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**ON "EUROPEAN STANDARDS AND ELECTORAL  
PROCESS IN UKRAINE"**

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**REPORT**

**EUROPEAN STANDARDS AND ELECTORAL PROCESS  
IN UKRAINE - VIEW BY INTERNATIONAL OBSERVERS**

**by**

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I have had the privilege to observe quite a few elections. The first time was the parliamentary election in Ukraine 2002. Linked up to those elections were also pre-election missions. There we had meetings with those involved like the Central Election Committee, ministers NGOs and so on. We also had meetings with parties and candidates. The main purpose of the pre-election missions was to see how the preparations towards the elections are conducted. Are candidates made able to participate and how does the campaign move forward.

### **Changing the election rules**

What we often see when being in former Soviet countries is that the lawmaking process regarding elections often is a source of conflict. The debates then often is about who has tried to fiddle with the law or procedures to make unfair gains. Is it abuse of power or is it only necessary adjustments?

Democratic elections will always have room for improvements, also when it comes to rules and regulations. Something ought to be broadly agreed up on, other issues there will be a constant debate about.

What is major importance is that the voter can cast his/her vote freely and in secrecy. Then of course the will of the voters have to be respected. How to reach these basic standards one ought to be able to have an agreement on regardless of political party background.

It is important to agreements on basic rules that make the democratically process of elections credible amongst the population. It is not only a matter of good rules and regulations, but also a need to make the people feel that it is worth the effort to participate in the important process.

Both parties in position and parties in opposition have a responsibility to guard the democracy and be the guardians of the well functioning of the country. The best way of doing that is to invest in public trust towards the processes that is necessary in functionary democracies.

### **How much to change**

One often finds that there are things that ought to be changes due to experience. It might also be that one wants to make some adjustments in order to avoid potential problems in the next election.

Don't change the whole election system only because one finds a need to correct one or two minor problems. Then change what need to be changed. It might be that one can get a broad majority for the change if one can have stability on the other matters regarding the election. Ukraine has had major changes at nearly every election. That is why it is important to try to make some kind of stability to the major lines in the way Members of Parliament are being elected. Then one does not need to be accused of changing the rules only to make benefits for ones party or candidates.

Large changes of the system on how to elect representatives should not be done without some agreements also between the different political parties.

### **What to agree up on**

#### **Basic principles**

I don't think there are any major differences in the understanding of a free and secret voting. Where this was a problem in earlier times, this is now respected and complied with in general.

The question on how to help voters that needs assistance when voting is a difficult matter. Here one needs the balance between the integrity of the voter and what is needed to be done in practical terms. It is of great importance the person assisting has credibility of only doing as the voters want and that no pressure regarding the voters' choice is being conducted.

The problem regarding group voting and so on occurs less frequently these days than earlier. That does indicate that the understanding of the democratic process and the right of the individual also is being more respected by the population in general.

#### How to control the results

Regardless of how wins an election, one needs to be able to control that the tabulation of the result has been done according to the rules and that it is accurate. If the voters are going to have confidence in the result the tabulation and the tabulation process have to be transparent. This also gives the winners credibility towards their right to govern the country.

The tabulation has to be done in a way that makes it possible to follow the numbers from the polling station all the way up to the final result at the Central Election Committee. It is when the voters and the observers can follow the results all its way to the final result that one can guarantee that the result is as the voters have actually voted.

#### Where to complain

If one has the right to complain about proceedings or one wants to contest the result, it has to be a known place to make the case. The more complicated the procedure for complaints are being made, the less functional they are. As a result of that one ought to find a way that is possible to use and that has credibility.

If those handling the complaints do not have credibility the whole trust in the democratic process is in danger. If one does not trust those who you can complain to, why should one trust the process in advance?

It is also important that the rulings are being done quickly and that it is being respected by those involved in the elections. The timeframe is crucial for the functioning of democratic elections. One can't wait for months for rulings on urgent matters. This is of great importance on matters regarding candidates and procedures in the time of campaigning. But also problems that are related to the actual voting and the tabulation have to be decided on as soon as possible. The elected body can not start working if the legality is not clarified.

#### What should be the consequences?

If there have been any violations they should be addressed. Violations also ought to have some consequences. But one must differ between small mistakes and large fraud. Some irregularities can be corrected without any difficulties, other things might require a whole new election to be held.

It is important to address all the irregularities that occur. At the same time one has to bear in mind the need to act within reason when ruling on the consequences. If one has added wrongly in a protocol, one might just correct it. This again can make a situation where someone else is being elected then the one first believed to have been elected. On the other hand if the irregularities are more severe one might find that the best thing is to hold a new election in some districts or local places.

If it comes to severe fraud on a national or other large scale, then the whole election might be invalidated.

One should also look into the matter whether or not it has had any implication on the result of the election. If something has not had any impact at all, a new election is hardly relevant. But when deciding up on that, one can not only decide up on isolated matters, but one has to see the whole picture with all the different irregularities working together. When added up a large number of smaller irregularities might end up making a pattern and have some consequences on the result.

If one finds that irregularities have had an impact on the result it is important that the final ruling is effectuated promptly. If one decides that it hasn't had any effect, one also needs a speedy ruling so it might be appealed to a higher level or at the end to the Court of Human Rights in Strasbourg.

### **Where one might have different opinions**

#### Closed lists or open lists?

Ukraine has decided up on a system with closed party lists. This means that one can only vote for the list and the voter is not able to add people from other lists or people that is not on any other lists.

Some countries do give an opening to the voters to change the party lists by putting on other names. Some countries give this possibility only on local elections and others again not at all. This is more a question on the possibility of preferences towards persons more then preferences towards the number of representatives that should come from the party preferred.

