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in co-operation with the
CENTRAL ELECTION COMMISSION OF GEORGIA

FOURTH EASTERN PARTNERSHIP FACILITY SEMINAR ON THE "USE OF ADMINISTRATIVE RESOURCES DURING ELECTORAL CAMPAIGNS"

Tbilisi, Georgia
17-18 April 2013

REPORTS OF THE SEMINAR

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I. Programme of the Conference

Wednesday 17 April 2013

9:00 – 9:30 Registration of participants

9:30 – 10:30 **Welcoming remarks**

- Mr Jandieri, First Deputy Minister of Justice
- Ms Tamar Kintsurashvili, Deputy Secretary, National Security Council of Georgia, Inter-Agency Task Force (IATF)
- Ms Tinatin Goletiani, Deputy Auditor General, State Audit office of Georgia
- Mr Philip Dimitrov, Ambassador, Head of Delegation, European Union Delegation to Georgia
- Mr Zurab Kharatishvili, Chairman of the Central Election Commission
- Ms Caterina Bolognese, Head of the Council of Europe Office in Georgia

Speeches to be delivered within 10 minutes

10:30 – 11:00 **Presentation** by Mr Alberto Guevara Castro, Electoral Court of the Federal Judiciary of Mexico
The preliminary Report on the use of administrative resources during electoral campaigns and the legislative framework on the use of administrative resources in Latin America

10:00 - 11:15 *Coffee Break*

11:15 – 11:45 Discussion session

11:45 – 12:15 **Presentation** by Mr Archil Anasashvili, Head of Legal Department, Central Election Commission of Georgia
Use of administrative resources during the election campaign

12:15 – 12:45 Discussion session

12:45 - 14:00 *Lunch (offered)*

14:00 – 14:30 **Presentation** by Mr Richard Ghévontian, Professor of constitutional law, Aix-Marseille University, France
The use of administrative resources and the monitoring of campaigns' accounts in France

14:30 - 15:00 Discussion session

15:00 – 15:30 *Coffee break*

15:30 – 16:00 **Presentation** by Ms Tatevik Ohanyan, Member of the Central Electoral Commission of Armenia
Ensuring free and fair election campaign in the Republic of Armenia

16:00 – 16:30 Discussion session

16:30 – 17:00 **Preliminary conclusions** of the first meeting day, by Mr Oliver Kask, Judge, Member of the Venice Commission of Estonia

19:30 – 22:00 **Dinner** offered by the Central Election Commission of Georgia

Thursday 18 April 2013

9:30 – 10:00 **Presentation** by Mr Rovzat Gasimov, Head of Department, Central Electoral Commission of Azerbaijan
The prevention of the misuse of administrative resources in Azerbaijan

10:00 – 10:30 Discussion session

10:30 – 10:45 *Coffee break*

10:45 – 11:15 **Presentation** by Mr Serhii Kalchenko, Partner, Moor & Krosondovych Law Firm, Kyiv, Ukraine
the issue of methodology for research of misuse of administrative resource during electoral processes and the Ukrainian context

11:15 – 11:45 Discussion session

11:45 – 12:00 **Presentation** by Mr Iurie Ciocan, President, Central Election Commission of Moldova
The prevention of the misuse of administrative resources in Moldova

12:00 – 12:30 Discussion session

12:00 - 13:30 *Lunch (offered)*

13:30 – 14:00 **Presentation** by Mr Iurie Ciocan, President, Central Election Commission of Moldova
The prevention of the misuse of administrative resources in Moldova

14:00 - 14:30 Discussion session

14:30 – 15:00 *Coffee break*

15:00 – 15:30 **Conclusions** by Mr Oliver Kask, Judge, Member of the Venice Commission, Estonia
The use of administrative resources during electoral campaigns, drawing conclusions

15:30 - 16:00 Discussion session

16:00 – 16:30 **Closing remarks**

II. Speech by Mr Zurab Kharatishvili

Once again, I would like to express my gratitude for the opportunity to participate in such an important meeting.

Abuse of administrative resources during the election campaign is being discussed today. I will try to review the achievements and challenges of Georgia with this respect.

To describe the situation precisely, I would like to mention one of the features that characterize the political system in Georgia. Despite of the officially declared independence of political unions and formal existence of more than 200 political parties, in reality Georgia has not yet experienced multiparty system of governance before October 2012. In multiparty system of governance I imply coexistence of the ruling party with the essentially influential opposition. Ruling Party in Georgia has always been dominant and always controlled all governmental mechanisms. In this circumstance the real distinction between the ruling political party and the state agencies is essential.

The last Parliamentary Elections on October 1, 2012 were no exception, which was assessed by the OSCE/ODIHR as follows: “The election campaign was competitive with active citizen participation, including in peaceful mass rallies. The campaign environment, however, was polarized and tense, characterized by the use of harsh rhetoric and some instances of violence. It often centered on the advantages of incumbency of the UNM, on the one hand, and private financial assets of the GD, on the other, rather than on concrete political platforms and programs.”

Despite the fact that 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), in practice past elections have consistently identified the abuse of administrative resources in Georgian elections as a significant problem. Blurred line between the state and political parties is due to the lack of clarity and specificity in the legislation.

As for prevention of the misuse of administrative resources, previous elections were characterized by administrating this problem by Inter-agency Commission (IAC), a body composed of senior officials of the executive mandated to consider complaints or allegations of violations by civil servants. If existence of this commission was goodwill of the government during the previous elections conducted in 2010, for this time it was established on the basis of the amendments to the Election Code. As a representative of election administration, I can declare, that it was a very effective mechanism. The point is that, in case if the facts regarding abuse of administrative resources are revealed, the election administration may carry out the certain punitive measurements (levy fines), the process considers implementing a number of legal procedures. In contrast to the election administration, high-ranking officials represented at Inter-agency Commission have means for direct influence and they are able to ease the tension instantly.

It should be also mentioned, that the IAC proved a useful forum for the review of concerns raised by stakeholders. It played a pro-active role in deterring campaign violations through issuing 12 recommendations on corrective measures. IAC recommendations, which were legally non-binding, were implemented in a timely manner by all relevant authorities. However, in some instances, recommendations raised concern over the actual scope of the IAC’s authority, which at times exceeded its mandate and challenged the principle of separation of

powers. In particular, one IAC recommendation resulted in postponing the enforcement of a court decision. (IAC is not panacea but very useful tool).

Finally, let me return to the point I mentioned in the beginning. Establishment of practice of political competition can be considered as the best prevention of abuse of administrative resources. Elections of the Parliament of Georgia, October 1, 2012 carry a high importance, as currently we're living in a completely new political situation, with ruling coalition and real opposition. I do think that we have overcome the period of dominant political groups and made a step forward to the new democracy. This factor, as well as precedents of government alteration, is decisive for reducing abuse of administrative resources in long-term perspective.

III. Speech by Mr Alberto Guevara Castro

I. Introduction

It is a great pleasure to have the opportunity to present this preliminary report on the use of administrative resources during electoral campaigns. I will also take this opportunity to share a brief overview of the legal framework on the topic in Latin America and conclude my intervention with a few suggestions that may be useful for the seminar´s deliberations, in order to improve and strengthen the report.

II. The draft report: definitions and comparative analysis

In order to provide a baseline for our discussions, I will summarize the draft report, explaining its structure, fundamental concepts and some of its main preliminary findings and recommendations.

This draft report, based on the comments of Messrs Manuel González Oropeza, Oliver Kask, and Johan Hirschfeldt, is a response from the Venice Commission to address a long standing political problem: the "constant, or frequent, practice of misuse of administrative resources [also known as public resources] during electoral campaigns," with the purpose of giving incumbents "an undue advantage compared to their challengers". By administrative resources the report understands "resources enjoyed by incumbent political forces in elections, deriving from their control over public sector staff, finances and allocations", explicitly leaving state-owned media out of the analysis.

The use of administrative resources violates the principle of equality of opportunity. When they are used to disrupt the basic level playing field of political competitions, a democratic building block is compromised. A clear legal framework against misuse of administrative resources helps to protect this democratic principle, but the state also needs to guarantee balance of powers and freedom of opinion. As the report argues, it is fundamental "how the legislative instrument is used, the executive power exercised and the Judiciary or independent relevant agencies apply the law". Moreover, there must be a clear distinction between the state and political parties, as stated in the Copenhagen Declaration.

To assess the situation among Venice Commission member states, the report aims to answer two questions: 1) what are the inherent weaknesses in legislation and in practice in the member states that lead to misuse of administrative resources during electoral campaigns? 2) How to address this problem in law and in practice?

The report draws answers from various documents from the Council of Europe, the Organization for Security Co-operation in Europe (OSCE) and Case-law of the European Court of Human Rights. The comparative analysis that stems from this review points out that at least eighteen Venice Commission member states "do not have specific provisions" on the issue. It continues to describe the legal framework and, where it is available, makes reference to a practical assessment of the situation in seventeen countries through reports. It concludes the comparative section by analyzing six more countries where there is no specific regulation on the use of administrative resources during campaigns, but there are "other rules which may be intended at dealing with this issue".

The report shows that the legal environment is heterogeneous: in some cases there is a broad reference to the topic – as in the case of Finland, where the Election Act sanctions the *breach of official duty* by members of electoral commissions – and in some others there are precise

provisions, including lists of public servants for whom certain behaviors and activities during electoral campaigns are restricted, definitions for when this restrictions apply, or specific references to the use of administrative financial, human and other material resources during campaigns. In general, it is noted in the report that “the level of details and of effective sanctions stipulated by law is variable and does not ensure the same level of safeguards”.

