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Regional Parliamentary Conference on preventing and responding to the misuse of administrative resources during electoral processes: the role of national parliaments

Organised by

**The Parliamentary Assembly of the Council of Europe (PACE) and
The Venice Commission of the Council of Europe**

***Hosted by the Parliament of Georgia
In the framework of the Council of Europe Presidency***

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SUMMARY REPORT

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In many countries politicians are disconnected from voters which results in the overall lack of trust which is essential when it comes to elections. It is important to restore this trust which can only be achieved if the election process is transparent and fair and politicians do not misuse administrative resources to gain undue advantage over their opponents.

Election observation is not an end to itself. Its purpose is not to criticize countries for failing to hold fully democratic elections or to praise others that live up to the obligations. Election observation has a much more practical purpose: to help all member states improve their electoral processes to the benefit of their citizenry.

BACKGROUND

The regional parliamentary conference on preventing and responding to the misuse of administrative resources during electoral processes and the role of national parliaments was organised by the Parliamentary Assembly of the Council of Europe (PACE) in cooperation with the Venice Commission and it built on the London conference (organized on 9-10 November 2017) and the Tirana seminar (organized on 10 – 11 April 2018). The main objective of the Conference is to discuss concrete legal and legislative solutions and good practice for a more efficient implementation of guidelines and recommendations issued from relevant Council of Europe documents (*see links in the 'Reference documents' below*), with a view to sharing good practices existing among Council of Europe's member States in order to effectively prevent the problem of misuse of administrative resources during electoral processes.

The participants included members of the Parliament of Georgia and Armenia; members of the Parliamentary Assembly having chaired Assembly's election observation delegations in Georgia, Armenia, Republic of Moldova and Ukraine; members and experts of the Venice Commission who prepared reports and opinions on different aspects of misuse of administrative resources during electoral processes; members of electoral management bodies of countries where the PACE frequently observe elections, representatives of local NGOs with considerable experience in the observation of elections and experts and/or researchers working in the field of elections.

OPENING SESSION

The Opening Session highlighted the scope of the problem and provided, among other things, an overview of the persisting election related problems which, apart from misuse of public resources, include the lack of transparency when it comes to campaign finance, biased media and problems with providing unimpeded access for all contestants on a non-discriminatory basis, the lack of impartiality of election management bodies (EMBs), problems related to voting and counting procedures, and ineffectiveness of election dispute resolution (EDR). Other points noted during this session included the fact that the problem with the misuse of administrative resources is not limited to Eastern Partnership countries but are present also in well-established democracies.

Electoral process in any country is, in one way or another, affected by the phenomenon of misuse of administrative resources in the course of elections which can happen at various stages of the electoral cycle. It was also stressed that it is not enough to have a good law but it is important to have enough safeguards for its proper implementation. The work of PACE and the Venice Commission in helping countries in this regard is important. In 2004, the two institutions agreed to cooperate in the field of elections, with the Venice Commission focusing on the area of expertise and standards in electoral legislation and PACE being active in the field of election observation to identify recurring problems which can be either the result of non-compliance with electoral laws or legislative gaps or imperfections.

Moreover, in 2012, on the basis of election observation reports and other Council of Europe sources, PACE prepared a report titled "For more democratic elections" which concluded that "whereas domestic electoral legislation in most Council of Europe member States generally offers a good basis to hold "free and fair" elections, recurrent violations occur, mainly due to a lack of political commitment at the highest level to ensure full and effective implementation of the law and a level playing field for all candidates." The report further noted that „election-related violations still occur in a number of Council of Europe member states, in particular: in the pre-electoral period (opacity of election campaign

funding or lack of equal access to the media), on voting day or during counting (ballot box stuffing or falsification of electoral protocols), in the post-electoral period (ineffective complaints and appeals procedures) or throughout the electoral process (misuse of administrative resources; threats, pressure, violence and intimidation of candidates and voters).⁴¹ The report thus proposes measures to improve the democratic character of elections by fostering participation, ensuring transparency and strengthening supervision.

