework (part II./II.). The Guidelines have also the objective to tackle such misuse (part II./III.).

16. *The present joint Guidelines were adopted by the Council for Democratic Elections at its XXX meeting (Venice, XXX) and by the Venice Commission at its XXX plenary session (Venice, XXX).*

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<sup>25</sup> Code of Good Practice in Electoral Matters, II. 2.

## II. Guidelines

### I. Principles and prerequisites

#### I. 1. Rule of Law

**I. 1. 1.** The legal framework should provide for a general prohibition of the misuse of administrative resources during electoral processes. The prohibition has to be established in a clear and predictable manner. Sanctions for misuse of administrative resources have to be provided for and implemented. Such sanctions need to be enforceable, proportionate and dissuasive.<sup>26</sup>

**I. 1. 2.** It is important that rules – including laws, agreements and commitments that regulate or relate to the use of administrative resources during electoral processes, as well as judicial decisions interpreting them – are clear and accessible to all stakeholders, including authorities, candidates, political parties and citizens, and that sanctions and consequences for not abiding with these rules are foreseeable.

**I. 1. 3.** The possibility to bring complaints about the misuse of administrative resources to an independent tribunal – or equivalent judicial body – should be central in ensuring the appropriate use and to prevent the misuse of administrative resources during electoral processes.

#### I. 2. Freedoms of expression, to form an opinion and of information

**I. 2. 1.** The restrictions imposed on civil servants during electoral processes must reflect the complex relationships between the different rights and freedoms enjoyed by the individuals and the political actors. In this respect, according to the European Court of Human Rights,<sup>27</sup> “[f]ree elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system”. Therefore, “it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely”. The Court nonetheless underlined that “in certain circumstances, the two rights [free elections and freedom of expression] may come into conflict and it may be considered necessary, in the period preceding or during an election, to place certain restrictions, of a type which would not usually be acceptable, on freedom of expression, in order to secure the ‘free expression of the opinion of the people in the choice of the legislature’.”

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<sup>26</sup> See the Guidelines III. 2.

<sup>27</sup> For instance, European Court of Human Rights, *Case of Bowman v. United Kingdom* (ref. 141/1996/760/961; judgment of 19 February 1998):

“42. Free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system (see the *Mathieu-Mohin and Clerfayt v. Belgium* judgment of 2 March 1987, Series A no. 113, p. 22, § 47, and the *Lingens v. Austria* judgment of 8 July 1986, Series A no. 103, p. 26, §§ 41–42). The two rights are inter-related and operate to reinforce each other: for example, as the Court has observed in the past, freedom of expression is one of the ‘conditions’ necessary to ‘ensure the free expression of the opinion of the people in the choice of the legislature’ (see the above-mentioned *Mathieu-Mohin and Clerfayt* judgment, p. 24, § 54). For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely.

43. Nonetheless, in certain circumstances the two rights may come into conflict and it may be considered necessary, in the period preceding or during an election, to place certain restrictions, of a type which would not usually be acceptable, on freedom of expression, in order to secure the ‘free expression of the opinion of the people in the choice of the legislature’. The Court recognises that, in striking the balance between these two rights, the Contracting States have a margin of appreciation, as they do generally with regard to the organisation of their electoral systems (see the above-mentioned *Mathieu-Mohin and Clerfayt* judgment, pp. 23 and 24, §§ 52 and 54).”

### **I. 3. Impartiality**

**I. 3. 1.** The legal framework should provide explicit requirements for all public authorities and civil servants to act impartially during the whole electoral process while performing their official duties. Such regulations should establish the impartiality and professionalism of the Civil Service.

### **I. 4. Neutrality**

**I. 4. 1.** The legal framework should ensure the neutrality of the Civil Service by prohibiting campaign activities of public officials in their official capacity, either being themselves candidates or simply supporting candidates. This applies as well to public and semi-public entities. It is important that a clear separation between the state and political parties is maintained; in particular political parties should not be merged with the State.<sup>28</sup>

**I. 4. 2.** In order to ensure neutrality of the Civil Service during electoral processes and consequently to avoid any risk of conflict of interest, the legal framework should provide for incompatibilities between the exercise of public positions and potential candidates, in particular for senior management positions in the public sector. In this respect, the legal framework should provide for a range of adequate rules. Such rules may include the suspension from office or resignation of certain public officials running for elections.

**I. 4. 3.** Ensuring the integrity of judges, prosecutors, police as well as auditors of political competitors is of essential importance. Concrete measures should address the issue of integrity so as to ensure the neutrality of these persons in their capacity vis-à-vis the entire electoral processes.

**I. 4. 4.** The principle of neutrality in the use of administrative resources excludes any kind of interference of public money and public goods in electoral campaigns.

**I. 4. 5.** The legal framework should ensure the objective, impartial, and balanced coverage of election-related events by publicly-owned media. Law and practice should both ensure that publicly-owned media are not involved in "hidden" campaigning in favour or disfavour of particular political competitors.