For most countries, this legal landscape is contrasted with practice described by election observation reports from the Parliamentary Assembly of the Council of Europe (PACE) and from the Office for Democratic Institutions and Human Rights of the OSCE. In the cases of Finland, Ireland, Spain and Portugal, these reports do not mention the misuse of administrative resources during electoral campaigns. In the rest of the analyzed countries there are different levels of concerns with regard the conditions of equality of the playing field in electoral competitions and the separation of state resources from party and candidate resources. This includes various forms of coercion of public servants to favor incumbents, unequal access to administrative resources by contestants and practices of vote buying, which shows “that the implementation of legal provisions in the field remains difficult in many countries”.

It is important to note that the draft report makes a distinction between use and misuse of administrative resources during electoral campaigns. In order to do so, it suggests that there is a legitimate use of them “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.” In this context, the need that “civil servants strive to develop and maintain high ethical standards in their work” is highlighted, in order to make a clear distinction between legitimate activities of a government from those of the ruling party during electoral periods.

From this analysis, the report provides six recommendations: political self-regulation, legislation against bribery and corruption, complementary legislative measures, correct and effective application of the legislation, strong transparency and freedom of information, and public grants to political parties. I will come back to these and other recommendations at the end of my presentation.

III. The legal framework in Latin America

In a non-exhaustive ongoing research on the legal framework that regulates the use of administrative resources in Latin America, developed for the purposes of this seminar, we have identified a broad set of constitutional and specialized legislation in the region. Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela, all of them have special provisions on the issue.

Also, in line with the draft report´s findings, constitutional principles provide grounds to the Judiciary to solve controversies over the illegal use of administrative resources. For instance, in Mexico, article 134 of the Constitution, establishes an explicit mandate for public servants to make impartial use of administrative resources, avoiding influencing equality in the competition between political parties. In the Constitution of Uruguay, article 58 clearly states that civil servants are at the service of the Nation and not of a political group, specifying that any kind of proselytism is illegal in the work place and during work hours.

There is evidence in the region that Supreme Courts and Specialized Electoral Courts have taken action with regard misuse of administrative resources. The Colombian Constitutional Court, in its decision C1153-2005, confirmed that public servants where banned from forcing

subordinates to support political campaigns, from offering promotions or other incentives to those that take part in their political campaign or cause, and from providing benefits to citizens or communities through public administration acts or services aimed at influencing voting behavior, among other prohibitions.

In the same category, the Peruvian National Electoral Jury, recently published regulations on electoral propaganda in its decision 136-2010-JNE, by which it established that as soon as there is a call for elections, state entities are forbidden to campaign in favor of political parties, candidates or coalitions. Also, national, state and municipal governmental facilities shall not be used for activities in favor of a given candidate or political organization.

Legal provisions on the use of administrative resources during campaigns establish different timeframes when drawing a line between their use and misuse. In Argentina, inaugurations of public buildings, launch or promotion of plans, projects and programs, and any governmental act in favor of candidates is forbidden seven days before the election. In Costa Rica, advertising of new public buildings is forbidden to institutions of the executive power, starting the next day of the call for elections and until the day it takes place. In Colombia, there are similar restrictions four months before the election.

Another interesting feature is that there are sanctions for misuse of administrative resources during campaigns against civil servants that violate legal provisions on the matter, but also against political parties, their representatives and/or candidates that benefit from those resources. The latter case includes Argentina, Brazil, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Paraguay and Venezuela. These sanctions range from fines to imprisonment.

This brief overview points towards a trend to adopt regulations that protect the principle of equality in electoral competitions; a trend that is most welcome and, to different extents, supports good practice in democratic constitutional states. However, there is evidence that misuse of administrative resources during electoral campaigns is still entrenched in political behavior.

To follow the methodology of the draft report described in the first part of my intervention, there are indeed electoral observation reports for Latin America that express concerns regarding possible of misuse of administrative resources during electoral campaigns and warnings to strengthen control over them. Examples include press releases by the Organization of American States of its electoral observation missions in Ecuador in 2009 and 2013 and El Salvador in 2012, which made recommendations in that sense.

Comprehensive legislation in Latin America has not eradicated the misuse of administrative resources in electoral campaigns. Even when political actors abide by the law, cases of incumbents attempting to use their influence to shape voters' preferences remains pervasive. Two cases from the region illustrate this point.

In May 2010, Luiz Inacio Lula da Silva, president of Brazil at the time, pronounced a speech at the celebration of workers day, where he mentioned that continuity of his work was necessary and that the audience knew who him preferred. Dilma Rousseff, was present at the event and the reference was obvious. The Superior Electoral Court sanctioned the Brazilian president with a fine of 5,000 Reals under the grounds of anticipated campaigning. His presence at the event and even his explicit support to Dilma Rousseff was legal, but remains questionable with regard the level playing field of the electoral competition.

During the 2012 electoral process in Mexico, shortly after a presidential debate, Marcelo Ebrard Casaubón, mayor of Mexico City appeared in radio and television spots explaining that, in case that Andres Manuel López Obrador was elected president, he would be Minister of the Interior

in his cabinet. Two political parties presented complaints to the Electoral Tribunal of the Federal Judiciary against Ebrard Casaubón and the political coalition that supported López Obrador, on the grounds of violations of the electoral law. The Electoral Tribunal ruled by majority that there was no disruption of the constitutional principle of equality and that the public servant did not act partially. However, other judges argued that since the spots had the clear goal of promoting López Obrador´s coalition, Ebrard´s appearance did violate those principles. It is true that he did not mention his position, but this fact can be deemed obvious for many of the audiences.

These behaviors by political leaders, many times at the limits of legality, are a breeding ground for persistent violations of the principle of equality. In the end, elected officials are human resources at the service of the state whose freedom of speech should be exercised with good judgment and a clear sense of responsibility. As acknowledged by the Constitutional Court of Germany in a sentence from 1977, actions by state authorities have an influential effect on the electorate's opinion and how it casts its vote. Therefore, they are forbidden, with regard to their public function, to identify themselves with political parties or candidates during elections and to use administrative resources in favor or against them, particularly through advertising aimed at influencing the voters' decision (see BverfGE 44, 125, C., I., 4, par. 49).

IV. Recommendations and guidelines

These comparative reflections point toward recommendations and guidelines for the upcoming deliberations. First, there is a need to distinguish activities inherent to the state's responsibility from those of political parties and candidates. In some countries, this has been tackled with legislation on the use of administrative resources during campaigns and it is desirable to develop laws on the matter where they do not exist and improve the existing ones.

However, more laws do not necessarily imply a better protection of constitutional principles. In order to achieve this, the development of a truly democratic culture that counteracts entrenched vicious political habits is much needed. This involves efforts from political groups, citizens and authorities.

The draft report suggests political self-regulation to reduce abuse or misuse of political power. Charts of ethics and agreements during electoral campaigns that include the use of administrative resources could help improve the conditions of political competition. Publicity and thorough dissemination of these instruments is crucial to increase their effectiveness. Although Scandinavian countries are the primal referent, efforts can be documented elsewhere and it should be systematized and discussed, towards a catalog of best practice.

Laws against corruption and bribery must be enforced through increased integrity of the police force and prosecutors, with an independent Judiciary and by thorough auditing processes to political actors.

Fine-tuning the overall legislative environment is instrumental. The way the fundamental law defines principles, institutions, separation of powers, accountability and other decisions, affects all legislation, including electoral laws. Also the way budgetary issues are regulated determines how efficient audits can be. In many countries, financial operations that impact equality of electoral competitions occur out of the books or through complex unregulated networks.

A reflection on which institutions are responsible for the administration of justice is also important. When citizens know how to protect their political rights and who is the responsible authority, accountability and certainty improves, and it is more likely that misuse of administrative resources is detected.

At this stage, the report provides a comprehensive comparative analysis of specialized electoral legislation and practice. A similar effort could be done around the systematization of successful

preventive efforts on the misuse of administrative resources during electoral campaigns. This is in line with the idea of a catalogue of good practices and the systematization of judicial interpretations on constitutional principles about equality.

To strengthen the report, ways in which domestic law and international conventions and treaties turn into effective systems for the protection of administrative resources could be explored, identifying models for coordinated action against malpractice.

Moreover, it would be beneficial to identify specific responsibilities for the use of administrative resources during campaigns by different actors – namely, supreme, specialized and ordinary courts, prosecutors, electoral commissions, political parties, candidates, elected officials and civil servants, organizations of civil society and citizens in general. In this exercise it would be important to clarify that even though a formal campaign may have a clear timeframe, the misuse of public resources in support of a political party or cause may happen early in the electoral process or between electoral cycles. Again, prevention is key.

Finally, a deeper reflection on how the principle of neutrality is verified in the action of senior public officials in different contexts would stress the need for ethical behavior of incumbent political parties and officials. Public service, even at the highest political level, should be invested with principles, particularly during campaign periods.

With these ideas in mind, I look forward to the works of this seminar and to find in your varied and thorough experience valuable inputs to the draft report.

IV. Speech by Mr Richard Ghevontian

The use of administrative resources for incumbents who stand for a new election is one of the most significant electoral law problems. As it has already been said, this is about protecting the principle of equality between the candidates in the run, in order to condition the fairness of the election. However, on the other hand, the officials have to be able to fulfil their functions up to the end of their mandate.

It is very important to share the experiences of different countries in this domain which is so important for the Democracy.

Behind the principles, it is necessary to consider the specificities of each country.

First of all I have to present quickly the French Electoral system. In France we have two series of elections: The national elections and local elections and European elections.
The national elections are: The presidential election, the election of deputies (Legislative elections) and the election of senators (Senatorial elections)
The local elections are: municipal elections, cantonal elections (for the departments) and regional elections (for the regions).
European elections are the election of the French representatives to the European Parliament.