Another question is whether or not the voters should be able to influence on the internal ranking of the candidates and by that influence on witch persons that are elected inn from the list the voter is voting on.

#### Thresholds

Thresholds are often used to keep the number of parties in parliament lower then it would have been without a threshold. The argument then is that one gets a set of lager and more responsible parties and a clearer picture on how to form a government. At least one does not need to take into consideration a large number of parties with one or two representatives.

When deciding on a threshold one need to bear in mind the democratic aspect of many votes not being represented in parliament. In Council of Europe the thresholds vary from Sweden with 2% and Turkey with 7%. The threshold in Turkey has been mentioned in The Parliamentary Assembly of the Council of Europe as to large. The Venice commission has in its Code of Good Practice estimated that the threshold should not be more then 4%. This does not rule that a 5% threshold automatically is a violation of democratic principles.

#### Proportional or majority?

Whether one would like a proportional system, majority system or a mixed system, is up to the country it selves to decide. This is not something that by it selves are regarded as question on democratic development or not.

It is largely regarded that proportional representation gives the minority a better representation then the majority system. A majority system without a established party system can also make up a parliament where there is difficult to establish a ruling majority. But again a proportional

system is not a guarantor for a stable parliament.

### Constituencies

Ukraine has decided to have one national constituent. Some countries have divided the country into a small or larger number of constituencies. Then again some countries have made some arrangements to smoothen out the differences between the national acquired percentage of the votes and the fact that geographical constituencies do not always contribute in the same way.

If one wants to use geographical constituencies to guarantee that certain minorities gets a representation in parliament, the minority have to be gathered in a specific geographical location.

There is also a possibility to argue that rural regions far away from the capital ought to have a bit larger representation than the population by it selves would be entitled to. Some advocate that this is a compensation for the difficulty of being heard for people in these places.

One has to look into the question of the possibility for groups of people to actually be able to be represented in parliament or not. A national constituency with a large threshold would probably not be helpful for minorities.

### Quotas

A question that often are debated is whether or not one ought to have quotas to insure that minorities or poorly represented groups should be guaranteed some kind of representation in parliament.

The question of quotas is often linked to the question of regional constituencies regarding ethnical minorities. Registration of ethnical minorities and of those belonging to a minority also raises problems. Should one be able to take part in the quota if one has a mixed ethnical background? Are those registrations going to make problems or make individuals feel some kind of pressure? Registration of ethnicity has not always been a positive thing in European history.

There is also a question on quotas regarding male and female. Is a quota system a useful way forward to accomplish equality on representation in parliament? How does it inflict on the equal right for the individual to take part in the democratic processes? Here I suppose there will be different political priorities.

### When to make changes?

Changes in the election code is often being done quite close up to the time of elections. Then one makes it possible to ask questions regarding why changes are made at this point. This kind of turbulence then takes away the political aspect of the election campaign.

To avoid uncertainty and accusations about these matters the Venice commission has stated in its Code of Good Practise that one shall avoid changes in the electoral code close up to the time of election.

This stability that one wants regarding the electoral code is of course linked to the major principles and procedures in the code. This recommendation is not given for stopping changes that are agreed up on by all major participants in the election, or if one can clarify or remove contradiction in the laws concerning the conduction of the election.

The best time to start the work on the code of election procedures is straight after this forthcoming election. Then one has the knowledge on what might cause uncertainties and what one would like to change. One also has the time to have inclusive debate on what would be the best solutions and why so. I think that the rules on election matters ought to be as broadly accepted as possible. This means that one has to take into consideration also the views of the minority as well as the will of those in majority. As one knows, majorities and minorities do change from time to time. Taking this into consideration, the majority ought to make rules they themselves can accept if they later come into being in minority. And the minority should not put forward demands they aren't going to fulfil if later in majority.

### **Election campaigns**

Election campaigns are important for getting a democratic and fair election. Without a real campaign the voters can't make an informed decision on what to vote for.

The voters need to be able to make an informed choice on what to vote for. Then it is crucial that the campaign revolves around the issues of how to develop Ukraine in the interest of its population. Then the voters can vote for those the voter agrees with the most.

If an election campaign is focused on the changes in the rules and regulations of the elections, one does not get a political debate. One of the important moves forward for Ukraine is to develop a political focus and not just a focus on administrative resources and changing of the election laws.

### **The legal texts**

When it comes to the laws on the conducting of elections a main obligation is to avoid contradiction in the legal texts. If one makes one electoral law the problem of contradiction usually is less than when one spreads the legal framework on to a number of laws. Even if one makes one law it is still possible to have contradictions. But if one takes the time to debate it in a proper way in parliament, one has a better chance to avoid this.

One discussion ought to be on how detailed a law on election matters should be. What shall be decided by the parliament, and what can be delegated to the Central Election Committee or to a ministry? Here one has to balance between flexibility and stability. Regardless of that the parliament has to decide if the Central Election Committee or a ministry should be able to make statements on clarifications or contradictions. This kind of statements ought to come as early as possible. Then the participants know what to relate to.

Regardless of how one makes laws, one can't foresee everything. If decisions or results are contested, one needs clear rules on how to be able to get a ruling on the question. At the same time the final decision has to come as fast as possible. It is not an option to wait for months or years, when in fact a new election is coming up. If one wants to take the question to the court in Strasbourg the timeframe is crucial.

Reaching European standards regarding elections, one does not only need good laws and implementations of them. When it comes to democratic rule, this is also a way of thinking.

The respects of one's opponents are crucial. Worth then bad losers is a bad winner. Winners that don't change what they were against when in minority do not bring a lot of credibility neither to themselves nor to the democratic process. It is important to follow up on changes that have been promised earlier. Also the minority ought to put forward proposals that covers problems or regulations that one has debated against previously.