



Strasbourg, 18 May 2009

CDL(2009)058*

Study No. 477 / 2008

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT SUMMARY OF RECOMMENDATIONS
ON AN INTERNATIONALLY RECOGNISED STATUS
OF ELECTION OBSERVERS**

on the basis of comments by

Mr Owen MASTERS (Expert, United Kingdom)
Mr Valeriy MUSIN (Substitute Member, Russian Federation)
Mr Olivier POHLER (Expert, France)
Mr Ángel SANCHEZ NAVARRO (Former Substitute Member, Spain)

**This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

Introduction

1. *Following the Report on an internationally recognised status of election observers¹ adopted by the Venice Commission at the request of the Parliamentary Assembly of the Council of Europe, the need for recommendations leading to an internationally recognised status of election observers appeared palpable.*

2. *For achieving this purpose and in order to get a global vision of election observation within the Council of Europe member states, in addition to an overview of domestic legislation dealing with provisions on election observation, elections observation missions' reports of the Parliamentary Assembly of the Council of Europe as well as similar reports from OSCE/ODIHR have been scrutinised in the present document.²*

3. *Before going into substance, a distinction should be made between assessment and observation made by the election observers. By observing, the election observers collect information on the given elements of the electoral process on the spot; by assessing the electoral process, the election observers evaluate information received from other stakeholders and which requires more caution; such assessment will be made generally in the final exhaustive election observation mission reports.*

4. *The present document has been elaborated on the basis of international election observation missions' reports which underline possible improvements in national electoral legislation. It aims at summarising the main elements underlined in these reports.*

5. *The present document has been adopted by the Council for Democratic Elections at its ... meeting (Venice, ...) and by the Venice Commission at its ... plenary session (Venice, ...).*

Possible improvements in national electoral legislation on the basis of international election observation missions' reports

6. Various countries, mostly Central and Eastern European countries amended their domestic electoral legislation in order to bring them in line with the 1990 OSCE Copenhagen Document and with other international standards. On the contrary, none Western European country implemented such international standards in its legislation, probably due to the absence of international monitoring and to confidence in the electoral process. Moreover, in the latter case, electoral processes are guaranteed by the presence of candidates or parties' proxies.³

7. In this regard, it is important to legally recognise proxies' rights at the same level as non-partisan observers' rights.⁴ Additionally, it should be noted that party proxies are sometimes under the responsibility of their political party and do not require any official accreditation.⁵

¹ Report on an internationally recognised status of election observers, on the basis of comments by Mr Valeriy Musin (Substitute Member, Russian Federation), Mr Owen Masters (Expert, United Kingdom), Mr Olivier Pohler (Expert, France) and Mr Ángel Sanchez Navarro (Member, Spain), adopted by the Venice Commission at its 78th plenary session (Venice, 13-14 March 2009, CDL-AD(2009)020).

² For OSCE/ODIHR reports, see www.osce.org/odihr-elections/14207.html. For Council of Europe Parliamentary Assembly reports, see www.assembly.coe.int.

³ Final Report on the 22 April and 6 May 2007 Presidential Election in France by OSCE/ODIHR. Needs Assessment Mission Report ahead of the 9 March 2008 Parliamentary Elections in Spain by OSCE/ODIHR.

⁴ PACE Ad hoc Committee to observe the Parliamentary Elections in Bulgaria (25 June 2005) §15.

Final Report on the 10 June 2007 Parliamentary Election in Belgium by OSCE/ODIHR.

Final Report on the 25 November 2007 Parliamentary Elections in Croatia by OSCE/ODIHR.

Final Report on the 2006 Presidential Election in Bulgaria by OSCE/ODIHR.

⁵ Final Report on the 7 October 2007 Parliamentary Elections in Latvia by OSCE/ODIHR.

8. Various election observation missions' reports underline transparency and public credibility in the electoral process strengthened by the active involvement of the civil society.⁶ It has been underlined in this regard that a distinction between domestic and international observers should be avoided in order not to limit the rights of domestic observers compared to international ones.⁷

9. Concerning international election observation missions, it is important that the legislation provides provisions on the competent authorities able to invite international organisations to observe the various kinds of elections as well as referenda.⁸

10. Election observation missions' reports advise national authorities on improving the fulfilment of rights for domestic and international election observers' rights in their domestic electoral legislations. The observation process has therefore to be helped by local authorities. For proper and efficient observation as well, polling stations and counting centres have to be accessible to the observers and well organised (e.g.: shortening the distance between observers and counting tables for better observation).⁹ Election commission meetings should be widely accessible to all kinds of observers, including tabulation of results process.¹⁰ Freedom of movement for observers should be guaranteed for a wide observation process during all stages of the electoral process.¹¹