These elections have different judges:
For the presidential election and for the parliamentary elections, the judge is the Conseil constitutionnel.
For the local elections the judge is the administrative judge (Administrative tribunal and Conseil d'Etat for municipal and cantonal elections and the Conseil d'Etat for the regional elections.
For the European elections the judge is the Conseil d'Etat.
In France we haven't central or local electoral commission. Every election is organized by the national or local administration.

The point of this short report is to present how the legislator as well as the judges deals with this question. Firstly, we will look into the legal framework(I), before turning to the control exercised in this field by the National commission for campaign accounts and political financing (II) and by the judge of election (III).

I. The legal framework

Article L.52-8 of the French Election code puts two rules: On the one hand, donations made by legal persons (with the exception of political parties and groups) are forbidden. On the other hand, these legal persons are allowed to provide the candidates with benefits in find.

Article L.52 Electoral Code:
« *Donations made by an individual duly identified to finance the campaign of one or more candidates in the same election may not exceed 4,600 euros. Legal persons, with the exception of political parties or groups cannot participate in the financing of the election campaign of a candidate, or by granting donations in any form whatsoever, or by providing goods, services or other direct or indirect benefits to prices lower than those usually practiced. Donations of more than 150 euros made to a candidate to his campaign must be paid by check, bank transfer, debit or credit card. The total amount of cash donations to the candidate may not exceed 20% of the amount of authorized expenses if the amount is equal to or greater than 15,000 euros in application of Article L.52-11. No candidate may receive, directly or indirectly,*

for any expenditure whatsoever, contributions or material support to a foreign state or a foreign legal entity. Notwithstanding the first paragraph of Article L.52-1, candidates or lists of candidates may use advertising through the media to solicit donations authorized by this article. Advertising may not contain references other than those required to enable the payment of the gift. The amounts provided in this section are updated each year by decree. They evolve as the price index for household consumption, excluding tobacco. »

State and local authorities are concerned by these rules.

The benefits in kind can take many forms:

- It can be human resources: the official who is a candidate can benefit from the help of his/her collaborators: one can write speeches, another one can organize meetings or distribute flyers or put up posters… However there is a limitation to this help: the collaborators of the candidate cannot help during the working hours; it has to be in the evening or on holydays.

- It can be material means: phone, fax, copier, use of car, various equipment, transport for travel, use of photograghs taken by the local authority. These benefits in kind must be substantial to enter into the account. Indeed, the exceptional use of fax by a mayor who is also a candidate to send few documents, for example, is not sanctioned. However, the cost must be paid by the candidate at the market price. It is only when the benefits are significant and regular that they should be incorporated into the campaign account of the candidate.

- Eventually, it can be any kind of meetings and events, during which the candidate can campaign and which are paid by the local authority. They will have to be incorporate into the campaign account.

This issue is a very complex one, since the electoral code prevents promotion of the management or the actions of the local authority which is led by a candidate, during the six months before the elections. This prohibition and the obligation to integrate into the campaign accounts the costs of these events are to be combined. In practice, this is pretty easy when the event is a traditional one, with a small communication impact. For instance: a ceremony of New-Year greetings, a celebration of a national event (so for the 14th of July, the French national Day.)

But during the period of six months before the election it is not possible to organize a naw event with a great impact as a movie Festival…

However these rules are not always so easily enforceable as we can see with the campaign of the former French President Nicolas Sarkozy in 2012. The Campaign account Commission, whose organizations and missions will be studied later, estimated that Mr Sarkozy had to incorporate in his campaign expenses the cost of public meetings he had held in the province as part of its mandate of President, even if some of them were hold before he declared his candidacy. This case is currently under review by the Constitutional council as an example.

This case is very interesting. First, in financial terms. So, it's not the most important – excluding of course for the candidate and his Party – but it's very serious. If the decision of the Commission is confirmed, the Party of Nicolas Sarkozy (U.M.P.) shall reimburse 11 million euros!

But the most important is not here.
The fundamental question is the statute of the incumbent of an electoral mandate who is candidate to a new election.

How to reconcile in a democracy, the necessity to exercise the electoral mandate until the last

second and the ability of being a candidate to be re-elected?

Here, we have two extreme solutions: or re-election is forbidden for the incumbents or the elected official must stop his mandate before the term in order to campaign.
I think that for the democracy these solutions are unsatisfactory.

II. The Control by the National commission for campaign accounts and political financing

- Presentation

The legislation aims to promote equality of candidates by establishing an election expenses limit in electoral districts which has a population of, at least, 9.000. Candidates who obtain at least 5% of the votes (3% concerning the election of representatives of the European Parliament and territorial French Polynesia) may be entitled to reimbursement by the State for all expenses incurred for the election that have been financed by their personal funds.
This repayment is subject to a ceiling equal to half the election expenses limit. The corresponding drawback is, for the candidates, the duty to respect financial transparency by entering their entire expenditure and revenue, and providing the requisite justification.

In order to contribute to more ethical politics, donations from individuals are restricted and donations from legal bodies (companies, groups and corporate entities), other than political parties are prohibited.

The Commission, which was created in 1990 consists of 9 members (3 from the Cour des comptes, 3 from the Conseil d'Etat, 3 from the Cour de Cassation).

They are named by government decree on the respective proposals of the Vice President of the Conseil d'Etat, the First President of the Cour de Cassation and the First President of the Cour des comptes.

The Commission elects one of its members President, who appoints a Vice President.

The nine members are appointed for five years and cannot be removed during that period.

The Commission is, since 2003, an Independent Administrative Authority and its decisions have legal force.

The Commission checks the campaign accounts and fixes the maximum amount of the reimbursement to be paid by the State. If an essential formality is not satisfied, the campaign account may be rejected. In such a case, the candidate can't claim any refund and runs a significant risk of being barred from standing for election by judges of election, to whom electoral matters must be referred by the Commission. This Commission also has the obligation to publish a brief summary of the campaign accounts, and to make a report on the outcome of its control.

The campaign account must identify all the receipts and trace its origin. All funds paid shall be deposited into a specific bank account, opened for this purpose by a proxy (natural person or campaign finance organization).

At the time when the campaign account is deposited, all receipts must have been actually received and all expenses must have been paid.

No deficit shall be incurred.

All debt-write off by a supplier or a provider will cause the account to be rejected (it will be considered as a prohibited grant from a legal body).

All the supporting documents relating to the expenditure and revenue have to be provided in support of the account.

Campaign expenditure are limited, depending on the kind of election and, if need be, of the population of the electoral district.

The global expenditure for elections, in an authorized funding period, must show up in the campaign account, except for expenses arising from the official campaign.

The expenses arising from the official campaign are the cost of impression of ballots or of profession of faith…

These expenses must go through the single fiscal agent's bank account, except for in-kind funding and expenditure actually and directly paid by the party.

All operations of the campaign account must be performed by a proxy or by an association of funding.

- Powers of the Commission

After examining campaign accounts, the Commission deliberates and reaches a collegial decision.

It may:

- approve the campaign account
- approve the accounts after amendment, in particular in cases where the candidate's spending includes items that are not of an electoral nature;
  It is the most frequent situation.
- reject accounts in the case of failure to comply with a substantive formality required by law (failure to have accounts audited, donations received from a corporation or other juridical person, debit balance on account, spending limit exceeded, etc.).

The Commission can also take official note of the candidate's failure to lodge an account or to lodge it within the required time.

The Commission works with the assistance of external experts who review campaign accounts.

III. The control by the judge of election

Rejection of accounts, failure to lodge accounts or failure to lodge them by the deadline deprives candidates of any entitlement they may have had to reimbursement and entails, except in the case of a presidential election, the automatic submission of the case to the court competent for the election, which may be the Conseil Constitutionnel, the Conseil d'Etat or the Administrative Tribunal.

Just a precision: For the presidential election the rule is different. All claims against the result of presidential election must be examined before the proclamation of the elected candidate.

After this proclamation, it is impossible to contest the result. It is the reason why the decision of the Commission is not transmitted to the Conseil constitutionnel as it is the case for the other elections.

But - and it is the case for the « Nicolas Sarkozy affair »- the candidate which accounts are rejected can contest the decision of the Commission before the Conseil constitutionnel.
The election judge may first consider that the Commission was wrong to dismiss the campaign account.

In this case, no action is decided. But it can also confirm the decision of the Commission. In this case, it may declare ineligible the candidate whose account was rejected. This decision is not automatic.
The automaticity of a criminal sanction even additional is not conform with the French Constitution and the European Convention of human Rights.

The judge may consider that there was no fraud and will not declare the ineligibility.
If the disqualification of the elected candidate is decided, the election will be cancelled and there will be a new election.

If the election judge affirmed the dismissal of the campaign account of a candidate, it will not benefit of reimbursement of expenditure by the State.

In conclusion: It appears that the problem of the use of administrative resources during electoral campaigns is full treated by the French law. The dispositions of the electoral Code, the jurisprudence, the mechanism of control by the National Commission and by the judge, the sanctions seem to be excellent instruments against the abuse.

But, in practice, it’s very difficult to do one clear distinction between the use of administrative resources for the campaign of a candidate and the use of these resources by the incumbents of an electoral mandate.

V. Speech by Ms Tatevik Ohanyan

In the social and political life of any country elections are considered to be the most important event. Holding elections in compliance with international standards comes to speak about the stability of the country, its domestic political situation, its position on the world scene and - what is most significant - it indicates the degree of state democracy.

In newly independent states which still don't have long-recognized democratic traditions the role of elections is inestimable while developing civil society and fostering civic engagement. Accordingly, the conduct of elections should be aimed at applying one major principle, that is to be of service to voters, in other words- to create necessary conditions for securing voters' active participation in the voting process and ensuring free expression of their will.

