



Strasbourg, 30 November 2013

CDL-EL(2013)015
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**FIFTH EASTERN PARTNERSHIP
FACILITY SEMINAR
ON ELECTION OBSERVATION
AND CENTRAL ELECTORAL COMMISSIONS**

**Council of Europe
Meeting Room No. 8**

**Strasbourg, France
25-26 November 2013**

**INTERNATIONAL OBSERVERS
AND ELECTION OFFICIALS**

**by Mr Nikolai VULCHANOV
Expert, Bulgaria**

This document will not be distributed at the meeting. Please bring this copy.
www.venice.coe.int

Funded
by the European Union
and the Council of Europe



EUROPEAN UNION



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Implemented
by the Council of Europe

1. Background

1. The first record of an international election observation dates back to 1857, when a commission of Austrian, British, French, Prussian, Russian, and Turkish representatives observed a plebiscite held in the disputed territories of Moldavia and Wallachia.¹ While international organizations and government representatives have monitored some electoral events since World War I and such activities intensified to a degree after World War II, they were conducted more often in territories of emerging sovereignty. In those times, election observation had been perceived largely as a post conflict political exercise aiming to “rubber-stamp”, by representatives of the international community, the credentials of a new government emerging after the conflict.²

2. In the middle of the Cold War of the XX century, key international actors sat around the table in an attempt to replace military stand up with a dialogue in a forum broadly known as the Conference for Security and Cooperation in Europe (CSCE). The first key result was the adoption of the 1975 CSCE Helsinki Final Act.³ In the *Declaration on Principles Guiding Relations between Participating States*, States agreed “to respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief for all without distinction as to race, sex, language or religion”. States decided to act in conformity with the purposes and principles of the Charter of the United Nations (UN) and the Universal Declaration of Human Rights, to fulfil their obligations as set forth in the international declarations and agreements in this field, “including the International Covenant on Human Rights, by which they may be bound.” Thus, the Declaration (in theory) cleared the way towards genuine elections behind the ‘Iron Curtain’, although it took more than a decade in order for such elections to begin happening.

3. Following the fall of the Berlin Wall, the CSCE became more and more active and was transformed in 1994 into the Organisation for Security and Cooperation in Europe (OSCE). Within the family of international organisations, the 57 member OSCE remains unique by taking its decisions with consensus, despite the need for further clarity with regard to its legal personality.⁴ The OSCE has produced a series of documents covering human dimension issues⁵. Most notable, in the context of this presentation, was the 1990 OSCE Copenhagen Document.⁶ With this landmark document, participating States in the CSCE (and since 1994, the OSCE) adopted, with consensus, clear commitments upholding unambiguously democratic elections. These commitments included, as a special tool to uphold transparency, election observation under a unique arrangement, whereby OSCE participating States agreed to invite each other to observe their elections in line with international standards, first and foremost the 1990 OSCE Copenhagen Document.⁷

¹ [Yves Beigbeder](http://www.osce.org/odihr/elections/17165), International Monitoring of Plebiscites, Referenda and National Elections: Self-Determination and Transition to Democracy, International Studies of Human Rights; 1994; see also ‘Election Observation: A Decade of Monitoring Elections’, OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Warsaw, 2005, <http://www.osce.org/odihr/elections/17165>.

² For example, after World War II in late 1945, VIP visits praised a farce known as the first “election” in Bulgaria, which was under Soviet occupation after World War II.

³ The 1975 Helsinki Final Act is available at <http://www.osce.org/mc/39501?download=true>. It begins with a Declaration on Principles Guiding Relations between Participating States. The Act did not end the Cold War, but marked a breakthrough which culminated in the fall of the Berlin Wall in 1989 and the renewal of democratic development throughout Europe and beyond.

⁴ <http://www.osce.org/secretariat/36184>.

⁵ The human dimension is one of the three pillars of the OSCE. The other two are the economic-environmental and the politico-military dimensions. Documents on the human dimension are included in the OSCE Human Dimension Commitments, Vol. 2, A Chronological Compilation, II Edition, and are available at <http://www.osce.org/odihr/76895?download=true>.