### **I. 5. Transparency**

**I. 5. 1.** The legal framework should provide for transparency and a clear distinction between the operation of government, activities of the Civil Service, and the conduct of the political campaign.

**I. 5. 2.** The legal framework should ensure the availability of trustworthy, diverse and objective information to voters and political competitors on the use of administrative resources during electoral processes operated by public authorities as well as entities owned or controlled by public authorities.

**I. 5. 3.** The legal framework should regulate transparency and accountability of the use of public funds by political parties and candidates during electoral processes.

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<sup>28</sup> This separation should comply with Paragraph 5.4 of the 1990 OSCE Copenhagen Document.

## **I. 6. Equality of opportunity**

**I. 6. 1.** The legal framework should grant equality of opportunity to all candidates and political parties during electoral process.

**I. 6. 2.** The legal framework should ensure equitable access<sup>29</sup> for all political parties and candidates to administrative resources during electoral processes, to public funding of political parties and campaigns, and to publicly-owned media.

## **II. Preventing the misuse of administrative resources during electoral processes**

17. There is a need for a proper and effective legal framework aimed at preventing the misuse of administrative resources during electoral processes. This does not prevent from recommending additional measures, which are developed hereafter.

### **II. 1. Through the law**

**II. 1. 1.** The legal framework should provide for effective mechanisms for prohibiting public authorities as well as public and semi-public entities to hold official public events for electoral campaigning purposes, including charitable events.

**II. 1. 2.** If public buildings and facilities are used for campaign purposes there has to be equal opportunity for all parties and candidates and a clear procedure for allocating such resources.

**II. 1. 3.** The legal framework should prohibit public authorities as well as public and semi-public entities in their official capacities from engaging in activities during the electoral process which intentionally or unintentionally favour or disfavour any political party or candidate. This relates to specific funds (state or local budget) as well as institutional resources (staff, vehicles, infrastructure, phones, computers, etc.).

**II. 1. 4.** Apart from permitted forms of public funding provided for by law, candidates and political parties must refrain from receiving assistance, financial or in kind, from any public authorities, particularly those directed by their members.<sup>30</sup>

**II. 1. 5.** The legal framework should state that no major announcements should occur during an election period that would impact public resources. This should exclude those that are necessary due to unforeseen circumstances – such as following a natural disaster or receipt of funding from an international organisation.

**II. 1. 6.** The legal framework should stipulate that there should be no non-essential appointments to public bodies during the electoral processes by the incumbents running for re-election.

**II. 1. 7.** There should be a protocol put in place by a competent authority – electoral management body, head or governing body of the Civil Service or special committee – identifying what activities are considered to be campaign activities and therefore

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<sup>29</sup> See also Guideline II. 1.8. See as well the Code of Good Practice in electoral matters, I. 2.3. b: "Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated according to the results achieved in the elections. Equality of opportunity applies in particular to radio and television air-time, public funds and other forms of backing."

<sup>30</sup> Code of Good Practice in the field of political parties, para. 41.



forbidden to the Civil Service. The competent authority should have an advisory role in relation to queries during the election period as to whether something is captured by the prohibition on campaign activities by the Public Service.

**II. 1. 8.** The legal framework should provide for a clear distinction between 'campaigning activity' and 'information activity' of public media in order to ensure equity among political competitors in the media as well as a conscious and free choice for voters.<sup>31</sup>

**II. 1. 9.** In addition to the national legislation, charters of ethics or agreements could be appropriate steps to tackle the misuse of administrative resources during electoral processes.

## **II. 2. Through independent and effective audit**

18. The Guidelines are based on the assumption that mechanisms of independent and effective audit of administrative resources are prerequisites, through existing institutions, such as national audit offices, courts of accounts or via electoral management bodies.

**II. 2. 1.** A national audit office, an electoral management body, or another equivalent body, should be responsible for auditing political parties and candidates in their use of public administrative resources during electoral processes. In this respect, such an institution should act independently and effectively.

**II. 2. 2.** The audit authority should be empowered and resourced to supervise all public expenditure and use of administrative resources. Moreover, this authority should be required to report misuse during electoral processes in a timely, clear and comprehensive manner.

**II. 2. 3.** Political parties and candidates should be required to report on the origin and purpose of all their financial transactions to facilitate the detection of potential misuse of administrative resources. Any permissible use of administrative resources for parties or candidates should be treated as a part of campaign finance contribution and be reported accordingly.

**II. 2. 4.** Clear and effective relationships between audit authorities, electoral management bodies and other equivalent bodies should be provided in law and facilitated.

## **II. 3. Through effective implementation and information**

**II. 3. 1.** A comprehensive and effective implementation of the legislation is essential for preventing the misuse of administrative resources during electoral processes. Thus, restrictions on the use of administrative resources should be implemented in good faith.

**II. 3. 2.** Authorities, including electoral management bodies, should create wide-reaching information campaigns, in which citizens and civil servants, candidates and political party leaders, are aware of their responsibilities during electoral processes. Clear criteria should be established to distinguish campaign activities. Such criteria should be applied consistently.