At the end of the Opening session, participants learnt about the objectives of the conference with a focus on having concrete proposals which would feed into the work of PACE and the Venice Commission to guarantee democratic elections in member countries of the Council of Europe.

SESSION I: INTERNATIONAL TEXTS AND PRACTICE AT STAKE

The first session focused on international texts and practice at stake. It was mentioned that the problem with the misuse of public resources will continue to exist in one way or another and will not go away as elections happen in the public domain. As such, it is important to continue to be aware of the problem and its complexity. Speakers highlighted the experience of PACE in the area of election observation which provides a very good ground for monitoring of the recurrent problem with the misuse of administrative resources. More specifically, PACE has played a leading role in creation of the European electoral heritage, initiating a standard-setting work of the Council of Europe in the electoral field which served as a basis for improving national electoral legislation of Council of Europe member states. It has also contributed to the development of co-operation in this field, both within the Council of Europe, in particular with the Venice Commission and its Council for Democratic Elections, with other organizations, such as the Organization for Security and Cooperation in Europe (OSCE) and its Office for Democratic Institutions and Human Rights (ODIHR), as well as with the European Parliament. Having observed the first elections held in Greece in November 1974, PACE was also behind the introduction of international election observation in Europe in an institutionalized manner. Since 1989, PACE has observed more than 160 parliamentary and presidential elections in 38 European and non-European countries, and around 2,300 members of the Assembly have been deployed for this purpose.

As specified in PACE reports and Venice Commission opinions, substantial progress has been achieved by Council of Europe member states, but problems remain. In particular, two problems were mentioned. The first one stems from unintentional problems related to a proper application of electoral legislation. The second one is more serious as it relates to problems which are intentional and result in outright electoral fraud. The most serious problems are committed during the pre-election period. It was also highlighted that countries which ratified international conventions should live up to their obligations. Other problems include the fact that politicians are disconnected from voters which results in the overall lack of trust in institutions. The role of international observers, including PACE, is not to criticise but rather to shed light on problems. PACE is an advisor and not a judge. The role of PACE and Venice Commission is not to levy sanctions but they need to be critical in their assessments in order to ensure progress.

By highlighting the recurring problems observed by PACE and its international partners during election observation missions, they identify the main challenges facing member states today in the field of legislation and electoral practice, and propose possible measures to improve the democratic character of elections. In this context, the importance of of the Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms was mentioned, particularly its Article 3 which obliges Council of Europe member states to "hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the electorate in the choice of the legislature". Participants learnt about the existing principles and instruments, focusing on the case-law of the European Court of Human Rights (ECtHR) with a specific focus on ECtHR's judgments on Article 3 of Protocol No. 1. By 2019, ECtHR considered and adjudicated 95 cases related to Article 3 of Protocol No. 1.² The specific cases mentioned during this session included *Kovach v. Ukraine*, no. 39424/02, 7 February 2008 „*Arbitrary invalidation of votes obtained by the leading candidate resulting in victory for his opponent, a public official*“; *Karimov v. Azerbaijan*, no. 12535/06, 25 September 2014 „*Use of special polling stations for the military in circumstances not permitted by domestic law*“ and *Communist*

¹ For more information, see the full report "For more democratic elections" by [Mr Jean-Charles GARDETTO](#), Monaco, EPP/CD available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19004&lang=en>

² More specifically, here is a breakdown of cases in specific countries: Armenia (1 case), Austria 1, Azerbaijan 23, Bulgaria 5, Cyprus 1, Georgia 2, Greece 3, Hungary 3, Italy 17, Latvia 3, Lithuania 1, Republic of Moldova 2, Romania 6, Russian Federation 6, Serbia 1, Turkey 11, Ukraine 2, United Kingdom 7.