11. Remedies should be ensured to observers before national or local authorities in case their rights are denied in the course of the observation process.¹² Competent authorities should quickly solve such complaints since the electoral process is short.¹³

12. Most of national electoral legislation provides provisions regarding the accreditation process that may concern individual observers, NGOs and international institutions. Such a process should be simple,¹⁴ and its attribution criteria as well as deadlines be clearly defined in legislation.¹⁵

13. Attribution criteria for observation accreditation should not be restrictive.¹⁶ The accreditation process should be simple and harmonised throughout the country if there is a decentralised process of accreditation (for instance for the regional NGOs observing the elections); notably a single registration should be sufficient for the whole country. Concerning international

⁶ PACE Observation of the Presidential Election in Armenia (19 February 2008), §14.

Final report on the 10 September 2006 parliamentary elections in Montenegro by OSCE/ODIHR.

⁷ Final report on the parliamentary elections in Albania, 3 July 2005 by OSCE/ODIHR.

Final report on the local elections in Albania, 12 October 2003-25 January 2004 by OSCE/ODIHR.

⁸ Final Report on the 12 May 2007 Parliamentary Elections in Armenia by OSCE/ODIHR.

Parliamentary Assembly *ad hoc* Committee to observe the Referendum on the Constitutional reforms in Armenia, §5.

Final Report on the 6 November 2006 Presidential Election in Tajikistan by OSCE/ODIHR (non member state of the Council of Europe).

⁹ Final Report on the 18 February 2007 Local Elections in Albania by OSCE/ODIHR.

¹⁰ PACE Observation of the extraordinary parliamentary elections in Kazakhstan (18 August 2007) §34.

PACE Observation of the Parliamentary elections in the Republic of Montenegro (10 September 2006) §22.

Needs assessment mission report ahead of the parliamentary elections in Belarus, 28 September 2008 by OSCE/ODIHR (State candidate for membership).

¹¹ Final Report on the 16 December 2007 Pre-term Parliamentary Elections in Kyrgyzstan by OSCE/ODIHR (non member state of the Council of Europe, member state of the Venice Commission).

¹² PACE Observation of the Parliamentary elections in Serbia (11 May 2008) §34.

Final Report on the 5 January 2008 Extraordinary Presidential Election in Georgia by OSCE/ODIHR.

Final report on the 19 March 2006 presidential election in Belarus by OSCE/ODIHR (State candidate for membership to the Council of Europe).

¹³ Final report on the elections to the State Duma of the Russian Federation, 7 December 2003 by OSCE/ODIHR.

¹⁴ Final report on municipal elections in "the former Yugoslav Republic of Macedonia", 13 and 27 March, and 10 April 2005 by OSCE/ODIHR.

¹⁵ Final report on parliamentary elections in Moldova on 6 March 2005 by OSCE/ODIHR.

¹⁶ PACE Observation of the parliamentary elections in the Russian Federation (2 December 2007), §19.

observation missions, countries cannot refuse the presence of any particular nationality.¹⁷ In a few cases, the country stipulated as a condition that observers have prior experience in election observation.¹⁸ Even if such an argument may be of interest, the hosting country should not impose such criteria, the competence belonging to the international institutions invited or to the country of the considered nationals.

14. Moreover, it is advisable to extend accreditation to the entire territory of the hosting country, and not to limit accreditation to specific electoral districts or precincts.¹⁹

15. In order to avoid timeframe problems in ensuring accreditations, the accreditation process should be quick once a request is received.²⁰ In the case of prior refusal of accreditation with finally a successful appeal from the observation group, the hosting country should also issue accreditation quickly, permitting accreditation in time.²¹

16. It is assumed that domestic electoral authorities adopt a flexible attitude regarding accreditation and related deadlines to requesting organisations, especially concerning domestic organisations.²² Too severe an approach could be interpreted as a hostile attitude towards the observation process.

17. Moreover, refusal to grant accreditation should be open to appeal by the requesting domestic group or institution. Grounds for denying accreditation should be communicated in written form and in a timely manner.

18. Accreditation for NGOs or NGO groups is also bound by the legislation dealing with associations. For instance, it can be requested that election observation be declared in the association by-law.²³

19. Some attribution criteria proper to NGOs do exist. For example, independence vis-à-vis the political parties has to be guaranteed by an NGO, for itself,²⁴ for all its observers²⁵ and for its bona fides as well.²⁶

20. The nationality of an NGO can also be a selection criterion by the accrediting authority. For such a reason, foreign NGOs see their accreditation rejected,²⁷ while there are more and more of them applying for observation missions in foreign countries. The foreign origin of domestic NGO funds can also be a criterion for rejecting application to observe elections.²⁸

¹⁷ PACE Observation of the Parliamentary elections in Serbia (11 May 2008), Appendix 2.

