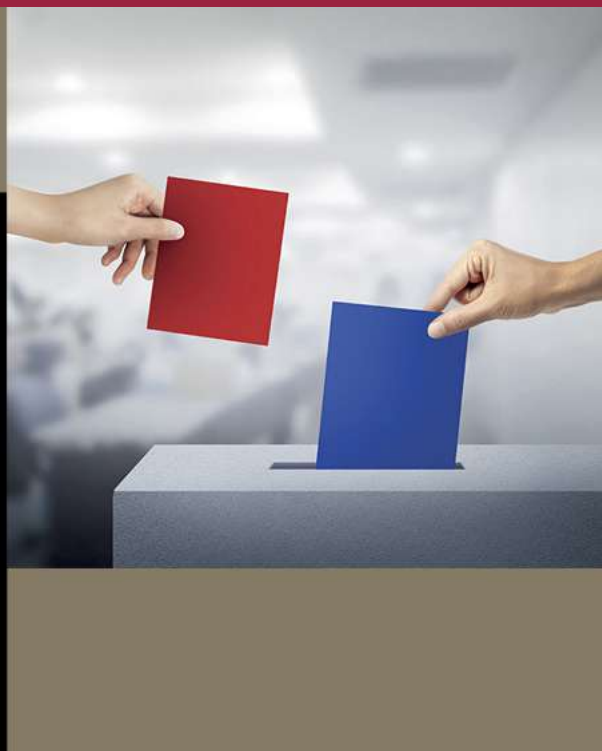


Preventing and responding to the misuse of administrative resources during electoral processes

Joint Guidelines



Venice Commission
of the Council of Europe



Preventing and responding to the misuse of administrative resources during electoral processes

**Joint Guidelines
by the European Commission for Democracy through
Law (Venice Commission)
and
the OSCE Office for Democratic Institutions
and Human Rights**

**Adopted by the Council of Democratic Elections
at its 54th meeting (Venice, 10 March 2016)
and by the Venice Commission
at its 106th Plenary Session (Venice, 11-12 March 2016)**

on the basis of comments by

**Mr Richard BARRETT (Member, Ireland)
Mr Manuel GONZALEZ OROPEZA (Substitute Member, Mexico)
Mr Johan HIRSCHFELDT (Substitute Member, Sweden)
Mr Oliver KASK (Member, Estonia)
Mr Serhii KALCHENKO (Expert, Ukraine)
OSCE/ODIHR Experts**

French edition:

*Prévenir et répondre à l'utilisation abusive
de ressources administratives pendant les processus
électoraux – Lignes directrices conjointes*

All requests concerning the reproduction or translation of all or part of this document should be addressed to the Directorate of Communication (F-67075 Strasbourg Cedex or publishing@coe.int). All other correspondence concerning this document should be addressed to the Directorate General Human Rights and Rule of Law – Venice Commission.

Cover and layout: Documents and Publications
Production Department (SPDP),
Council of Europe

Cover photos: shutterstock

This publication has not been copy-edited by the SPDP Editorial Unit to correct typographical and grammatical errors

© Council of Europe, October 2017
Printed at the Council of Europe

I. Introduction and background

1. The Guidelines¹ follow the Venice Commission's Report on the misuse of administrative resources during electoral processes² and the conclusions of the 11th European Conference of Electoral Management Bodies that dealt with this topic on 26-27 June 2014 in Helsinki. In these conclusions,³ the participants to the Conference invited "the Council for Democratic Elections [...] to consider developing guidelines aimed at preventing the misuse of administrative resources during electoral processes". The guidelines also build upon the OSCE/ODIHR's election observation findings and recommendations in respect of the misuse of administrative resources.

2. The Guidelines are aimed at assisting national lawmakers and other authorities in adopting laws⁴ and initiating concrete measures to prevent and act against the misuse of administrative resources during electoral processes. Therefore, they are not intended as a set of hard rules.

