



Regulating against abuse of state resources in Eastern Europe, recent innovative approaches

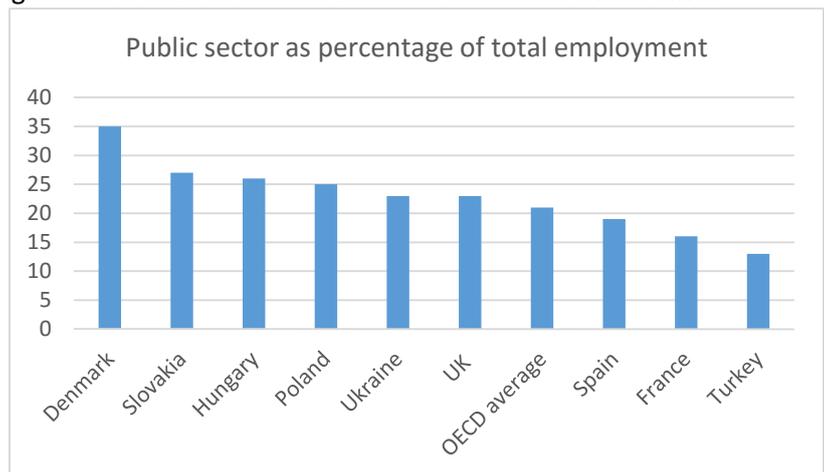
Dr Magnus Ohman, Senior Political Finance Adviser,
International Foundation for Electoral Systems

Paper prepared for the *Regional Conference On Money in Politics*, Tbilisi
February 2016

Abuse of state resources, an enduring problem

Elections is by now the only accepted way of selecting political leaders in all but a handful of countries around the world. While this is very encouraging, it also means that the quality of these elections has become increasingly important. Many of the problems with modern democracy revolve around money. Outspending opponents or bribing voters is used to ensure electoral outcomes which differ from the will of the people.

One problem that has proven particularly pervasive in many regions is the abuse of resources belonging to the state. The state is a major employer in many European countries, and the temptation to use state resources to unduly increase the chances for re-election has proven irresistible for many incumbent political parties.¹



Types of
state
resources



There are many types of state (or administrative) resources that may be abused in an electoral context, including financial resources (such as the government budget, pension increases and tax breaks), institutional resources (public employees and public media), regulatory resources (gerrymandering and candidate eligibility criteria) and enforcement resources (police permits for campaign rallies and unexpected tax inspections of opposition supporters).²

In Eastern Europe, the potential problems of abuse of state resources were acknowledged already in the 1990 Copenhagen document signed by the CSCE states, which noted that “there must be a clear separation between the State and political parties”.³ Unfortunately, these problems remain 25 years later.

¹ The data on public sector employment is from 2013 and taken from OECD *Employment in the public sector*, see <http://www.oecd-ilibrary.org/docserver/download/4215081ec022.pdf?expires=1453796098&id=id&accname=guest&checksum=06FBA55B59098C3B1852FE03B9F3CB8C>

² For more on types of abuse of state resources, including a list of “100 ways to abuse state resources”, see IFES (2013) *Political Finance Oversight Handbook*, available at <http://ifes.org/publications/tide-political-finance-oversight-handbook>