Final Report on the 12 May 2007 Parliamentary Elections in Armenia by OSCE/ODIHR.

¹⁸ Needs assessment mission report ahead of the parliamentary elections in Belarus, 28 September 2008 by OSCE/ODIHR (State candidate for membership to the Council of Europe).

Final Report on the 18 August 2007 Parliamentary Elections in Kazakhstan by OSCE/ODIHR (non member state of the Council of Europe, observer state of the Venice Commission).

¹⁹ OSCE/ODIHR assessment mission report on the parliamentary and presidential elections in Romania on 28 November and 12 December 2004.

²⁰ Final report on the parliamentary elections in Albania, 3 July 2005 by OSCE/ODIHR.

²¹ Final Report on the 1 October 2006 General Elections in Bosnia and Herzegovina by OSCE/ODIHR.

Final report on the local elections in Moldova, 25 May and 8 June 2003 by OSCE/ODIHR.

²² Final report on municipal elections in "the former Yugoslav Republic of Macedonia", 13 and 27 March, and 10 April 2005 by OSCE/ODIHR.

²³ Final Report on the 30 September 2007 Pre-Term Parliamentary Elections in Ukraine by OSCE/ODIHR.

²⁴ Final report on parliamentary elections in Moldova on 6 March 2005 by OSCE/ODIHR.

²⁵ Final Report on the 1 October 2006 General Elections in Bosnia and Herzegovina by OSCE/ODIHR.

²⁶ OSCE/ODIHR assessment mission report on the parliamentary and presidential elections in Romania on 28 November and 12 December 2004.

²⁷ Final report on the presidential election in Kazakhstan, 4 December 2005 by OSCE/ODIHR.

²⁸ PACE Ad hoc Committee to observe the parliamentary elections in Azerbaijan (6 November 2005), §17.

Needs assessment report ahead of presidential election in Azerbaijan, October 2008 by OSCE/ODIHR.

Final report on the parliamentary elections in Azerbaijan, 6 November 2005 by OSCE/ODIHR.

Final report on the presidential election in Azerbaijan, 15 October 2003 by OSCE/ODIHR.

21. Such criteria can appear too severe or could limit the value of an observation process. On the contrary, it occurred that a NGO was asked to have a national dimension in its observation process, which is almost impossible in some large countries.²⁹

22. However, the lack of domestic observers is not necessarily proof that national authorities have impeded the election observation process; on the contrary, population and civil society can show wide confidence towards the electoral process.³⁰

23. It often happens that recommendations made following election observation do not have any effect.³¹ In such cases, Central and Eastern European countries should show a positive example and reform their electoral legislations in order to include provisions on the observation process.³²

24. Finally, it is crucial that electoral authorities as well as domestic and international observers be well informed of their rights and duties in the election observation process to ensure a smooth observation process and in order to give citizens confidence in the electoral process.³³

Conclusions

25. This report on the current situation regarding the status of election observers, drawn up on the basis of reports from the international election observation missions of the Parliamentary Assembly of the Council of Europe and OSCE/ODIHR, underlines the diversity of provisions regulating this status, including the lack of such a status or the lack of enough safeguards in this regard in national electoral legislation. In particular, some national electoral pieces of legislation make a distinction – difficult to justify – between national and international observers where others do not. Improvements are feasible and recommended in most national electoral texts of the considered member States, regardless of their level of democratic development. On the basis of this report, the Venice Commission will develop Guidelines on an internationally recognised status of election observers.

²⁹ Final report on the presidential election in the Russian Federation, 14 March 2004 by OSCE/ODIHR.

³⁰ PACE Observation of the Parliamentary elections in Turkey (22 July 2007), §15.

Final Report on the 22 July 2007 Early Parliamentary Elections in Turkey by OSCE/ODIHR.

³¹ PACE Observation of the presidential election in the Russian Federation (2 March 2008), §33.

Final Report on the 21 October 2007 Pre-Term Parliamentary Elections in Poland by OSCE/ODIHR.

³² Needs Assessment Mission Report ahead of the 9 March 2008 Parliamentary Elections in Spain by OSCE/ODIHR.

Final Report on the 21 October 2007 Federal Elections in Switzerland by OSCE/ODIHR.

Final report on the presidential election in the Republic of Serbia (Serbia and Montenegro), 13 and 27 June 2004 by OSCE/ODIHR.

³³ Final report on the parliamentary elections in Albania, 3 July 2005 by OSCE/ODIHR.

Final report on the elections to the State Duma of the Russian Federation, 7 December 2003 by OSCE/ODIHR.