3. In order to fulfil their purposes, such laws and measures must provide the conditions to:

- ▶ promote neutrality and impartiality in the electoral process;
- ▶ promote equality of treatment between different candidates and parties in relation to administrative resources;
- ▶ level the playing field between all stakeholders, including incumbent candidates; and
- ▶ safeguard against the potential misuse of administrative resources for partisan purposes.

4. In Europe, "after more than twenty years of election observation in Europe and more than ten years of legal assistance to the Council of Europe member

states, many improvements were observed regarding electoral legislation and practice. However, the practical implementation of electoral laws and laws related to political parties (including financing of political parties and electoral processes) remains problematic up to a certain extent. Today, one of the most important and recurrent challenges observed in Europe and beyond, is the misuse of administrative resources, also called public resources, during electoral processes. This practice is an established and widespread phenomenon in many European countries, including countries with a long-standing tradition of democratic elections. Several generations of both incumbents and civil servants consider this practice as normal and part of an electoral process. They seem even not to consider such practice as illegitimate action *vis-à-vis* challengers in elections. It may be consequently harder for these challengers to take advantage of administrative resources. This phenomenon seems part of an established political culture and keeps a relation not only with practices potentially regarded as illegal but also with the ones caused by the lack of ethical standards related to the electoral processes of the public authorities in office."⁵

5. Such problems are regularly addressed by international organisations. Within the OSCE region it has been observed that "failures to provide for a level playing field among electoral contestants and the abuse of state resources in favour of incumbents caused concern in several States, particularly when such abuse amounted to intimidation of voters."⁶

1. [CDL-AD\(2016\)004](#).

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

3. [CDL-EL\(2014\)001syn](#).

4. These Guidelines refer to laws and legal frameworks that have to be understood as any domestic texts, from Constitutions to Codes and sub-legal rules. The legal framework covers electoral laws as well as laws imposing a legal liability (including administrative and criminal sanctions).

5. 2013 Report, para. 1. As defined in the Convention on Access to Official Documents, Article 1(2)a i, "Public authorities' means:

1. government and administration at national, regional and local level;
2. legislative bodies and judicial authorities insofar as they perform administrative functions according to national law;
3. natural or legal persons insofar as they exercise administrative authority. [...]"

This definition of 'public authorities' is the one retained in the present Guidelines throughout the document.

6. OSCE/ODIHR, [Review of Electoral Legislation and Practice in OSCE Participating States](#), p. 4.

6. Similarly, GRECO has observed on different occasions, during the country evaluations conducted to date concerning transparency of political financing (and to a lesser extent, concerning the prevention of corruption of parliamentarians), a variety of situations where administrative resources are being misused. This concerns property and means owned at State level or by local authorities (human, financial, material and technical means), especially – but not only – in the context of electoral processes. It was also occasionally observed that funds managed by the ministries are particularly exposed to risks of misuse, including for political financing purposes, where elected authorities have excessive discretion or where special statutory rules provide for derogations to the general transparency and accountability requirements. Depending on the seriousness of the problem and the overall situation and context, GRECO has sometimes issued recommendations to the country concerned. Examples include “to take appropriate measures to ensure that the regulation of party and electoral campaign financing is not undermined by the misuse of public office” or “to provide clear criteria on the use of public facilities for party activity and election campaign purposes”.

7. The absence of clear demarcation lines specifying that the in-kind resources and – where these exist – financial means allocated to political groups in parliament are meant to support exclusively the work of the legislature, has also occasionally led to questionable contributions from such groups to parties and candidates before, during or after elections (to co-finance certain events or to repay certain debts). Moreover, the misuse of administrative resources may be widespread even where the law provides for a ban on donations from public institutions and public companies, as well as from institutions and companies with State capital share. In some post-communist countries, the widespread misuse of administrative resources may reflect a persisting lack of distinction between the State and the governing party. This also explains occasional allegations of widespread abuse of the public media and of public facilities in connection with electoral campaigns, even where equal and unbiased coverage of political parties and of (outgoing) candidate parliamentarians by the State-owned media is guaranteed by existing detailed legal provisions. Controversies have also been occasionally triggered at domestic level by situations where the ruling parties manage to attract additional indirect financial resources, for instance by arranging for public authorities to purchase in the newspapers under their control substantial amounts of advertisement space (or by making fictitious contracts with a similar purpose).