⁶ Document of the Copenhagen Meeting of the Second Conference on the Human Dimension of the CSCE, Copenhagen, 5-29 June 1990, available at <http://www.osce.org/odihr/elections/14304>.

⁷ This is in accordance with Paragraph 8 of the 1990 OSCE Copenhagen Document, please see below.

2. Elections

4. It is broadly accepted that a democratic election involves a genuine political competition where voters are able to make an informed choice between distinct alternatives competing on a level playing field. Such competition is impossible without true respect for a broad range of fundamental civil and political rights, including freedom of association, expression and assembly. Take away just one of those rights, and an election could become nothing more than a house of cards.⁸ The term 'democratic election' is broadly accepted to mean an election conducted in line with relevant international standards.

5. International standards for democratic elections include international law applicable for a given State. It comprises conventions ('hard law') adopted by the UN and regional organisations such as the Council of Europe (CoE), and explanatory documents ('soft law') like the UN General Comments or the 2002 CoE's Commission for Democracy through Law (Venice Commission) 'Code of Good Practice in Electoral Matters'⁹. In addition, international standards for democratic elections include other documents such as those issued by the OSCE, which represent political obligations. For example, the UN Declaration for Human Rights and the OSCE documents represent political obligations, while the UN and CoE conventions represent legal obligations for those member States that have completed the process of their ratification. The 2007 Compendium of International Standards for Elections¹⁰ published by European Commission¹⁰ provides a useful tool for the implementation of international standards for democratic elections.

6. An election is a participatory process unfolding in the course of months, or even years. It is a public process and it presupposes a pluralistic environment characterised by full transparency and accountability of all stakeholders, first and foremost of the incumbents, in order to promote public confidence. Importantly, introduction in the electoral process of new technology, such as web cameras in the polling stations or new voting technologies, is not a substitute of the political will by all stakeholders to conduct the election in line with international standards. While each election includes a logistical component involving delineation of electoral districts and polling station areas, supplying ballot papers and boxes and collecting electoral returns, the above mentioned political competition based on the rule of law remains at its core. The exercise of all fundamental freedoms is put to the test during the entire electoral period, as disrespect for any of these pillars of democracy hurts the conduct of a democratic election. A democratic election does not guarantee, in itself, pluralistic democracy. It is just the tip of the "democracy iceberg".¹¹

3. International Election Observation

7. In years following the fall of the Berlin Wall in 1989, election observation acquired new expert dimensions, assessing elections, as a process in its entirety to the extent possible, against a set of criteria representing aspects of the international standards for democratic elections. This approach was upheld by the OSCE, the CoE and the European Union (EU). Nevertheless, there are still attempts to qualify an election as "free and fair", rather than provide assessments on the basis of international standards for democratic elections.¹²

⁸ Election Observation: A Decade of Monitoring Elections, OSCE/ODIHR, Warsaw, 2005.

⁹ The Code is available at [http://www.venice.coe.int/webforms/documents/CDL-AD\(2002\)023rev-e.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2002)023rev-e.aspx).

¹⁰ The Compendium is available at http://eeas.europa.eu/eueom/pdf/compendium-of-int-standards-for-elections_en.pdf.

¹¹ Christian Strohal, Democratic Elections and Their Monitoring, European Yearbook on Human Rights, pp.247-264, 2009, <http://www.intersentia.com/searchDetail.aspx?bookid=101378>; please see also <http://www.osce.org/odihr/elections/41094>.

¹² The judgment that an election is "free and fair" – a political label intended to denote the (abstract) "gold standard" for an election process - is not used in assessing elections by traditional election observer organisations such as the

8. The overall objective of election observation is to support development of democratic institutions by providing recommendations for possible improvements of the electoral process in line with international standards on the basis of an established methodology for conducting election observation. In addition, election observation has a potential to deter possible violations of the legal framework upholding the rule of law and to prevent eventual electoral violence through the mere presence of observers across the host State.