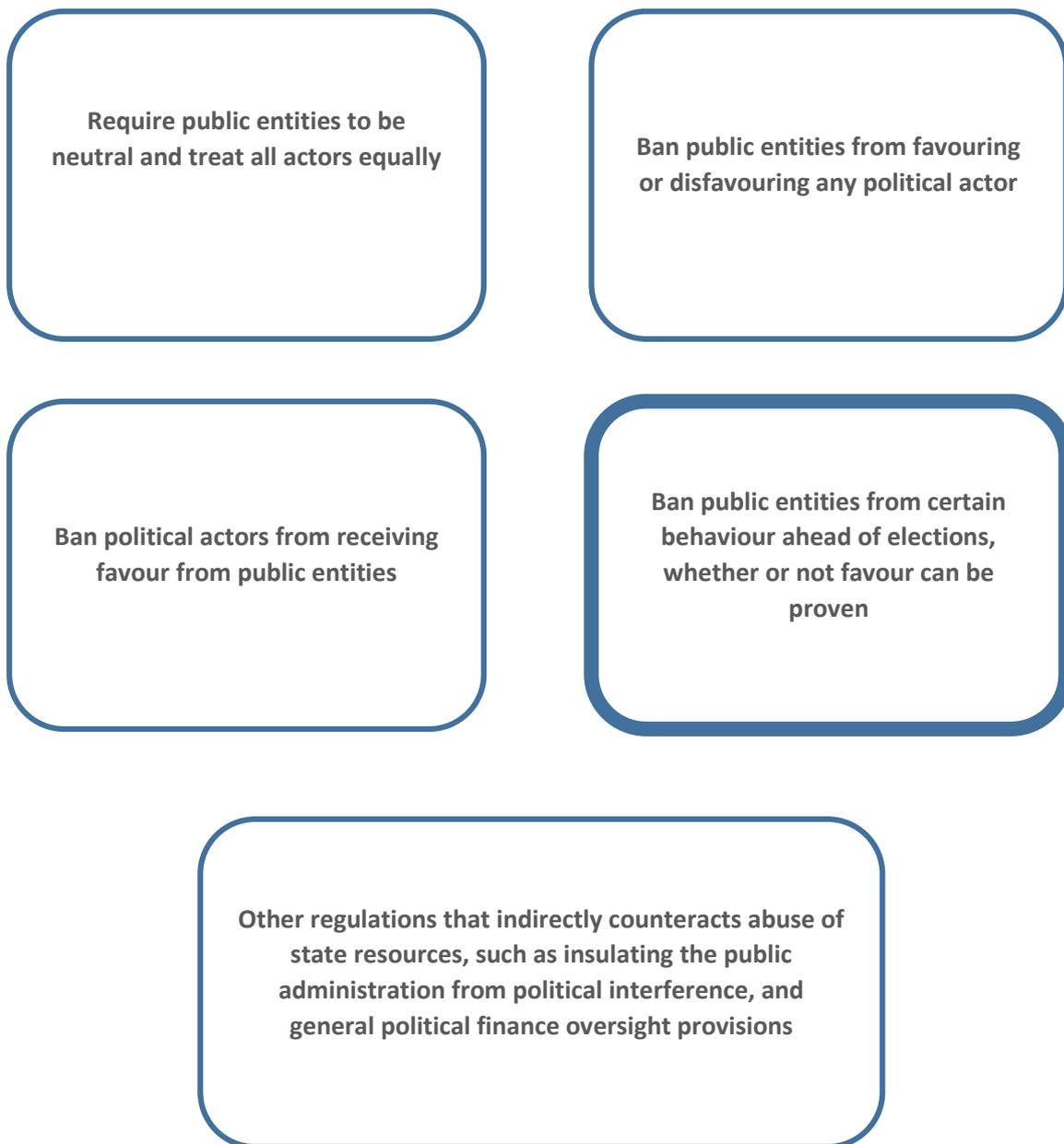
³ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen 1990, Article 5.4.

Typology of regulations

Out of the 180 countries reviewed in the International IDEA database on political finance regulations, it was only in Namibia, South Africa and Swaziland that no bans on abuse of state resources could be found (and also in this cases the reason may have been that the researchers did not have access to the right data).⁴ In other words, almost all countries have attempted to address abuse of state resources in the political process by introducing at least some rules. Broadly, these rules can be divided into five categories.⁵

The rest of this paper will deal with recent examples of legislation that falls under the category highlighted particularly below.

Typology of regulations against abuse of state resources



⁴ See www.idea.int/political-finance. This conclusion is based on a joint analysis of questions 11 and 30 in the database.

⁵ See further IFES (2013) *Political Finance Oversight Handbook*, Chapter 12.

Case studies of recent legal changes

Montenegro

In 2014, the Parliament of Montenegro passed a “Law on Amendments to the Law on Financing of Political Parties”. Portions of this law was found by the Constitutional Court in May 2014 not to be in line with the Constitution of Montenegro. For example, a restriction on advertising by public institutions ahead of elections was found to breach regulations on freedom of expression.

However, even with this partial reversal, the Law on Financing of Political Parties contains interesting provisions seldom been tested in other countries. Apart from general bans on using state resources in favour of a particular political actor, the law for example bans state institutions from incurring a “monthly consumption higher than the average monthly consumption in the previous six months from the day of calling of the elections until the day of holding of the elections” (Article 28). Writing off debts is also banned from the calling of elections until one month after election day (Article 31) and “persons may be employed for a fixed-term as well as hired under a temporary service contract, only if it is so envisaged by the act on job descriptions” (Article 33).

The blanket ban on public institutions advertising during the pre-electoral period has been replaced by a ban on such activities if they “could in any way place into a favoured position the political entities or their representatives during the election campaign” (Article 27).

Especially interesting is that these bans and restrictions have been complemented with detailed publication and reporting requirements for public institutions. For example, all budget units are required during the campaign period to on a weekly or bi-weekly basis publish information about their accounts, spending and social welfare payments, as well as their travel orders (useful for monitoring the ban on public vehicles being used for needs other than “public duty”) (Articles 28-32). Any decisions to hire staff must also be reported to the Anti-Corruption Agency, which is required to publish these on its website.

If implemented, these unusual reporting and publication requirements can greatly assist the monitoring of compliance with rules against the abuse of state resources in Montenegro. A number of challenges admittedly exist, for example that the Anti-Corruption Agency that is to oversee the new law has only recently been constituted, and that a number of the public entities required to publish various information on their website do not actually have a website. The latter also relates to the multitude of information sources – the law does not anticipate that all data on public entity activity will be gathered in one place. Even so, the new provisions represent an interesting and innovative experiment in counter-acting abuse of state resources in elections, well worth studying closer.