8. Apart from the 2013 Report on the misuse of administrative resources during electoral processes, the Guidelines are based on the following documents:

- ▶ Organization for Security and Cooperation in Europe (OSCE), [Copenhagen Document](#), 1990, Paragraph 5.4;
- ▶ United Nations, [International Covenant on Civil and Political Rights](#) (ICCPR), General Comment No. 25, Article 25;⁷
- ▶ Council of Europe, Committee of Ministers, [Recommendation](#) of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns;⁸
- ▶ Council of Europe, Committee of Ministers, [Recommendation](#) of the Committee of Ministers to member states on measures concerning media coverage of election campaigns;⁹
- ▶ Council of Europe, Committee of Ministers, [Recommendation](#) of the Committee of Ministers on protection of whistleblowers;¹⁰
- ▶ Council of Europe, Group of States against Corruption (GRECO), Horizontal Review “[Fighting Corruption – Political Funding](#)”,¹¹ as well as country evaluation reports especially those of the [Third Evaluation Round](#);¹²
- ▶ Venice Commission, [Report on the misuse of administrative resources during electoral processes](#);¹³

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

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

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

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

11. Council of Europe, Group of States against Corruption, [Fighting Corruption – Political Funding](#), by Yves-Marie Doublet, Deputy Director at the National Assembly, France – Thematic Review of GRECO’s Third Evaluation Round.

12. The third round evaluation reports deal with the transparency and supervision of political financing. The reports of the [Fourth Evaluation Round](#) sometimes also contain some pertinent information as they deal *inter alia* with the prevention of corruption of parliamentarians.

13. Report adopted by the Council for Democratic Elections at its 46th meeting (Venice, 5 December 2013) and by the Venice Commission at its 97th plenary session (Venice, 6-7 December 2013; CDL-AD(2013)033).

- ▶ Venice Commission, [conclusions](#) of the Seminar held on 17-18 April 2013 in Tbilisi on the use of administrative resources during electoral campaigns;¹⁴
- ▶ Venice Commission, [conclusions](#) of the 11th European Conference of the Electoral Management Bodies held in Helsinki on 26-27 June 2014 on the same topic;¹⁵
- ▶ Venice Commission, [Code of Good Practice in Electoral Matters](#);¹⁶
- ▶ Venice Commission, [Code of Good Practice in the Field of Political Parties](#);¹⁷
- ▶ OSCE, Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and Venice Commission, [Guidelines on Political Party Regulation](#);¹⁸
- ▶ OSCE/ODIHR, [Handbook for the Observation of Campaign Finance](#);¹⁹
- ▶ OSCE/ODIHR, [Review of Electoral Legislation and Practice in OSCE Participating States](#).²⁰

9. The 2013 Report defines the administrative resources as follows:²¹ “administrative resources are human, financial, material, *in natura*²² and other immaterial resources enjoyed by both incumbents and civil servants in elections, deriving from their control over public sector staff, finances and allocations,²³ access to public facilities as well as resources enjoyed in the form of prestige or public presence that stem from their position as elected or public officers and which may turn into political endorsements or other forms of support”.²⁴

14. CDL-EL(2013)003syn.

15. CDL-EL(2014)001syn.

16. CDL-AD(2002)023rev.

17. CDL-AD(2009)021.

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

19. Publisher: OSCE/ODIHR. Date: 21 January 2015.

20. Publisher: OSCE/ODIHR. Date: 15 October 2013.

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

21. Paragraph 12 of the Report.

22. Like some benefits from social programmes, including goods and in-kind resources.

23. As well as state-owned media, which will not be addressed here.

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

10. The misuse of administrative resources may also include related offences, such as forms of pressure or threats exerted by public authorities on civil servants. All rules dealing with electoral campaigns are potentially relevant for assessing the use of administrative resources by incumbents.