During the discussion, concrete examples from Armenia, France and Ireland were discussed. It was noted that the gate keepers of administrative resources are public officials and code of conducts play central role when it comes to misuse of administrative resources as they strengthen the rules. Moreover, it is important to back them up with adequate protection provided to whistle blowers who are important when it comes to reporting on potential abuse of power and abuse of administrative resources. Some of the most important principles that must be retained are a clear separation between the State and political parties, principle of civil servant's neutrality, their protection from pressure and no major policy shifts during an election campaign. In most of the cases, incumbent government will continue their work during an elections campaign and it is thus useful to have a set of rules for civil servants on how to behave.

SESSION II: RECURRENT CASES OF MISUSE OF ADMINISTRATIVE RESOURCES DURING ELECTORAL PROCESSES: PRACTICAL APSECTS

This session focused on recurrent cases of misuse of administrative resources featuring the PACE observation of the 2018 Georgian elections. Participants learnt about problems in Georgia with polarised media environment, procedures with nomination of certain lower level members of election administration, the lack of transparency of campaign finances as well as the problems with the misuse of administrative resources. The increasing role of money in politics was also mentioned as not contributing to the level playing field. The election reform done in Georgia was also mentioned, with a special focus on the area of misuse of administrative resources. Specific attention was given to the discussion in Georgia of the changes to the electoral system. Participants opined that such as important reform should include all relevant stakeholders. The case of the Irish referendum where the public money was spent only by one side was mentioned. The Irish Supreme Court ruled that this approach was distorting the level playing field. It is important to raise awareness about the misuse of administrative resources which touches upon the basic values and standards. These include the competitiveness and fairness of electoral processes, the clear distinction between public and party interests or a level playing field for all electoral competitors. As mentioned earlier, it is also important to increase and enhance the whistle blower's protection. A document elaborated by the United Kingdom at the start of each election titled "General Election Guidance" was also mentioned as an example of good practise in this field.

The Venice Commission's Code of Good Practice in Electoral Matters sets out the five principles underlying Europe's electoral heritage: suffrage must be *universal, equal, free, secret and direct*.³ The question of preventing the misuse of administrative or publicly owned or funded resources during electoral processes is particularly relevant to the principles of *equality* and *freedom*. Those standing for election must all have an *equal* opportunity to put their case to the voters – if public resources are deployed in support of the incumbent governing party or its candidates, then the playing-field is not level for other contestants. Voters must be *free* to form their opinion at an election. In their joint guidelines on this issue⁴, the Venice Commission and OSCE/ODIHR recommend that laws and measures designed to prevent and deal with the misuse of public resources during electoral processes must provide conditions that:

- Promote neutrality and impartiality in the electoral process
- Promote equality of treatment between different candidates and parties in relation to public resources
- Level the playing field between all stakeholders, including incumbent candidates
- Safeguard against the potential misuse of public resources for partisan purposes.

The joint guidelines refer to discussion of reasons for the failure to prevent abuse of public resources. One cause is that abuse of public resources by incumbents is considered to be a normal part of an electoral process, with those in authority failing even to grasp the problem of seriously disadvantaging challengers at an election. The Venice Commission report which preceded the joint guidelines points to the need for ethical standards relating to the conduct of public authorities and officials during an electoral process.⁵

³ CDL-AD(2002)023rev available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev-e)

⁴ CDL-AD(2016)004 is available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)004-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)004-e)

⁵ CDL-AD(2013)033 is available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)033-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)033-e)

The discussion focused also on the ban on contributions from companies during elections and different practices in this respect between US and EU countries. Participants learnt from NGO representatives about their work in the area of observation elections in general and dealing with the misuse of administrative resources in particular. More specifically, they learnt about involvement of public servants for mobilization and other campaign purposes in favour of the ruling party, as well as changes to the budgets prior to elections. They also heard that it was possible to have democratic elections conducted according to an old election law if there is political will for its proper implementation.