Within a year the Republic of Armenia has had 3 events of national significance, i.e. regular elections to the National Assembly and elections to the local self-government bodies both held in 2012, as well as Presidential elections of 2013.

Bearing in mind the responsibility and the level of accountability towards the public in terms of holding those elections in line with international standards, Armenian authorities and the Central Electoral Commission in particular took up a wide scale of necessary preparatory activities which are divided into three main groups:

1. Trainings for poll workers; within a year more than 40.000 PEC members underwent trainings and refresher courses which overwhelmingly conduced to the engagement of competent, knowledgeable and well-prepared poll workers in the organization of the voting process thus resulting in more effective election administration.

2. Technical modernization of election commissions, implementation of new voting technologies (the implementation of e-voting system providing diplomatic servants with the opportunity to vote via internet), the streamlined operation of "Elections" automated system and modernization of the internal computer network of the Central Electoral Commission. With the help of this efficient system linking Central and Territorial Electoral Commissions, voting results are received and publicized expeditiously by precincts in "real-time" regime on election day. In fact, the Central Electoral Commission, mass media representatives and the public get the information simultaneously.

In the efforts to ensure publicity and transparency of elections and, as a result, raising public awareness and establishing public confidence towards the whole electoral process, undoubtedly, access to information plays a pivotal role. Thus, during the last parliamentary and presidential elections the Central Electoral Commission with the technical support of the OSCE Yerevan Office and IFES/Armenia initiated on-line broadcasting of its sessions making the electoral process more transparent and open to public knowledge and scrutiny, further maintaining trust towards elections. A huge number of educational materials, guidebooks have been published for commission members, observers, proxies. The Central Electoral Commission launched voter education spots on television aimed at having engaged and informed citizens with high level of awareness of electoral issues. All these endeavours were also acknowledged by the OSCE/ODIHR election observation mission.

But the confidence towards the electoral process is *inter alia* achieved when general respect for fundamental human rights, particularly the right of citizens to freely take part in the governing of their country is secured. This right is guaranteed by the Universal Declaration of Human Rights, the OSCE 1990 Copenhagen Document and a number of other internationally recognized

documents. In this light let me refer to the OSCE/ODIHR election observation mission report of 2013 presidential elections of Armenia, ***"The election campaign was characterized by general respect for fundamental freedoms and contestants were able to campaign without hindrance."*** It goes without saying that the legal framework in its turn should be brought to conformity with European electoral heritage to ensure the aforementioned respect for fundamental freedoms.

3. Here we come to the third group of reforms that were made in Armenia, i.e. the election legislation amendments based on the OSCE/ODIHR and Venice Commission recommendations.

Let me touch upon election legislation novelties pertaining particularly to the use of administrative recourses during election campaign; this issue was substantially addressed by Armenian authorities while amending the electoral law. Specifically, the ODIHR EOM previously noted that in order to reduce the potential emergence of unequal campaign conditions, legislation should clarify under what conditions State and local self-government officials may legitimately be involved in a candidate's campaign. Toward this end, in the main principles of election campaign it was stipulated that state government bodies and local self-government bodies, as well as state and municipal servants, and the pedagogical staff of educational institutions during the performance of their duties, members of the Constitutional Court, judges, prosecutors, officers serving in the Police, the National Security Service, and penitentiary institutions, military servicemen, as well as members of electoral commissions are prohibited from conducting campaign activities and disseminating any campaign materials.

A wide range of restrictions was enacted for candidates holding political, discretionary, or civil positions, as well as candidates that are state or municipal servants. Accordingly, those candidates who hold political, discretionary, or civil positions, as well as candidates that are state or municipal servants shall conduct the election campaigns subject *to the following restrictions:* it is prohibited to make direct or indirect statement urging to vote for or against a candidate or political party during one's performance of official duties; to use for election campaign purposes areas, transportation and communication means, or material and human resources provided for the performance of official responsibilities.
The coverage of the activities of these candidates via mass media, except for cases prescribed by the Constitution, for official visits and receptions, as well as activities carried out by them during natural disasters is also prohibited. Where other activities of candidates who fall under this category are covered, then the mass media performing terrestrial broadcasting shall consider it when covering the activities of other candidates in order to comply with the non-discrimination principle of equal coverage.

Another provision aimed at prohibiting the use of administrative recourses is the ban of locating election campaign offices of candidates in buildings occupied by state government bodies and local self-government bodies (except for cases where election campaign offices occupy an area not belonging to such bodies), or in buildings in which electoral commissions are functioning.

The new Electoral Code of Armenia more specifically regulates the procedure of using campaign posters and print campaign materials during the campaign period. Thus, it is prohibited to post campaign posters on buildings occupied by state government bodies or local self-government bodies, on or inside public catering or trading facilities and on or inside public transportation means, irrespective of the form of ownership. This amendment is based on the OSCE/ODIHR another recommendation to prohibit the displaying of campaign materials on any public property, except in specially designated areas.

The new Electoral Code further stipulates that community leaders should designate spaces for posting campaign posters which are provided free of charge to all the candidates by safeguarding equal conditions.

During the election campaign period free campaigning conditions are also safeguarded by state government and local self-government bodies by means of providing free halls and other premises for meetings with voters, and other election-related events. Moreover, the list of all those halls and premises is posted on the website of the Central Electoral Commission for candidates' information.

For the purpose of clear separation between the State and political parties the new Electoral Code obliges the candidates for the President of the Republic, with the exception of those holding political positions, to be exempted from the performance of their work duties, from the time of their registration as candidates till the summarization of the election results, i.e. to take a formal leave of absence. Candidates for the President of the Republic of Armenia do not have the right to use their official position for gaining an advantage during the campaign period. Same restrictions are in place when it comes to candidates for a deputy to the National Assembly, i.e. employees of state government and local self-government bodies are temporarily exempted from the performance of their work duties from the time of being registered as a candidate for a National Assembly deputy until the end of the election campaign, with the exception of persons holding political positions. For those holding political positions the restrictions mentioned above are applied.

The activities of all those advertising companies that own or manage outdoor advertising billboards is also specifically regulated; these companies should ensure equal, non-discriminatory and impartial conditions for candidates making those billboards for placing campaign posters available to all candidates on equal terms. Companies submit to the Central Electoral Commission the information on the number, surface area, location and the rental fees for billboards provided during the election campaign period. The Central Electoral Commission then posts such information on its website for informing candidates, who, in their turn, may apply to the Central Electoral Commission for the purpose of placing campaign posters on particular billboards they want to and get the requested area.

While talking about the misuse of administrative resources the freedom of media should be underlined as an overarching subject. Lots of amendments to the electoral code have been made in terms of equal treatment of the candidates by mass media representatives. Public and private broadcast media are required by law to present impartial and unbiased information about contestants in their news programs and to ensure equal and fair conditions. The law requires that during the campaign period the National Commission for Television and the Radio carries out a monitoring of TVs and radios on the provision of equal and non-discriminatory conditions for all candidates and periodically publishes the results of its monitoring. 20 days prior to the elections it publishes the methodology of this monitoring. Let me once again go back to the ODIHR report on February Presidential elections, ***"Contestants were able to campaign freely. Media fulfilled their legal obligation to provide balanced coverage, and all contestants made use of their free airtime. OSCE/ODIHR EOM interlocutors welcomed the existence of a freer media environment and the variety of information available, especially on the internet."***

As you can clearly see, the electoral legislation of Armenia and the public policy as well provide a comprehensive and sound basis for clear separation of state and political parties during the campaign period thus conducing to the conduct of political campaign in a fair and free atmosphere where candidates have all the opportunities to freely present their views and platforms and for the voters to express their will without any hindrance. The vivid proof of the aforementioned is the assessment of the presidential elections of February 18, 2013 by the OSCE/ODIHR EOM, "… elections were generally well-administered and were characterized by a respect for fundamental freedoms. Contestants were able to campaign freely. Media fulfilled their legal obligation to provide balanced coverage… The electoral legal framework is comprehensive and conducive overall to the conduct of democratic elections… Election

commissions administered the election in a professional, transparent manner… Various measures undertaken by the authorities contributed to the improved quality of the voter lists… The election campaign was characterized by general respect for fundamental freedoms and contestants were able to campaign without hindrance..."

VI. Speech by Mr Rovzat Gasimov

First of all, I would like to thank the Venice Commission of the Council of Europe and the Central Election Commission of Georgia for organizing such an event which is important for exchange of views for electoral bodies and sharing experience that enables participants to improve their activities based on “lessons learnt” in different countries.

As many in this room share the same “electoral” experience during the Soviet Union, main challenge for electoral systems is different electoral actors’ approach to the elections, improvement of different procedures in the process. One of the important issues in elections is to provide equal conditions for candidates to have “fair race”. It is the main task of electoral management bodies to manage it. Above all, for managing this issue, the electoral body should have supporting legal background and relevant tools.

The Constitution of the Republic of Azerbaijan includes Article 56 that considers the right of citizens to elect and be elected to state bodies. Implementation of this right correctly is the main duty for state authorities.

To conduct free and fair elections is up to the range of certain factors. We can mention long list of those factors. But misuse of administrative resources is among serious issues.

Azerbaijan has demonstrated strong political will by taking relevant steps for conducting free and fair elections. These steps also include prevention of misuse of administrative resources and illegal interference in electoral process.

The 3 Presidential Orders were given in last 7 years, are among the considerable and important measures in this direction. These Orders are specially putting emphasis on prevention of the misuse of administrative resources and illegal interference, as well as education of electoral actors as a remedy to avoid this kind of cases to happen in elections.