11. Similarly, the OSCE/ODIHR has defined ‘abuse of state resources’ (terminology used as well by other international institutions) as the “undue advantage obtained by certain parties or candidates, through use of their official positions or connections to governmental institutions, in order to influence the outcome of elections”.²⁵ For the purposes of these Guidelines, the term ‘abuse of state resources’ should be understood as analogous to ‘misuse of administrative resources’. It should also be noted that in election observation mission reports as well as documents issued by other international institutions, references to ‘use’ of administrative resources typically relates to misuse. For such quotations of external sources, it should be understood that it refers to misuse of administrative resources.

12. As noted before, the notion of administrative resources developed in these Guidelines is broad. These Guidelines cover the actions of civil servants in their official duties. This includes how civil servants may misuse their duties and public means or, conversely, be pressured to support or vote for certain electoral contestants. These Guidelines also cover the actions of elected incumbents, particularly while campaigning. These two categories do not usually overlap, as such. These Guidelines hereafter specify whether they cover both civil servants and incumbent candidates or only one of these categories.

13. According to the 2013 Report on the misuse of administrative resources during electoral processes, an electoral process should be understood as a period much longer than the electoral campaign as strictly understood in national electoral law. It covers the various steps of an electoral process starting from, for example, the definition of the electoral constituencies, the nomination or the registration of candidates or lists of candidates for competing in elections. This period lasts until the election of public authorities. It includes all activities in support of or against a given candidate, political party or coalition by incumbent representatives before and during the election day.²⁶ This broad definition covers the multifaceted ways in which administrative resources may be misused during the entire electoral process, not only the official electoral campaign period.

25. OSCE/ODIHR [Handbook for the Observation of Campaign Finance](#).

26. Paragraph 9 of the 2013 Report. Whilst the majority could influence election results by amending the electoral system before elections, such action cannot be considered as misuse of administrative resources. However, it has to be avoided as recommended by the Code of Good Practice in Electoral Matters (II.2.b).

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

15. It should also be underscored that these Guidelines do not have the ambition of being an exhaustive set of prescriptive legal recommendations. They rather provide guidance that can be followed by lawmakers, in line with democratic principles. Indeed, even where the legal framework provides a solid basis against the misuse of administrative resources,

legislation will only be effective if the public bodies involved implement such legislation in good faith. This includes the political will to impartially uphold the letter and the spirit of the law.

16. The Guidelines include three parts. The first one recalls the applicable fundamental principles (part II. A.). The Guidelines proper deal with the way to prevent and sanction the misuse of administrative resources during electoral processes, first by suggesting improvements to the electoral or general legal framework (part II. B.), and then by suggesting concrete remedies and sanctions (part II. C.).

17. The present joint Guidelines were adopted by the Council for Democratic Elections at its 54th meeting (Venice, 10 March 2016) and by the Venice Commission at its 106th plenary session (Venice, 11-12 March 2016).

II. Guidelines

A. Principles

Respect for the principles outlined below is essential for preventing and responding to the misuse of administrative resources during electoral processes. Formal, substantive and procedural principles are cumulative prerequisites intended to ensure the foundations of a legal framework to regulate the use of administrative resources.

1. Rule of law

- 1.1. The legal framework should provide for a general prohibition of the misuse of administrative resources during electoral processes. The prohibition has to be established in a clear and predictable manner. Sanctions for misuse of administrative resources have to be provided for and implemented. Such sanctions need to be enforceable, proportionate and dissuasive.²⁷
- 1.2. Stability of the law²⁸ is a crucial element for the credibility of electoral processes. It is therefore important that stability of electoral law be ensured in order to protect it against political manipulation. This applies not least to the rules on the use of administrative resources.
- 1.3. It is important that rules – including laws, agreements and commitments that regulate or relate to the use of administrative resources during electoral processes, as well as judicial decisions interpreting them – are clear and accessible to all stakeholders, including public authorities, civil servants, voters, candidates, political parties, and that sanctions and consequences for not abiding with these rules are foreseeable.
- 1.4. The possibility to bring complaints about the misuse of administrative resources to an independent and impartial tribunal – or equivalent judicial body – or to apply to an authorised law-enforcement body should be central in ensuring the appropriate use and to prevent the misuse of administrative resources during electoral processes.