9. The methodology for election observation is based on several principles:¹³

- (a) The election is a process, rather than a one day event. Consequently, credible and unimpeded election observation aims to assess the process in its entirety,¹⁴ notwithstanding obvious resource limitations impacting on the size and length of an observation activity.¹⁵
- (b) The sovereignty of the host State conducting elections implies that election observers must not interfere in the election process at any time including by providing advice and assistance. They must remain politically impartial with regard to all electoral contestants and must comply with the legislation of the host State.
- (c) An election (including its outcome) is legally legitimized by the host State's institutions and politically legitimized by the domestic electoral stakeholders.¹⁶ The mere presence of observers cannot legitimize the election.
- (d) Any election observation effort must be transparent. Transparency relates to funding and recruitment of observers, and public reporting of the observation findings. The latter is of particular importance, as delayed or 'confidential' reporting might be used by winners and losers alike to uphold their domestic political agendas.
- (e) Observers' activities must be based, at all times, on common sense including with regard to respect towards their host interlocutors, communication with the media,¹⁷ personal security, personal identification and restraint in any possible situation that they may be involved with.

10. Election observers include international and domestic observers, the latter being citizens of the host State. International observers can be representatives of partner governments or relevant international non-governmental organisations.¹⁸ Domestic observers can observe on behalf of competing political interests and/or civil society groups. The latter may often declare

OSCE/ODIHR or the EU. The reason is that preference is given to a more nuanced assessment focusing on the process vis-à-vis the **applicable international standards for democratic elections, rather than risking to explain** what does it mean that an election is "free but not fair", or is "not free but fair", etc. Further to that, adhering to an assessment in line with international standards provides for the opportunity to honestly describe both the positive features of the process observed and those of its aspects where there is room for improvement.

¹³ Further information is provided by the OSCE/ODIHR Election Observation Handbook (VI edition, 2010) available at <http://www.osce.org/odihr/elections/68439?download=true> and the Handbook for EU Election Observation at http://eeas.europa.eu/eueom/pdf/handbook-eueom-en-2nd-edition_en.pdf. However, the EU observes elections outside the OSCE region, across the world.

¹⁴ This includes the legal framework and its implementation by the authorities, the administration of the process by the election management bodies, the system for translation of votes cast for political contenders into seats in the elected body, voter and candidate registration, electoral campaign including its financing and coverage by the media, election day process and resolution of electoral disputes.

¹⁵ Funding is the most frequent limitation. For example, the OSCE/ODIHR election observation activities can be funded only by the OSCE/ODIHR core budget which must be approved by consensus by all 57 OSCE participating States.

¹⁶ For example, the 2005 UN Declaration of Principles for International Election Observation (please see below), http://www.ndi.org/files/1923_declaration_102705.pdf, states on page 1 (last sentence of the last paragraph) that '[...] it is the people of a country who ultimately determine credibility and legitimacy of an election process.'

¹⁷ In the context of communications with the media, it is particularly important for observers to understand that such communications have to take place in an organised manner in order to reflect correctly the overall assessment of the observation mission, rather than individual impressions which may differ even between two subsequent visits to the same polling station by the same observer.

¹⁸ It is regrettable that, on rare occasions, the latter might have arrived to observe a given election with a political agenda directly interfering with the election.

that they are not politically affiliated.¹⁹ This presentation is focused on international election observation by intergovernmental organisations, although on occasion it may touch upon other election observation efforts.