SESSION III: PREVENTING AND RESPONDING TO THE MISUSE OF ADMINISTRATIVE RESOURCES DURING ELECTORAL PROCESSES

The second day started with a session focusing on preventing and responding to the misuse of administrative resources during electoral processes. In the course of the presentation, participants learned about the PACE observation in Moldova during the 2019 parliamentary elections. The report pointed at problems with hate speech, particularly waged at women candidates; problems with the voter list; the lack of trust vis-à-vis the public institutions, the endemic corruption and the lack of oversight when it comes to campaign finance. Other issues included the high concentration of media ownership, voter intimidation and campaigning on election day. The report also mentioned the misuse of administrative resources.

The Venice Commission's Guidelines, ways of preventing and responding to the misuse

Participants also heard about the Venice Commission's Guidelines and ways of preventing and responding to misuse of administrative resources. In order to ensure the free, fair and balanced elections, the effective system of the interdependent and interrelated legislative, political, and social components should be maintained involving the following items:

- ✓ Well-considered legislation prohibiting the misuse of administrative resources and establishing clear, predictable and proportional sanctions for these violations.
- ✓ Eligibility of the sincere political will of the highest state authorities is a key factor in achieving the objective to effectively prevent and sanction the misuse of public resources.
- ✓ Good practice of implementation of the legislation by the bodies of the state executive power, regional and local authorities, judiciary, election management and law-enforcement bodies.
- ✓ Compliance of the civil servants with ethical standards.
- ✓ Development of political culture anticipating "a mutual understanding and a sense of responsibility" of both the incumbent and opposition political actors, as well as respect of recognized values of democratic society.
- ✓ Active participation of public and mass media in pursuing political will and strengthening political culture in society.

It was also mentioned that failure or reluctance of the state to implement and support the above-mentioned measures effectively would mean a simulation of activity, but not a real intention to overcome the existing problems.

The experience of national and international non-governmental organisations (NGOs) in the election observation processes:

In this part of the conference, participants focused on experience of local non-governmental organizations with misuse of administrative resources in their electoral observation, focusing on recent elections in Ukraine and Moldova. They provided examples of misuse of administrative resources grouping them into four categories. We also heard about problems with financing of political parties and the fact that the change cannot be done only during elections. When it comes to party funding and oversight, the real change has to be done much earlier. Another issue mentioned during the discussion was the involvement of church in elections.

SESSION IV: FOLLOW-UP TO THE INTERNATIONAL AND NATIONAL ELECTION OBSERVERS' RECOMMENDATIONS

How to reinforce the cooperation between different bodies of the Council of Europe and other international and local partners in order to address this problem and follow up on the implementation of the recommendations?

The fourth session included a round table at participation of representatives of election management bodies from Georgia, Ukraine and Moldova. They focused on the follow-up in implementing of election-related recommendations and discussed a number of issues related to the role of judiciary in the election process, the importance of impartiality of election management bodies as well as how to deal with cases and complaints where the evidence is missing. The representatives also talked about their experience on how to deal with the misuse of administrative resources and shared good practices including the manual on how to tackle the misuse of administrative resources prepared by the Georgian Central Election Commission.

It is important to use the concrete cases for awareness raising and efficient follow up. Election observation is not an end to itself. Its purpose is not to criticize countries for failing to hold fully democratic elections or to praise others that live up to the obligations. Election observation has a much more practical purpose: to help all member states improve their electoral processes to the benefit of their citizenry.

In conclusion, the following general points were highlighted:

- There are countries with and without legal framework when it comes to misuse of administrative resources – often, there are more cases with misuse of administrative resources in the first category of countries;
- The role of executive power for preventing the misuse of administrative resources is important as the executive power is controlling state institutions
- The same goes for the role of local executive power concerning misuse of administrative resources at a local level
- The role of international and local observers in identifying the cases of misuse of administrative resources is important and it does not require that such cases are evidence-based as it is incumbent upon relevant authorities to verify the allegations, if there are true or not and if necessary, to launch investigations and later inform the partners about the results.