The Order of the President of the Republic of Azerbaijan in 2005 “On improvement of election practices in the Republic of Azerbaijan” once more implies that the heads of central and local executive authorities, other state officials who illegally interfere in election process shall be subject to liability according to the legislation of the Republic of Azerbaijan.

According to the following Presidential Order devoted to urgent activities for the preparation and conduct of elections, relevant state bodies are commissioned with facilitating all candidates to use mass media equally and ensuring equal campaign resources for them pursuant to the Election Code.

It should be noted that at the result of law reforms commenced since the beginning of independence and successfully carried on up today, a lot of normative legal acts covering national and international values, were adopted. The legislation also considers the ways of settling the abovementioned problem of misuse administrative resources in elections within the legal framework. Range of requirements of the Election Code adopted in 2003, regulates these relationships.

The Election Code unambiguously considers that candidates shall join elections on equal conditions and misuse of state and municipal resources in favour of any candidate shall be strictly prevented. For example, Article 55 can be mentioned. According to the Article 55.2 of the Election Code, civil and municipal employees shall be prohibited to take actions in favour of or against any candidate, as well as preventing free or preferential use of buildings,

means of communication, information and transportation, which are at the disposal of state or municipal bodies, in favour of any candidate. Such cases are accepted as a misuse of the official position to gain an advantage.

Failure to fulfil these requirements is considered violation of citizens' electoral rights and imposes liability. Pursuant to the Article 115 of the Election Code, the persons who misuse their powers and administrative resources in order to influence the results of elections shall be accordingly subject to criminal, civil or administrative liability. The Criminal Code of the Republic of Azerbaijan also implies that the incumbents who violate electoral rights by misusing their official powers shall be relevantly punished by penalty, deprivation of the right to take official position for some period or imprisonment.

The Article 308 of the Criminal Code specially covers the actions committed in order to influence the results of elections and implies imprisonment from 3 up to 8 years. The Code of Administrative Offences of the Republic of Azerbaijan also considers penalties for the misuse of official position.

Above-mentioned requirements are legal tools for prevention of misuse of administrative resources for improper purposes in elections.

As the Central Election Commission, we are closely cooperating with relevant bodies to prevent such cases to happen. But as the election is the process involving millions of participants, sometimes this kind of instances happen. Of course, it can be intentionally committed or unintentionally. But we are looking at the result and taking decision based on not our personal judgment but on legal requirements and proven facts filed. There were some cases in our experience that different electoral actors were charged for improper conduct in elections, including misuse of administrative resources. For example, in last 10 years of electoral history of Azerbaijan, Chairpersons of Constituency Election Commissions were imprisoned for break of legal requirements of the legislation, over 10 Chairpersons of Precinct Election Commissions were administratively punished because of irregularities committed, and 3 heads of local executive authorities were dismissed because of illegal interference and use of administrative resources in the electoral process. The Central Election Commission cancelled the results of voting in different polling stations due to complaints on the misuse of administrative resources filed by different electoral actors. All these facts were legal remedies for illegal cases committed in election process.

But sometimes, exaggeration of cases happened, can be judged by different electoral actors such as political parties, observers, etc. and can become subject of discussion and seem disputable. But we try to base our decisions on proven grounds.

But as the election management body, we are implementing a range of various educational projects focused on local commissioners, observers, local authorities and other electoral actors for preventing these kinds of cases to take place. We can frankly admit that the results of the awareness raising projects involving different channels, are apparent and we already see professionalism demonstrated by participants involved in elections during last couple of years. But still there is room to improve.

But there is one delicate issue that I would like to render into your attention as our partners from different countries. Election management body, i.e. Central Election Commissions in our countries and the relevant state and local authorities, which are responsible for, must organize the electoral process jointly. In some cases, it is misinterpreted the administrative resources to be used for the organization of elections. For example, during updating of voter lists, we are working with local authorities and without their assistance, as it would be difficult for local commissions to achieve accurate voter lists. In this and other election related processes, election commissions are using administrative resources according to the

requirement of the Election Code. Other instance, during pre-election campaigning, the local authorities are allocating open and closed premises, those are classified as administrative resources, for meeting of candidates with their voters. Candidates use these locations free of charge, just by informing intended time of their meeting to the Constituency Election Commission for the purpose of not to get the events overlapped. We can mention many instances that election commissions should cooperate with local authorities.

We are to educate electoral actors to distinguish legal and illegal use of administrative resources. To that end, we are preparing different guides with full information on roles and responsibilities and distribute them to relevant participants. By that way, we can avoid incorrect criticism for the use of administrative resources for elections, especially by observers.

As the Central Election Commission of Azerbaijan, we are continuing our efforts with relevant bodies to prevent illegal use of administrative resources and to provide free and fair conduct of elections in Azerbaijan.

VII. Speech by Mr Serhii Kalchenko

Проблема противоправного использования административного ресурса в период избирательной кампании, безусловно, является ***чрезвычайно*** важной для исследования и обсуждения, поскольку при определенных и крайне негативных обстоятельствах ставится под ***угрозу*** сама суть института свободных и демократических выборов. Как следствие – может быть подвергнута ***сомнению*** также легитимность представительского органа или должностного лица, получившего представительский мандат на определенный срок, а также решений, принимаемых таким органом или должностным лицом. Поэтому считаю, что инициатива Венецианской комиссии подготовить соответствующий доклад по этой проблеме является актуальной и своевременной.

По моему мнению, заслуживает самой высокой оценки проект предварительного доклада, положения которого обсуждаются в рамках сегодняшнего семинара. Пользуясь возможностью, хочу отметить ***комплексный*** подход авторов этого документа к исследованию проблемы, предполагающий не только анализ соответствующих положений законодательства конкретных государств, но и учет таких факторов, как ***политическая воля***, устоявшиеся ***традиции***, правовая ***культура***. Все эти факторы также являются показательными ***индикаторами*** того, имеет ли место неправомерное использование административного ресурса во время избирательного процесса, каков масштаб подобного использования, каково влияние этого ресурса на результат выборов.

Представленную позицию хочу также подкрепить мнением одного из депутатов украинского парламента, озвученным им при обсуждении проекта закона о выборах во время «круглого стола», проведенного при участии Венецианской комиссии в Киеве в 2011 году. Итак, депутат отметил, что в истории Украины выборы 2006 были признаны международным сообществом такими, что в ***наибольшей*** степени соответствовали стандартам свободных и демократических выборов. Почему именно эти выборы, сказал тогда выступающий, только ли закон был настолько совершенен? Действительно, действующий на тот момент закон о выборах обеспечивал достаточно качественную регламентацию избирательных процедур. Однако, сделал вывод депутат, в прошлом, кстати – председатель областной государственной администрации, ***ключевым*** фактором проведения свободных выборов стало ***невмешательство*** государственных органов в те процессы, которые находятся вне сферы их компетенции, и четкое ***выполнение*** этими органами именно тех функций, которые установлены законом. Поэтому полностью разделяю позицию авторов доклада, которая представлена в пункте 1 документа, что именно «*политическая воля*» (*political will*) является одной из ***первопричин*** улучшения в целом «избирательной среды», под которой следует рассматривать само законодательство и существующую практику. При отсутствии такой воли усилия, направленные лишь на совершенствование законодательных норм, не будут эффективными сами по себе. Это обстоятельство также четко отмечено в проекте доклада.

В то же время, по моему мнению, под термином «практика» (*practice*) следует понимать не только «практику применения законодательства о выборах», а также «практику хода избирательного процесса» в целом, что предполагает неуклонное исполнение требований актов законодательства в иных, «смежных» сферах, и практику надлежащего «поведения» всех, кто наделен практическими возможностями использовать различные средства административного ресурса. Поэтому, полностью согласен с позицией, представленной в пункте 16 документа, о необходимости обеспечить ***основы*** политической и правовой культуры «*справедливой игры*» (*fair play*).

Особенность тематики противоправного использования административного ресурса во время выборов состоит в том, что плоскости ее исследования и обсуждения могут несколько ***модифицироваться*** в зависимости от конкретной ***аудитории***, которая привлекается к обсуждению, а именно: эксперты-исследователи неправительственных организаций, представители политических сил или же представители органов публичной власти. Безусловно, вынесение этой проблемы на обсуждение членов центральных органов администрирования выборов тоже имеет свою специфику, поскольку в широком смысле административный ресурс традиционно рассматривается как использование соответствующих возможностей «действующей власти». В то же время центральные избирательные комиссии государств также являются органами государственной власти, хотя в формировании состава их членов в зависимости от законодательства конкретной страны могут принимать участие как политические силы, которые находятся у власти, так и оппозиция. В любом случае мне представляется, что обсуждение этой проблемы на таких мероприятиях является гораздо более ***эффективным*** средством практического нивелирования влияния административного ресурса на выборы, нежели, скажем, отстаивание государствами своих позиций вследствие нарушения прав граждан и обращения их в Европейский суд по правам человека. Тем более, что общий массив сформировавшейся практики Европейского суда уже содержит решения о нарушениях, в частности, статьи 3 Первого протокола к Европейской конвенции по правам человека, установленных Судом в делах «*Ковач против Украины*», «*Мельниченко против Украины*», «*Намат Алиев против Азербайджана*», «*Керимова против Азербайджана*», «*Саруханян против Армении*» и других.

Учитывая то обстоятельство, что целью проведения сегодняшнего семинара является обсуждение проекта доклада, хочу поделиться некоторыми собственными идеями относительно ***методологии***, которые, возможно, заинтересуют авторов документа.