Macedonia

Macedonia is another country in the Balkans that has had its fair share of concerns regarding abuse of state resources. For example, state owned companies have reportedly made donations to political parties via private companies.⁶

A new provision was introduced in the Macedonian electoral code in 2014. This includes a ban on among other things the “payment of subsidies that are not regular monthly payments”. Article 8-a prohibits a series of activities from the day it is decided to call a presidential, parliamentary or local government election until election day. These include:

⁶ Treneska-Deskoska (2012) *Financing of Political Parties in Republic of Macedonia*. Iustinianus Primus Law Review Vol 3:1. page 6. See also OSCE/ODIHR (2015) Needs Assessment Report, page 8.

- Use of public/budget funds “for the commencement of construction of new infrastructural facilities, such as roads, waterworks, transmission lines, sewage, sports playgrounds and other facilities, or social activities’ facilities - schools, kindergartens and other buildings, unless Budget funds have previously been allocated for that purpose, i.e. unless it is part of the implementation of the program adopted based on a law in the current year”
- “payment of salaries, pensions, social welfare or other payments and financial compensations from budget funds or public funds” outside of “regular monthly payments”

Starting 20 days before the election campaign commences, it is also banned for public entities to;

- Incur “payment of un-scheduled subsidies”
- Holding of public events “on the occasion of the commencement of construction or use of facilities” involving public resources, with the exception for “giving a public statement of a public official or a candidate for a public official during a rally, an interview in the media, a debate in the media or an answer to a journalist’s question”

These provisions have been well received internationally. For example, the Venice Commission and OSCE/ODIHR wrote in its review of the legal changes that “This Article is consistent with recommendations made by the Venice Commission and the OSCE/ODIHR concerning the development of safeguards to ensure sufficient separation between the state and party. In addition, the list of prohibited activities is now precise and well defined”.⁷ The analysis however added that “Article 8(a) should be further strengthened in order to be more effective in avoiding the misuse of public resources for the campaign, especially for limiting public spendings [sic] before election campaign. A further provision should be added to regulate the campaign activities of ministers during municipal elections and when they take up an active role in the campaign”.⁸

One concern about the new provisions is that compared to the Montenegrin scenario, there are limited reporting and publication provisions in relation to these prohibitions. Admittedly, the Ministry of Finance should publish “an overview of all planned and realized incomes and expenditures from the Budget presented per item, in the period from the beginning of the fiscal year until the day of the publishing of the report” two weeks following the announcement of elections. It should also publish “all budget payments, except the regular salaries, pensions and utilities” on a daily basis (Article 8-a.3-4). However, it is not clear if this information will be presented in an aggregated manner, or at a level of detail that will allow for a review of the compliance with the prohibitions above. Even with these reservations, the new article represents an interesting step forward, and the impact on this regulation on abuse of state resources in the 2016 election campaign should be monitored carefully.

Other countries

Limitations of this kind exist also outside of Europe. The Indian Model Code of Conduct bans public authorities from announcing financial grants or promises of road construction ahead of elections. Similarly, there are strict limitations on public spending in Brazil ahead of elections, including on the hiring of temporary and permanent staff. At the extreme end we find provisions in Bangladesh (formerly) and in Pakistan requiring care-taker governments to be in place ahead of elections, to ensure that an incumbent cannot misuse their position during the election campaign.

⁷ Venice Commission & OSCE/ODIHR (2013) *Joint Opinion on the Electoral Code of “The Former Yugoslav Republic of Macedonia”*. Adopted by the Council for Democratic Elections at its 45th meeting (Venice, 13 June 2013) and by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), page 4.

⁸ Ibid page 5.

Limits to regulations in counteracting abuse of state resources

The examples above show innovative approaches to counteract abuse of state resources with legislative provisions. Everyone interested in democratic elections should follow the future progress of these examples with great interest.

Having said this, there is little to indicate that legal provisions alone can effectively stop state resources being abused in elections. In many cases, these practices have been going on for decades, and sometimes they are carried out by the very people tasked with monitoring, investigating or sanctioning such abuses.

Other measures have to be added, and key among these are;

Raise public awareness	Professional pride within state administration	Civil society and media monitoring
<ul style="list-style-type: none">• Include education about the integrity of the public administration in school curricula• Run public awareness campaigns ahead of elections about the dangers of such abuses for democracy, and the waste of tax payers' money that it entails	<ul style="list-style-type: none">• Make professional pride and the rejection of abuse of state resources an integral part of the education of public servants• Public and fully and partially publically owned institutions should develop their own regulations or codes of conduct on how their resources can and cannot be used	<ul style="list-style-type: none">• Civil society to monitor abuse of state resources, including budget monitoring, as done by TI Georgia and other groups in the region.• Media outlets to name and shame those who engage in abuse of state resources.

Final words

This brief paper has explored regulations against abuse of state resources, highlighting in particular some innovative approaches that have been introduced into East European legislation recently.

While the issue of abuse of state resources has gained increasing attention during the last decade or so, there is a significant need to continue exploring the roots and approaches that these abuses take. While Eastern Europe and countries of the former Communist bloc are far from the only region that suffers from this kind of abuses, they represent an interesting focus for in-depth research and consultation.

In particular, the search for solutions to these approaches must continue. In this, innovative legal provisions complementing existing rules should be carefully considered. The experience shows however that any legislation will fail to counteract abuse of state resources unless the regulations are actually implemented, and complemented by other activities by different stakeholders.