²⁷. See the Guidelines C. 2.

²⁸. Code of Good Practice in Electoral Matters, II. 2.

2. Political freedoms

Freedoms to form an opinion, together with freedoms of association and expression, form the bedrock of any democratic system, including during electoral processes. Opinions and information should freely circulate during pre-electoral periods, especially during electoral campaigns. In general, the right to free elections and freedom of expression reinforce each other. Nevertheless, possible tensions between such rights and freedoms have been recognised by the European Court of Human Rights. In this respect, it may be necessary to place certain restrictions on freedom of expression in order to secure the 'free expression of the opinion of the people in the choice of the legislature'.²⁹

3. Impartiality

The legal framework should provide explicit requirements for civil servants to act impartially during the whole electoral process while performing their official duties. Such regulations should establish the impartiality and professionalism of the civil service.

²⁹. See for instance, European Court of Human Rights, *Case of Bowman v. United Kingdom* (ref. 141/1996/760/961; judgment of 19 February 1998):

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

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

4. Neutrality

- 4.1. The legal framework should ensure the neutrality of the civil service by prohibiting civil servants from campaign activities in their official capacity, either by being themselves candidates or when supporting candidates. This applies as well to public and semi-public entities. It is important that a clear separation between the state and political parties is maintained; in particular political parties should not be merged with the State.³⁰
- 4.2. In order to ensure neutrality of the civil service during electoral processes and consequently to avoid any risk of conflict of interest, the legal framework should provide for a clear separation between the exercise of politically sensitive public positions, in particular senior management positions, and candidacy. In this respect, the legal framework should provide for a range of adequate and proportionate rules. Such rules may include a clear instruction on how and when campaigning in a personal capacity may be conducted, suspension from office or resignation of certain public authorities running for elections.
- 4.3. The non-involvement of judges, prosecutors, police, military and auditors of political competitors in their official capacity in electoral campaigning is of essential importance. Concrete measures should ensure such official neutrality throughout the entire electoral processes.
- 4.4. The legal framework should ensure the objective, impartial, and balanced coverage of election-related events by publicly-owned media. Law and practice should both ensure that publicly-owned media are not involved in “hidden” campaigning for or against particular political competitors.

5. Transparency

- 5.1. The legal framework should provide for transparency and accountability of the use of public money and public goods by political parties and candidates during electoral processes.
- 5.2. A clear distinction between the operation of government, activities of the civil service and the conduct of the electoral campaign should be made.
- 5.3. The legal framework should provide for the availability of trustworthy, diverse and objective information to voters and political competitors on the use of administrative resources during electoral processes operated by public authorities as well as entities owned or controlled by public authorities.

³⁰. This separation should comply with Paragraph 5.4 of the 1990 OSCE Copenhagen Document.

6. Equality of opportunity

- 6.1. The legal framework should provide for an equal right to stand for elections and for equality of opportunity to all candidates, including civil servants, and political parties during electoral processes.
- 6.2. The legal framework should provide for equitable access³¹ for all political parties and candidates to administrative resources during electoral processes, to public funding of political parties and campaigns, and to publicly-owned media. This also applies to public buildings and facilities used for campaigning.³²

B. Prevention of the misuse of administrative resources

There is a need for a thorough and effective legal framework to prevent the misuse of administrative resources during electoral processes. This does not exclude recommending additional measures, which are developed hereafter.