В частности в ***основу*** методологии исследования данной проблемы могут быть положены конкретные ***права*** граждан, которые нарушаются вследствие противоправного использования административного ресурса. Например, те права, которые ***гарантированы*** и попадают под ***защиту*** Европейской конвенции по правам человека, а именно:

✓ Статьи 3 Первого протокола – право на свободные выборы, которое истолковывается Европейским судом как право избирать, баллотироваться на выборах в законодательный орган, а случае избрания – исполнять полномочия депутата парламента в течение установленного срока;
✓ Статьи 10 – право на свободу выражения мнения, которое главным образом реализуется в процессе проведения предвыборной агитации, обсуждения избирателями предвыборных программ партий и кандидатов. Подчеркну, что актуальность учета именно статьи 10 Конвенции во время избирательного процесса возрастает с учетом решения Европейского суда от 31 октября 2012 года по делу «*Шаповалов против Украины*» (*Case of Shapovalov v. Ukraine*), которое касается нарушения права журналиста освещать события, относящиеся к процессу выборов. В решении Европейский суд пришел к выводу о том, что право доступа к соответствующим документам, которое охватывается правом на свободу выражения взглядов, является «правом цивильного (гражданского) характера» и, соответственно, применяются механизмы части 1 статьи 6 Конвенции о праве на справедливый суд;
✓ Статьи 11 – право на свободу собраний и объединений, которое предполагает, в том числе, свободу деятельности политических партий.

Применение указанной методологии исследования проблемы, когда в ***первооснове*** рассматриваются именно нарушенные ***права***, предоставляет возможность обратить внимание на еще один ***массив*** возможных сфер применения административного ресурса, который также охватывается общей дефиницией, предложенной авторами

проекта доклада в пункте 8 документа. Общеизвестно, что одним из способов влияния на результат выборов и средств получения преимущества над конкурентом может быть ***искусственное*** создание ***барьера*** для участия в выборах определенного кандидата или политической силы, т.е. – создание ***препятствия*** в осуществлении права баллотироваться. Например, в Отчете миссии наблюдателей Европейского Союза от 17 ноября 2010 года о результатах наблюдения за местными выборами в Украине 31 октября 2010 года[1] приведен пример того, как в двух регионах были зарегистрированы списки кандидатов от, ***якобы***, местных организаций партии «Батькивщина» (*Party of Motherland*), руководимой в то время бывшим Премьер-Министром Украины Юлией Тимошенко (*Yulia Tymoshenko*), но которые в действительности ***не имели*** отношения к этой партии. В реальности это происходило следующим образом.

На определенном этапе избирательного процесса местные организации политической партии «Батькивщина» подавали в соответствующие территориальные избирательные комиссии в Киевской и Львовской областях документы о регистрации кандидатов по спискам и в мажоритарных округах. Однако сразу выяснялось, что в комиссии ***уже*** поступили аналогичные документы от, ***якобы***, этих же партийных организаций, но подписанные совершенно другими людьми, а ***не руководителями*** местных организаций. При этом кандидатами в депутаты выдвигались совершенно ***иные*** лица, чем те, кто выдвигался на партийных собраниях. Причем подобные местные партийные организации – «двойники» («клоны») настоящих, представляли в избирательные комиссии все необходимые для регистрации кандидатов документы, в том числе свидетельства о регистрации, выданные органами Министерства юстиции, другие документы, заверенные печатями, разрешение на изготовление которых выдавались органами Министерства внутренних дел. Как следствие – возникали многочисленные споры, разрешаемые в административных судах. Причем суды выясняли: ***кто*** же является ***реальными*** представителями партии «Батькивщина» и руководителями ее местных организаций: лица, избранные на собраниях самими членами этих организаций, чьи полномочия подтверждались руководством партии, или же лица, внесенные в соответствующий реестр Министерства юстиции, но полномочия которых отрицались самой партией? В итоге, как отмечено в Отчете миссии наблюдателей Европейского Союза, кандидатами от этой партии были зарегистрированы лица, которые ***не имели*** формального отношения к ней.

Очевидным является тот факт, что ***без вовлечения*** соответствующих возможностей и полномочий государственных органов и ***без*** их ***вмешательства*** во внутрипартийные дела реализация подобного сценария событий ***не могла*** быть осуществлена. В свою очередь представляется, что подобное вмешательство органов власти во внутрипартийные отношения как раз не согласуется с устоявшимися требованиями ***размежевания*** государственных и партийных сфер деятельности, на что справедливо указывают авторы проекта доклада в пункте 9 документа. Следует также отметить, что определенные проблемы с регистрацией кандидатов в депутаты отмечены также в Итоговом отчете миссии наблюдения ОБСЕ/БДИПЛ за проведением последних парламентских выборов в Украине 28 октября 2012 года[2].

Приведенный выше пример также демонстрирует необходимость исследования проблемы использования административного ресурса на выборах ***не только*** в связи с проведением предвыборной ***агитации***. По моему убеждению, эта проблема должна быть рассмотрена в более ***широком*** аспекте, в том числе через призму ***других*** важных этапов избирательного процесса, а именно: регистрации кандидатов или избирательных списков, отмены регистрации, территориальной организации выборов, формирования избирательных комиссий и т.д. В период выполнения каждой из указанных

[1] http://eeas.europa.eu/delegations/ukraine/documents/press_releases/report_ep_en.pdf.
[2] http://www.osce.org/odihr/98578.

избирательных процедур возможно принятие решений или осуществление действий, нарушающих принцип «*равного отношения*» (*equal treatment*) ко всем участникам выборов, что существенно понизит уровень состязательности процесса.

Кроме того, по моему мнению, целесообразным является также обсуждение и, возможно, уточнение ***названия*** доклада. Дело в том, что используемое в заглавии словосочетание *electoral campaign*, как мне представляется, может быть истолковано как в широком, так и в узком смысле, соответственно: «*избирательная кампания*» или «*предвыборная агитация*» (например, ***такой*** перевод соответствующих положений законодательства Казахстана и Македонии отражен в пунктах 36 и 40 доклада). И хотя основная часть изложенного материала, ***по сути***, касается нарушений, относящихся именно к ***агитации***, которая является, безусловно, одним из важнейших этапов всего избирательного процесса, данную проблему следует обсуждать в ее ***широком*** смысле с учетом ***всех*** без исключения этапов избирательной кампании. Тем более, что авторы доклада также используют в документе термин «*избирательный процесс*» (*electoral process*) (например, в пунктах 13, 63, 81).

Обобщая последний тезис, укажу на то, что в обсуждаемом сейчас нами проекте доклада отмечены ***различные*** по природе нарушения, ***каждое*** из которых может быть охарактеризовано как противоправное использование административного ресурса. В связи с этим представляется достаточно эффективным провести анализ ***отдельных*** типов проявления административного ресурса. В частности некоторые исследователи предлагают следующую ***типологизацию*** соответствующих нарушений, а именно:

- ✓ ***законодательные*** ресурсы;
- ✓ ***финансовые*** ресурсы;
- ✓ ***институционные*** ресурсы;
- ✓ ресурсы государственных ***средств массовой информации*** (СМИ);
- ✓ ***регуляторные*** ресурсы;

и, наконец, ***наиболее*** социально опасные

- ✓ ***силовые*** ресурсы.

Считается, что использование ***законодательного*** ресурса может состоять в принятии парламентом, где большинство мандатов принадлежит правящей политической силе, законов исключительно в интересах ***большинства***. Например, это могут быть законы, исключающие баллотирование независимых кандидатов, которые не выдвигаются политическими партиями, т.е. исключающие самовыдвижение; предполагающие такой тип избирательной системы, который будет в большей степени отвечать интересам действующей власти; внедряющие такие правила формирования составов избирательных комиссий, которые на практике позволят контролировать процесс администрирования выборов лишь одной политической силе и т.д. Манипулирование ***финансовыми*** ресурсами предполагает расходование средств государственного и/или местных бюджетов в интересах только одной политической силы посредством ее финансирования через «третьих лиц», оплаты проведения предвыборной агитации или даже «материального стимулирования» воли избирателей. Кроме того, бюджетные средства могут расходоваться на реализацию положений предвыборной программы действующей власти. ***Институционными*** средствами эксперты традиционно рассматривают ***материальные*** (нефинансовые) и ***человеческие*** ресурсы властных органов. К ним относятся помещения, оборудование, транспорт, средства связи, техника, другие объекты инфраструктуры, используемые действующей властью в период избирательного процесса в интересах определенной политической силы. Служащие органов власти могут привлекаться к агитационной деятельности или прямо быть задействованы в работе избирательного штаба правящей партии. При этом ключевым фактором классифицирования практики привлечения людей как противоправного использования административного ресурса эксперты считают участие служащих в

подобной деятельности именно в ***рабочее***, а не в свободное от работы, время. ***СМИ***, которыми владеет или которые контролирует государство, могут активно использоваться в интересах правящей власти. Использование ***регуляторных*** ресурсов может проявляться в «избирательном», с признаками ***предубеждения*** правоприменении в интересах определенной политической силы, в результате чего, например, отменяется регистрация кандидата-представителя иной силы решением подконтрольной избирательной комиссии, налоговыми органами осуществляется внеплановая проверка деятельности оппозиционной партии и т.д. И, наконец, ***силовые*** ресурсы, т.е. использование правоохранительных органов, таможни, других силовых структур с целью запугивания, создания разного рода сложностей и препятствий или даже устранения оппонентов. Представляется, что последний тип нарушений несет в себе ***наибольшую*** степень социальной ***угрозы*** устоям демократического общества, в том числе вследствие значительно ***меньших*** практических возможностей выявления и фиксации таких нарушений, оценки их масштаба, а также с точки зрения негативного влияния на фундаментальные, естественные права граждан.

Таким образом, по моему мнению, проведения анализа проблемы использования административного ресурса з позиции различных ***типов*** нарушений будет способствовать созданию более четкой ***структуры*** результатов исследования.