11. In the regional context, the leading election observation body is the OSCE/ODIHR.²⁰ It was established through the 1990 Charter of Paris for a New Europe.²¹ First called the Office for Free Elections, it became the principal instrument to assist OSCE participating States in possible improvement of their elections in line with international standards and holding them accountable to the standards they set for themselves in the 1990 OSCE Copenhagen Document, in particular Paragraphs 6, 7 and 8 of the Document. Key elements of the OSCE/ODIHR mandate to observe elections were further provided for by the 1994 Budapest Summit Document²² and the 1999 Istanbul Summit Document.²³

12. Generally,²⁴ OSCE/ODIHR election observation missions comprise a core team of experts contracted by the Office through a public competitive process and core budget funds, and long term and short term observers seconded by OSCE participating States. All OSCE/ODIHR election reports are released in a timely manner and become publicly available at the time of their release. In its observation efforts, the OSCE/ODIHR cooperates with regional international parliamentary bodies, such as the parliamentary assemblies of the OSCE and the CoE, the EU Parliament and on occasion the parliamentary assembly of the North Atlantic Treaty Organisation. Another regional body involved in election observation in parts of the OSCE region is the Commonwealth of Independent States (CIS).²⁵

13. In the course of an OSCE/ODIHR election observation mission, observers exchange views with domestic civil society groups. It was easy to establish that international election observation and election observation by national civil society groups can only complement each other and that this cooperation is beneficial to both. Notwithstanding the benefits of such cooperation, in view of the broad diversity of domestic observation efforts and the principle of impartiality of international observation, it has proved useful that these efforts should remain distinct in order to maximize their value.

14. In October 2005, the UN Secretary General announced²⁶ the endorsement of the principles of international election observation by a number of international bodies involved in election observation. These principles were included in a Declaration,²⁷ together with a Code of Conduct for International Election Observers, and endorsed by 22 international bodies including the OSCE/ODIHR and the CoE Venice Commission. The Declaration and the Code of Conduct

¹⁹ While the OSCE/ODIHR cooperates with civil society observers in a broader context, it maintains contacts with party and candidate observers (proxies) during its field activities as well.

²⁰ A comprehensive list of international organisations active in the field of election observation is provided in the presentation of Gerald Mitchell at the International Centre for Parliamentary Studies in London on 4 April 2011, <http://strategictransport.parlicentre.org/pdf/Gerald%20Mitchell%20-%20London%20-%20Session%201%20-%20Pre-election.pdf>.

²¹ Available at <http://www.osce.org/mc/39516>.

²² Chapter VIII, Paragraph 12 provides that the 'ODIHR should play an enhanced role in election monitoring before, during and after elections'. It also includes a mandate to assess the media situation in the context of elections, develop a framework for coordination in this field and devise a handbook for election monitors; <http://www.osce.org/mc/39554?download=true>.

²³ The 1999 Istanbul Summit Document re-committed States to invite the OSCE/ODIHR to observe their elections and 'to follow up promptly the ODIHR's assessment and recommendations'; <http://www.osce.org/mc/39569?download=true>.

²⁴ While this modality represents the so-called standard election observation mission, there are occasions where there is sufficient information on the way specific stages of the process unfold. In these cases, the OSCE/ODIHR may conduct a limited election observation mission (without short term observers) or an election assessment mission comprising only a team of experts. Details are provided in the OSCE/ODIHR Election Observation Handbook.

²⁵ <http://www.cis.minsk.by/>.

²⁶ <http://www.un.org/sg/statements/?nid=1762>.

²⁷ http://www.ndi.org/files/1923_declaration_102705.pdf.

reaffirm the values and importance of international election observation. They seek to increase professionalism and impartiality in this field, and detail the above mentioned principles. The Declaration was passed by the UN General Assembly in 2009²⁸ and since 2005 it was further endorsed by additional 23 organisations²⁹ worldwide. The OSCE/ODIHR hosted the 8th Annual Implementation Meeting of the Declaration of Principles for International Election Observation group in September 2013.³⁰

15. The CoE Venice Commission recommended careful implementation of the Declaration and the Code. In this context, it issued Guidelines³¹ at promoting an internationally recognized status of election observers, specifying in details the rights and duties of the international observers on the basis of providing equal rights to international and domestic observers.