1. Legal framework

- 1.1. The legal framework should provide effective mechanisms for prohibiting public authorities from taking unfair advantage of their positions by holding official public events for electoral campaigning purposes, including charitable events, or events that favour or disfavour any political party or candidate. More precisely, reference is made to events which imply the use of specific funds (state or local budget) as well as institutional resources (staff, vehicles, infrastructure, phones, computers, etc.). This does not preclude incumbent candidates from running for election and campaigning outside of office hours and without the use of administrative resources.
- 1.2. If public buildings and facilities are permitted for campaign purposes, the legal framework should provide for equal opportunity and a clear procedure for equitably allocating such resources to parties and candidates.
- 1.3. The ordinary work of government must continue during an election period. However, in order to

³¹. See also Guideline B. 1. 8. See as well the Code of Good Practice in the field of political parties, I. 2.3. b: “Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated according to the results achieved in the elections. Equality of opportunity applies in particular to radio and television air-time, public funds and other forms of backing.”

³². As developed in Guideline B. 1. 2.

prevent the misuse of administrative resources to imbalance the level playing field during electoral competitions, the legal framework should state that no major announcements linked to or aimed at creating a favourable perception towards a given party or candidate should occur during campaigns. This does not include announcements that are necessary due to unforeseen circumstances, such as economic and/or political developments in the country or in the region, e.g. following a natural disaster or emergencies of any kind that demand immediate and urgent action that cannot be delayed.

- 1.4. The legal framework should stipulate that there should be no non-essential appointments to public bodies during the electoral campaign.
- 1.5. There should be a regulation put in place by a competent authority – electoral management body, branch of the civil service or special committee – identifying what activities are considered to be campaign activities and therefore forbidden to civil servants when acting in their official capacity. The competent authority should have an advisory role in relation to queries during the election period as to whether something falls under the prohibition on campaign activities by the civil service.
- 1.6. The legal framework should provide for a clear distinction between ‘campaign activity’ and ‘information activity’ of public media in order to ensure equity among political competitors in the media as well as a conscious and free choice for voters.³³
- 1.7. In addition to national legislation, charters of ethics or codes of conduct could be appropriate instruments to prevent the misuse of administrative resources during electoral processes.

2. Audit

- 2.1. An institution functionally independent from other authorities should be responsible for auditing political parties and candidates in their use of administrative resources during electoral processes. In this respect, such a body, regardless of its institutional form, should act impartially and effectively.
- 2.2. That institution should be sufficiently empowered and resourced to supervise all public expenditure and use of administrative resources. Moreover, this authority should be required to report misuse during electoral processes in a timely, clear and comprehensive manner.

³³. See *inter alia* the ICCPR General Comment No. 25, Article 25.

2.3. Political parties and candidates should be required to report on the origin and purpose of all their campaign finance transactions in order to facilitate transparency and the detection of potential misuse of administrative resources. Any permissible use of administrative resources for parties or candidates should be treated as a campaign finance contribution and be reported accordingly.

2.4. Communication between audit authorities and other bodies should be regulated in a way that facilitates efficient flows of information and effective implementation of transparent decisions.

3. Political will

- 3.1. Effective implementation of legislation requires that any restrictions on the use of administrative resources be implemented in good faith.
- 3.2. Where necessary, public authorities could make clear statements and issue written instructions that no pressure on civil servants will be tolerated and that no civil servant or citizen should fear for their employment or social services as a result of supporting or not supporting any political party or candidate. Civil servants should accordingly benefit from protection against any intimidation or pressure.
- 3.3. Civil servants as well as their relatives should be protected against (hidden) sanctions, pressure or intimidation when they disclose an alleged fraud or misuse of administrative resources. If the law does not protect whistleblowers in general, there should be specific rules in the context of electoral processes.³⁴
- 3.4. Genuine political will of the highest State, regional, and local authorities is a key factor to effectively preventing and sanctioning the misuse of administrative resources. The development of a pluralistic political culture – characterised by transparency towards the electorate –, a mutual understanding and a sense of responsibility of both the incumbent and opposition political forces, as well as a respect of recognised values of a democratic society are therefore of essential importance.
- 3.5. Civil society, including domestic election observers, has a crucial role in reporting on potential misuse of administrative resources and proposing recommendations to strengthen legislation and practice.