Традиционно эксперты рассматривают ***пять*** основных ***методов*** мониторинга противоправного использования административного ресурса во время выборов, а именно:

- ✓ мониторинг СМИ;
- ✓ непосредственное наблюдение;
- ✓ интервьюирование;
- ✓ бюджетный мониторинг;
- ✓ ситуативный анализ (*case studies*).

Следует отметить, что в предложенном авторами проекте доклада использованы, прежде всего, данные соответствующих миссий ***наблюдения*** за выборами. В то же время, в этих материалах приводятся примеры нарушений, выявленные посредством мониторинга СМИ и интервьюирования. На мой взгляд, именно системное непосредственное ***наблюдение*** за выборами, проведенное в комплексе с другими методами мониторинга, позволяет наиболее полно выявить всю «картину» нарушений. При этом, в частности, опыт украинских выборов позволяет сделать вывод о том, что во время ***местных*** (муниципальных) выборов суммарный объем использования административного ресурса в рамках всей страны с учетом этого явления по отдельным регионам может даже ***превышать*** размер нарушений во время ***общенациональных*** выборов. Особенно это может проявиться в государствах с большими территориями и значительным количеством населения. ***Причины*** этого – различны, и все они лежат в ***неюридической*** плоскости, а именно: ***специфика*** интересов региональных и местных правящих элит, не всегда и не полностью совпадающих с интересами элит на «центральном» уровне; значительно меньшее внимание международных миссий наблюдения именно за местными выборами и т.п. Обращаясь к такому методу мониторинга использования административного ресурса, как ***ситуативный*** анализ, считаю необходимым поддержать те идеи авторов проекта доклада, которые сформулированы в пунктах 64, 65 доклада и предполагают проведения анализа практики применения средств юридической ***ответственности*** за данные правонарушения, а также исследование соответствующей ***судебной*** практики. Проблема ненадлежащего или избирательного правоприменения, в том числе средств юридической ответственности, совершено справедливо отмечена в пункте 78 обсуждаемого нами доклада.

В заключение укажу еще на один аспект, который также может стать предметом дальнейшего обсуждения участниками нашего семинара – членами центральных органов администрирования выборов в своих странах. Полезно будет узнать, предполагает ли национальное законодательство какие-либо ***полномочия*** центральных избирательных комиссий, а, возможно, и комиссий низшего уровня в сфере противодействия проявлениям противоправного использования административного ресурса и наработана ли практика реализации таких полномочий в случае их наличия? С моей точки зрения, ***наиболее*** эффективно такая деятельность может осуществляться путем рассмотрения избирательными комиссиями соответствующих ***жалоб***.

В частности законодательство Украины о выборах традиционно устанавливает четкий и однозначный перечень лиц, органов, учреждений, организаций, ***чьи*** решения, действия или бездействие могут быть обжалованы путем обращения с жалобой в Центральную избирательную комиссию (далее - ЦИК). Такие лица, органы именуются ***субъектами обжалования***. В свою очередь подача жалобы на нарушение со стороны иного субъекта, прямо не указанного в законе, является основанием для оставления комиссией жалобы без рассмотрения. Действующее сейчас избирательное законодательство Украины ***не предполагает*** полномочий ЦИК относительно рассмотрения жалоб на решения, действия или бездействие органов власти или их должностных лиц, а также СМИ. Однако так было не всегда.

Например, Закон «О выборах Президента Украины» в редакции от 25 марта 2004 года, на основании которого проводились президентские выборы 2004 года, предусматривал возможность обращения в ЦИК с жалобами на нарушения установленных Законом ограничений в ведении предвыборной агитации общегосударственными СМИ. Причем жалобы такой категории предметности рассматривались ЦИК. Во время же кампании последних президентских выборов 2009-2010 годов действующий Закон более не наделял ЦИК соответствующими полномочиями, хотя сохраняется возможность обжалования в ЦИК нарушений со стороны кандидатов на пост Президента Украины. Следует отметить, что ЦИК рассматривала такие жалобы на действия, нарушающие порядок ведения агитации, со стороны кандидатов, которые на тот момент являлись, например, действующим Президентом и Премьер-министром страны.

Кроме того, Законом «О выборах народных депутатов Украины» в редакции от 7 июля 2005 года, в соответствие с которым проводились очередные и внеочередные парламентские выборы 2006, 2007 годов, были установлены определенные правила. В частности упомянутый закон предполагал возможность обращения в ЦИК с жалобой на действия или бездействие общегосударственного СМИ, его собственника, должностного лица или творческого работника (другими словами – журналиста, корреспондента). Кроме того, этот закон устанавливал право обжаловать решение, действие или бездействие органа исполнительной власти, органа местного самоуправления, предприятия, заведения, учреждения, организации, их служебных или должностных лиц, которые касаются неисполнения возложенных на них законом обязанностей, вмешательства в деятельность избирательных комиссий или их членов, несоблюдения требований в вопросах предвыборной агитации. Жалобы на указанные нарушения могли направляться в ЦИК или окружные избирательные комиссии. Практика, например, выборов 2006 года содержит примеры рассмотрения ЦИК жалоб на нарушения правил ведения агитации, в частности запрета на участие в предвыборной агитации должностных лиц органов исполнительной власти, совершенные Премьер-министром, Министром внутренних дел, Министром юстиции. В то же время при последующей модификации законов о выборах украинский законодатель отказался от практики нормативного закрепления полномочий избирательных комиссий рассматривать жалобы этой категории. Ныне обжалований таких нарушений осуществляется исключительно в ***судебном*** порядке.

Сравнительный анализ законодательства других стран и практики деятельности ЦИК в указанной сфере, на мой взгляд, будет интересным и полезным.

Заслуживает внимания также сформулированная в пункте 65 проекта доклада идея о целесообразности исследования соответствующей практики, в том числе решений конституционных судов и иных органов. В частности полезным для изучения представляется решение Конституционного Суда Украины от 24 марта 2005 года в деле о выборах Президента Украины. Следует отметить, что действующая на тот момент редакция Закона о президентских выборах устанавливала определенные ограничения относительно проведения предвыборной агитации органами исполнительной власти и местного самоуправления, а также их служебным и должностным лицам. В частности этим органам и лицам запрещалось принимать участие в агитации. По мнению Конституционного Суда Украины, указанный запрет преследовал ***цели***, во-первых, ***недопущения*** использования ресурса этих органов и служебного положения соответствующими служебными и должностными лицами во время агитации за того или иного кандидата на пост Президента, а, во-вторых, сделать ***невозможным*** давление на избирателей. Этот запрет, отмечено в решении, вызван необходимостью создания условий для ***свободного*** волеизъявления избирателей во время выборов.

Несомненно, практика конституционных судов и других соответствующих органов в различных странах может значительно обогатить общее понимание проблемы противодействия и борьбы с проявлениями противоправного использования административного ресурса во время выборов.

VIII. Speech by Mr Iurie Ciocan

The elections has a great signification in the life of the State, and for the existence of free and fair elections, the legislature is required to create optimal conditions in order to achieve the people' sovereign will on the exercise of electoral rights by the citizens and respectively the formation of some autonomous and independent bodies of public authority.

The conduct of elections in a State of law, involves the setting of a mechanism that would assure the respect of democratic principles, the guarantee of equal treatment in the exercise of the right to vote and to be elected, the development of a political culture, transparency in the exercise of rights and duties by the electoral actors, in order to combat cases of abuse in their exercise.

Legal framework

- Constitution of Republic of Moldova from 29th July, 1994;
- Electoral Code No. 1381-XIII from 21th of November, 1997;
- Contravention Code No. 218-XVI from 24th of October, 2008;
- Criminal Code No. 985-XV from 18th of April, 2002;
- The Law on the status of persons with the public dignity function No. 199 from 16th of July, 2010.

The policy implementation under the prevention of use of the administrative resources during the electoral campaign is based on the following normative acts:

- Constitution of Republic of Moldova
- Electoral Code
- Contravention Code
- Criminal Code
- The Law on the status of persons with public dignity functions.

It's prohibited:

• any form of financing and material support of electoral campaign from the organizations financed from the state budged;
• the use of public means and goods by the electoral candidates;
• to public authorities/institutions and those assimilated to them, to offer public goods or other favors to electoral candidates.

The prohibition on use of administrative resources during the electoral campaign is included in the Electoral Code of Republic of Moldova, namely:

1. "It is prohibited any form of financing and material support of electoral campaign by the organizations financed from the state budged";
2. "The candidates can't use public means and goods (administrative resources) in the electoral campaigns, and public authorities/institutions and those assimilated to them can't send/give to the electoral candidates public goods or other favours";
   The electoral candidates can receive public goods or other favours from public authorities/institutions only under a contract, on equal terms for all candidates.

Suspend their position in office:

1. Citizens, who ex officio are not entitled to be members of a political party or other social-political organization;

2. High-ranking officials whose appointment or election is regulated by the Constitution of the Republic of Moldova and/or by organic laws.

These provisions concern:
- Deputy Prime-Ministers, Ministers and Deputy Ministers, members of the Government;
- Heads of the central public authorities;
- Districts chairmen and deputy chairmen;
- Mayors and deputy mayors;
- Praetors and deputy praetors.

The emergence risk of cases of the use of administrative resources is higher among the candidates who hold a public position at the time of registration on the electoral candidate list. In order to exclude such possibilities, the Electoral Code imposes an obligation of their suspension from function for the entire duration of the electoral campaign.

"The citizens of Republic of Moldova, who under the position they hold, are not entitled to be members of political parties or other political social organisations as well as individual with high official liability, of whose mode of appointment or election is governed by Constitution of the Republic of Moldova and/or Organic Laws, since their registration as electoral candidates, suspend the function that they hold.