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<sup>31</sup> See *inter alia* the ICCPR General Comment No. 25: Article 25.

**II. 3. 3.** Where necessary, senior public officials could make clear statements and issue written instructions that no pressure on public employees will be tolerated and that no employee or citizen should fear for their employment or social services as a result of supporting or not supporting any political party or candidate. Public officials should accordingly benefit from protection against any intimidation or pressure.

**II. 3. 4.** Public officials as well as their relatives should benefit from protection against victimisation when they disclose an alleged fraud or misuse of administrative resources. If the law does not protect whistleblowers in general, there should be specific rules in the context of electoral processes.<sup>32</sup>

**II. 3. 5.** Training and guidelines for civil servants as well as internal guidelines for Ministers and their departments need to be developed to promote legally based non-partisan conduct within the executive branch. Guidelines for civil servants, public commitments, codes of ethics and other instruments, should be disseminated.

#### **II. 4. Through political willingness**

**II. 4. 1.** A sincere political will of the highest State, regional, and local authorities is a key factor in achieving the objective to effectively prevent and sanction the misuse of administrative resources.

**II. 4. 2.** In this respect, candidates and political parties should agree on charters or agreements and should publicly express commitments. Publicity and the thorough dissemination of these instruments are crucial in increasing their effectiveness. The development of a political culture, a mutual understanding and a sense of responsibility of both the incumbent and opposition political forces, as well as a respect of recognised values of a democratic society are of essential importance.

### **III. Acting against the misuse of administrative resources when observed during electoral processes**

#### **III. 1. Through complaints and appeals procedures**

**III. 1. 1.** The appeal body in electoral matters should be either an electoral commission or a court or an equivalent judicial body. For elections to parliament, an appeal to parliament may be provided for in first instance. In any case, final appeal to a court must be possible.<sup>33</sup> This guidance should apply to alleged cases of misuse of administrative resources.

**III. 1. 2.** The legal framework should provide for an effective system of complaints before a competent, independent and impartial court, or an equivalent judicial body. Particularly, an independent judiciary is a *sine qua non* condition for sanctioning the misuse of administrative resources. A specialised jurisdictional authority can be more likely to address the particular challenges that arise from electoral conflicts.

**III. 1. 3.** The legal framework should ensure the independence of electoral management bodies and courts in their decisions when adjudicating disputes regarding the misuse of administrative resources. This should be both reflected in their training and technical capabilities. For this purpose, electoral management bodies should get appropriate staffing and other work conditions.

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<sup>32</sup> See in this respect the Recommendation of the Committee of Ministers of the Council of Europe on protection of whistleblowers.

<sup>33</sup> Code of Good Practice in Electoral Matters, II. 3.3 a.

**III. 1. 6.** While tackling cases related to the misuse of administrative resources, including via adjudication of the election-related disputes, electoral management bodies and courts of law must apply laws in a uniform and impartial manner irrespective of the political opinions of the members of electoral management bodies and parties to the particular case.

**III. 1. 5.** Ensuring the integrity of the police, prosecutors, judges as well as auditors of political competitors is of essential importance. Concrete measures should address the issue of integrity so as to ensure the neutrality of these persons in their capacity vis-à-vis the entire electoral processes. The implementation of sanctions against the misuse of administrative resources is effective only if the investigation, auditing, prosecution and justice systems are independent from the ruling political power.

**III. 1. 4.** The legal framework should ensure that the decisions of electoral management bodies and courts – and other judicial bodies – be public, written and reasoned. The legal framework should also ensure a timely adjudication and appeals process.

### **III. 2. Through enforceable, proportionate and dissuasive sanctions**

**III. 2. 1.** The legal framework should define the misuse of administrative resources during electoral processes as an electoral offence. An irregularity should be a legal basis for a range of sanctions, from administrative fines to the ultimate sanction of cancelling the election result where irregularities may have affected the outcome, or criminal sanctions for the most serious offences.<sup>34</sup>

**III. 2. 2.** The legal framework should foresee that in case public finances or financially evaluable advantages are given to political parties or candidates without legal basis, such financing has to be returned to the state or municipal budget.

**III. 2. 3.** The legal framework should establish clear, predictable and proportionate sanctions for infringements of the prohibition of the misuse of administrative resources. A similar range of sanctions should apply for infringements regarding public funding of electoral campaigns.

**III. 2. 4.** Political parties and candidates who deliberately benefit from a misuse of administrative resources should be subject to a range of sanctions proportionate to the offence committed. This may include formal warnings, fixed monetary penalties, reduction in public financing, or referral for criminal prosecution.

**III. 2. 5.** Civil servants or staff of publicly-owned media who misuse administrative resources during electoral processes should be subject to sanction, including criminal and disciplinary sanctions as well as dismissal from office.

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<sup>34</sup> Code of Good Practice in Electoral Matters, II. 3.3 e.