³⁴. See in this respect the Recommendation of the Committee of Ministers of the Council of Europe on protection of whistleblowers (CM/Rec(2014)7).

4. Information and awareness raising

- 4.1. Authorities, including electoral management bodies, should create wide-reaching information activities, in which citizens and civil servants, candidates and political party leaders, are aware of their rights and responsibilities during electoral processes. Clear criteria should be established to distinguish electoral campaign activities from information activities. Such information should be distributed consistently.
- 4.2. Internal instructions and training for civil service need to be developed to promote legally based non-partisan conduct within the executive branch. Guidelines for civil servants, public commitments, codes of conduct and other instruments, should be disseminated.³⁵
- 4.3. Civil society can raise awareness among citizens and political stakeholders on the importance of a fair use of administrative resources during electoral processes.

C. Remedies and sanctions

1. Complaints and appeals

- 1.1. The legal framework should provide for an effective system of appeals before a competent, independent and impartial court, or an equivalent judicial body: an independent judiciary is a *sine qua non* condition for sanctioning the misuse of administrative resources.
- 1.2. The first instance appeal body in electoral matters should be either an electoral management body or a court or an equivalent judicial body. In any case, final appeal to a court must be possible.³⁶ This guidance should apply to alleged cases of misuse of administrative resources.
- 1.3. The legal framework should ensure the independence of electoral management bodies, other administrative bodies, and courts in their decisions when adjudicating disputes regarding the misuse of administrative resources. This should be both reflected in their training and technical capabilities. For this purpose, electoral management bodies should get appropriate staffing and other work conditions.
- 1.4. While tackling cases related to the misuse of administrative resources, including via adjudication of election-related disputes, electoral management bodies, other administrative bodies, and courts must apply laws in a uniform and impartial manner irrespective of the parties to the particular case.

35. See also Guidelines B. 1. 7.

36. Code of Good Practice in Electoral Matters, II. 3.3 a.

- 1.5. Authorised law-enforcement bodies – police, prosecutors – should investigate cases on the misuse of administrative resources effectively and timely.
- 1.6. The legal framework should ensure that the electoral management bodies and courts – and other judicial bodies – hold hearings and that their decisions are made public, written and reasoned. The legal framework should also ensure a timely adjudication and appeals process.

2. Sanctions³⁷

- 2.1. The legal framework should define the misuse of administrative resources during electoral processes as an electoral offence.
- 2.2. The legal framework should establish clear, predictable and proportionate sanctions for infringements of the prohibition of the misuse of administrative resources, from administrative fines to the ultimate consequence of cancelling election results where irregularities may have affected the outcome.³⁸ Civil servants who misuse administrative resources during electoral processes should be subject to sanction, including criminal and disciplinary sanctions, up to the dismissal from office.
- 2.3. Political parties and candidates who deliberately benefit from a misuse of administrative resources should be subject to a range of sanctions proportionate to the offence committed. This may include formal warnings, fixed monetary penalties, reduction in public financing, or referral for criminal prosecution.
- 2.4. The legal framework should foresee that in case of violations of the rules on public finances which imply a misuse of administrative resources or when illicit financial advantages are given to political parties or candidates, such financing has to be returned to the state or municipal budget, regardless of other applicable sanctions.
- 2.5. The implementation of sanctions against the misuse of administrative resources is effective only if the investigation, auditing, prosecution and justice systems are independent from the political power.

37. Code of Good Practice in Electoral Matters, II. 3.3.

38. Code of Good Practice in Electoral Matters, II. 3.3. e.

MORE INFORMATION

VENICE COMMISSION

- ▶ DG-I, Council of Europe
67075 Strasbourg Cedex France
Tel.: +33 3 88 41 20 67
Fax: +33 3 88 41 37 38
E-mail: venice@coe.int

FOR PRESS CONTACTS

- ▶ Tatiana MYCHELOVA
Tel.: +33 3 88 41 38 68
E-mail: tatiana.mychelova@coe.int

www.venice.coe.int

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.