People who fall under these provisions are:
a) Deputy Prime Ministers, Ministers and Deputy Ministers, members of the Government Office;
b) Heads of the Central Public Authorities;
c) District presidents and deputy presidents;
d) Mayors an deputy mayors;
e) Praetors and deputy praetors."

Introduced for the first time in 2002, in original version, the norm only defined the persons would suspend their activity position, for which it was considered too general, ambiguous, generating diverse interpretation and application in practice. Proceeding from this circumstances, in 2008, under a series of amendments to the Electoral Code were directly specified the persons covered by this provision.

In the examination of cases of use of administrative resources, the Central Election Commission was faced with the problem of proving that the actions of an electoral candidate were as the use of administrative resources, because the person held a public dignity function, which is not covered by this provision, and as a working visit, made promises and urge relating to the voting of a certain electoral candidate, his action being qualified as electoral propaganda.

Why work suspension is important?

- Prevention of use, by electoral candidates, of state institutions resources for political dividends;
- Prevention of use of official visits for electoral propaganda;
- Prevention of use of official duties for offering facilities or favors to voters.

The establishment of this restriction is aimed to avoid the use of administrative resources in organization and conducting of electoral campaign, including:

- Prevention of use, by electoral candidates, of state institutions resources for political dividends;
- Prevention of use of official visits for electoral propaganda;
- Prevention of use of official duties for offering facilities or favors to voters.

Declaration of work suspension

- ✓ Is completed by the candidate, personally;
- ✓ Is submitted to the Central Election Commission or to the District Electoral Council Is filled at the time of registration as candidate, but not later than 30 days before the Election Day;
- ✓ Otherwise, sanctions are applied – warning or cancellation of registration;
- ✓ The suspension declaration is personally completed by the candidate and it is submitted at the time of registration on candidates list to the Central Election Commission at parliamentary elections, or to the District Electoral Council at local elections. The Declaration deadline is not later than 30 days before the Election Day;
- ✓ For not respecting the suspension requirements, the Central Election Commission or the District Electoral Council can apply sanctions as warning or may request the cancellation of registration. In this case it is cancelled the registration of independent candidate or the candidate from the party's list it is excluded from it.

Legal liability

For the misuse of administrative resources, during the electoral campaign, electoral candidates may be sanctioned:

- ➢ Disciplinary
- ➢ Administratively
- ➢ Criminally

- ➢ The Electoral Code provides that individuals and legal entities, who violate the provisions of electoral legislation, interfere in the free exercise of citizens' electoral rights, interfere in the activity of the electoral authorities are sanctioned in accordance with the legislation in force.
- ➢ In the case of use of administrative resources during the electoral campaign, the candidate may be subjected to disciplinary, administratively, criminally liability.
- ➢ The legislation of the Republic of Moldova does not establish express sanctions for the acts of use of administrative resources by candidates during the electoral campaign. However, the direct non incrimination, do not interfere the control exercising on the sanctioning of the electoral candidates' improper conduct in the field of use of the administrative resources during the electoral campaign.
- ➢ According to the recorded practice during the elections held at national and local level were applied sanctions as warning and cancelation of the registration from the ballot paper, in the case of repeated elections.
- ➢ During the framework of general elections from 2007 was recorded a precedent were in a locality the elections were cancelled, because one electoral candidate during the electoral campaign has made use of the administrative resources in its development, and the court concluded that such circumstances may have influenced on the election result.
- ➢ However, the Central Election Commission should examine the opportunity of adoption of various sanctions, applicable directly to these types of fraud. The expressly criminalization of these actions in the context of the Electoral, Contravention and Criminal Code will make easier the finding, sampling as well the application of sanctions proportionate to their severity.

IX. List of participants

ELECTORAL MANAGEMENT BODIES

ARMENIA
Mrs Yelena Ayvazyan, Head of Information Technologies and Information Analysis Department, Central Election Commission
Ms Tatevik Ohanyan, Member, Central Election Commission

AZERBAIJAN
Mr Rovzat Gasimov, Head of Secretariat, Central Election Commission
Mr Azer Sariyev, Head of Media and Public Relations Department, Central Election Commission
Mr Rashid Yusifbayli, Head of International Relations Department, Central Election Commission

MOLDOVA
Mr Iurie Ciocan, President, Central Electoral Commission
Mr Eduard Raducan, Member, Central Electoral Commission
Ms Iulia Rotari, Legal Adviser, Central Electoral Commission

UKRAINE
Apologised

GEORGIA

Central Election Commission of Georgia
Mr Zurab Kharatishvili, Chairman
Mr Tamaz Sharmanashvili, CEC Member
Mr David Gurgenidze, CEC Member
Ms Marina Tsulukidze, CEC member
Ms Shorena Khorbaladze, CEC Member
Mr Irakli Khorbaladze, CEC Member
Mr Emzar Kakulia, CEC member
Ms Nino Goguadze, CEC Member
Mr Archil Anasashvili, Head of Legal Department,
Ms Ketevan Dangadze, Head of Department, Public Relations Department
Ms Ekaterine Azarashvili, Spokesperson
Ms Natia Zaalishvili, Head of the Centre for Electoral Systems Development, Reforms and Trainings

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GEORGIAN INSTITUTIONS

Ministry of Justice
Mr David Jandieri, First Deputy Minister

National Security Council of Georgia, Inter-Agency Task Force (IATF)
Ms Tamar Kintsurashvili, Deputy Secretary

State Audit office of Georgia
Ms Tinatin Goletiani, Deputy Auditor General

INTERNATIONAL ORGANISATIONS IN GEORGIA

EUROPEAN UNION DELEGATION
Mr Philip Dimitrov, Ambassador, Head of Delegation

UNDP
Mr Jamie Mcgoldrick, UN Resident Co-ordinator in Georgia

IFES
Mr Nermin Nisic, Chief of Party, Georgia

USAID
Ms Danielle Reiff, Caucasus DG Director

NIMD
Mr Levan Tsutskiridze, Country Representative

NDI
Mr Luis Navarro, Country Director in Georgia

IRI
Ms Andrea Keerbs, Country Director in Georgia

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EMBASSIES IN GEORGIA

Mr Florian Gubler, Deputy Head of Mission, Embassy of Switzerland to Georgia
Mr Ortwin Henning, Ambassador of Germany to Georgia
Mr Pieter Jan Langenberg, Ambassador of Netherlands to Georgia

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OSCE/ODIHR

Mr Steven Martin, Election Adviser, Elections Unit

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COUNCIL OF EUROPE

Venice Commission

Speakers
Mr Richard Ghévontian, Professor of Constitutional Law, Vice-President of Aix-Marseille University, Aix-en-Provence, France
Mr Alberto Guevara Castro, Chief of International Affairs, Electoral Court of the Federal Judiciary, Mexico
Mr Sergii Kalchenko, Senior Attorney, Moor & Krosondovych Law Firm, Kyiv, Ukraine
Mr Oliver Kask, Judge, Court of Appeal, Tallinn, Estonia

Secretariat
Mr Gaël Martin-Micallef, Division of Elections and Referendums

Council of Europe Office in Georgia
Ms Caterina Bolognese, Head of Office
Ms Tania Van Dijk, Deputy Head of Ofice
Ms Maia Javakhishvili

X. Synopsis

The fourth Eastern Partnership Facility Seminar on the "use of administrative resources during electoral campaigns" was organised by the Venice Commission in co-operation with the Central Election Commission of Georgia on 17-18 April 2013 in Tbilisi. The issues which were addressed during the Seminar included the presentation of the preliminary Report on the use of administrative resources during electoral campaigns; the framework of the administrative resources and relevant practice in Georgia, Armenia, Azerbaijan, Ukraine and Moldova as well as in France and Latin America.

Around 25 participants from the national electoral management bodies of the following countries attended the conference: Armenia, Azerbaijan, Georgia, Moldova as well as four rapporteurs on behalf of the Venice Commission and representatives of various Georgian and international institutions.

The Seminar:

1. *Took note* of the importance of guaranteeing the principle of equality of opportunity for political parties and candidates. This entails a neutral and ethical attitude by state authorities, in particular with regard to:
a. the pre-electoral period;
b. the coverage by the media, in particular by publicly owned media;
c. the public funding of political parties and electoral campaigns;

2. *Underlined* that the implementation of this principle requires tackling the misuse of administrative resources;

3. *Was of the opinion* that tackling the misuse of administrative resources should take place during electoral campaigns;

4. *Underlined* that preventive measures should be set up in order to tackle the misuse of administrative resources in an efficient manner;

5. *Pointed out* that electoral legislation has to provide efficient and sufficient means for tackling the misuse of administrative resources during electoral campaigns;

6. *Noted* that such regulation must be proportional, clear and foreseeable for all contestants (including incumbents) as well as implemented in good faith;

7. *Underlined* that public authorities should act based on those principles when specific limitations are missing or not efficient;

8. *Was of the opinion* that the principle of neutrality should also apply to civil servants as individuals. For this purpose:
a. Civil servants have to be impartial during the whole electoral process while performing their official duties in accordance with the law;
b. Effective measures have to be ensured to avoid illegitimate participation of civil servants in electoral campaigns, especially in support of the incumbent, provided that such measures do not impede the exercise of their right for freedom of expression when not performing their official duties in accordance with the law;
c. Only some persons working in administrations in contact with political parties and political activities according to their duties, as ruled by law, may be involved in relevant activity within the limits established by the law;
d. Such positions should be clearly distinguished from the others;

9. *Pointed out* that during electoral campaigns, incumbents and officials in public positions that are running for office, have to avoid representing themselves as representatives of the government or office;

10. *Noted* that an independent body should be in charge of tackling against the misuse of administrative resources during electoral campaigns.