RECOMMENDATIONS

The most important points that are related to the issue of misuse of administrative resources are:

- Quality of law
- Application of law
- Political will by political forces, particularly when they are in power
- Proper control of the application of law
- Efficient and transparent system of sanctions
- Public properly informed about the application of sanctions

Some of the most important principles that should be retained are a clear separation between the state and political parties, the principle of civil servants' neutrality, their protection from pressure and a lack of major policy shifts during an election campaign

It is important to acknowledge that the issue of misuse of administrative resources is a continuing one and will not go away. It is important to maintain awareness of the issue and highlight ways that it can be mitigated. The abuse of public administrative resources in an electoral context is a corrupt use of a public resource and is also a corrupt interference with an election process which should be neutral.

Addressing the abuse of public resources during electoral processes requires political commitment from leaders who regard meeting the key principles of Europe's electoral heritage as a genuine mark

of the democratic countries they aspire to lead. Legislation which is not only comprehensive, but also clear – so that those concerned can be in no doubt what is and is not permitted – is a fundamental requirement.

The conclusions of this conference should invite the PACE not only to pursue its work concerning the prevention of misuse but also the responses to the misuse of administrative resources during electoral processes through a recommendation and/or resolution to be adopted by PACE.

REFERENCE DOCUMENTS

Parliamentary Assembly of the Council of Europe

- [Resolution 1897 \(2012\) on Ensuring greater democracy in elections;](#)
- [Recommendation 2105 \(2017\) on Promoting integrity in governance to tackle political corruption;](#)
- [Resolution 2170 \(2017\) on Promoting integrity in governance to tackle political corruption;](#)
- [PACE Information note \(14 August 2014\) by the co-rapporteurs on their fact-finding visit to Sarajevo and Travnik \(6 – 9 July 2014\) on the honouring of obligations and commitments by Bosnia and Herzegovina;](#)
- [Resolution 2201 \(2018\) on the honouring of obligations and commitments by Bosnia and Herzegovina](#)
- [Resolution 2019 \(2014\) the honouring of obligations and commitments by Albania;](#)
- [Press release, Albania elections: free campaigning, basic freedoms respected, but a politicised election administration reduced trust, 26 June 2017;](#)
- [Parliamentary Assembly's reports on observation of elections in countries under monitoring procedure or post-monitoring dialogue;](#)

Committee of Ministers of the Council of Europe

- [Recommendation \(2003\)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns;](#)
- [Recommendation \(2007\)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns;](#)
- [Recommendation \(2014\)7 of the Committee of Ministers on protection of whistleblowers;](#)
- [GR-DEM\(2016\)14 Bosnia and Herzegovina: Compliance with obligations and commitments;](#)
- [Council of Europe Action Plan for Bosnia and Herzegovina 2015-2017;](#)
- [Council of Europe Programmatic Cooperation Document with Albania 2015-2017;](#)

Venice Commission

- [CDL-AD\(2002\)023rev](#), Code of Good Practice in Electoral Matters;
- [CDL-AD\(2009\)021](#), Code of Good Practice in the Field of Political Parties;
- [CDL-AD\(2013\)033](#), Report on the misuse of administrative resources during electoral processes;
- [CDL-AD\(2010\)024](#), Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and Venice Commission, Guidelines on Political Party Regulation, Venice, 15-16 October 2010.
- [CDL-AD\(2016\)004](#), Venice Commission and OSCE/ODIHR, Joint Guidelines on preventing and responding to the misuse of administrative resources during electoral processes;

Congress of Local and Regional Authorities

- [CG31\(2016\)07 final, Report on “The misuse of administrative resources during electoral processes: the role of local and regional elected representatives and public officials”;](#)
- [CG32\(2017\)12, Congress of Local and Regional Authorities, Checklist for compliance with international standards and good practices preventing misuse of administrative resources during electoral processes at local and regional level;](#)

United Nations

[United Nations, International Covenant on Civil and Political Rights \(ICCPR\), CCPR/C/21/Rev.1/Add.7 General Comment No. 25, Article 25, on Participation in Public Affairs and the Right to Vote, the Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, July 1996.](#)