16. Paragraph 8 of the 1990 OSCE Copenhagen Document commits OSCE participating States to invite each other to their elections. This commitment has been respected to date by the OSCE participating States. While Paragraph 8 of the Copenhagen Document refers to an invitation to observe a given election, the receipt of an invitation should not be construed as a precondition for launching an election observation activity.³² An invitation facilitates relevant preparations for international election observation. The OSCE/ODIHR receives the invitation with the understanding that it determines the numbers of observers needed to deliver its mandate, that where relevant the Office will issue a public statement reflecting its assessment of the process vis-à-vis the Copenhagen Document and no other preconditions will be included. Most often, the host State invites election observers through its Ministry of Foreign Affairs or its central election management body (EMB).

4. Cooperation between International Observers and Election Officials

17. No matter which would be the inviting authority, the central EMB is the key partner of the election observation activity. As a matter of fact, Paragraph 10 of the Declaration of Principles for International Election Observation provides that *'International election observation missions must actively seek cooperation with host country electoral authorities [...]'*. Both parties, the observers and the electoral officials, should contribute in order for such cooperation to become a success.

18. Election observers must demonstrate, throughout the election observation, respect towards their partners from the EMBs managing the election observed, although mutual respect does not exclude possible difference of opinions. During their introductory meetings with the host State EMBs, observers must explain in detail their mandate and share, in an appropriate form, their expectations for cooperation with the EMBs.

19. Observers should demonstrate good understanding of the electoral legal framework. They may seek clarifications with regard to the implementation of the law by the EMBs, but cannot expect that the EMBs amend the law or make proposals to this effect, in particular when the electoral process is ongoing. On a similar note, observers should not expect that EMBs provide comments on court decisions related to electoral disputes during the pre-election and post-election periods.

²⁸ Please see Gerald Mitchell's presentation at the International Centre for Parliamentary Studies in London on 4 April 2011, <http://strategictransport.parlicentre.org/pdf/Gerald%20Mitchell%20-%20London%20-%20Session%201%20-%20Pre-election.pdf>.

²⁹ <http://www.osce.org/odihr/elections/104324>.

³⁰ <http://www.osce.org/odihr/elections/104323>.

³¹ <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282009%29059-e>.

³² As a sign of respect towards their OSCE commitments, some OSCE participating States have extended the invitation for observation of their elections even before a date has been set, in order to facilitate the OSCE/ODIHR preparation for the respective observation activity. On other occasions, when an invitation has been in a process of preparation, the OSCE/ODIHR has deployed its needs assessment mission without the invitation being received, 'in anticipation of the invitation'.

20. Observers should take into consideration the challenges which EMBs face in the implementation of the law. Requests for meetings with EMBs should take into account such challenges. For example, during the pre-election period meeting requests by observers should respect the EMBs' schedule for regular sessions. On or around election day, meeting requests should be coordinated in advance because EMBs, in particular the central EMB, may have a heavy program due both to numerous meetings with international visitors and tight schedule of election related activities.

21. During meetings with EMBs, observers should not offer advice or assistance even if asked for this, because this would constitute interference in the election and even assuming responsibility for its conduct. However, by asking appropriate questions, observers can provide indications for possible concerns that they might have noted in the course of their meetings with other interlocutors from the host State, such as political parties and candidates or civil society observers.

22. Should the observers feel that an EMB is subject to undue pressure by a political party or institution, they should note this but in their assessment should analyse carefully the situation taking into account all related circumstances. Observers should be able to distinguish between issues resulting from lack of experience of an EMB and politically biased implementation of the law. Electoral officials should rest assured that possible 'legal tricks' are unlikely to remain unnoticed by the observers. OSCE/ODIHR election observers have proved, in the course of some two decades, that they were always able to identify correctly the tendencies of the observed electoral process.

23. Electoral officials should also treat observers as partners, displaying good understanding of the observers' mission and mandate, including granting reasonable observers' requests for meetings in a timely manner and providing to them requested documentation and clarifications. They should feel free to ask for clarifications as necessary. A professional EMB can only benefit from the presence of observers, as based on their comparative experience observers are best positioned to assess its performance in line with international standards and domestic law compatible with these standards. In addition, the presence of observers injects additional transparency in the electoral environment. EMBs can only benefit from this fact and further transparency by providing observers with clear information in a timely manner.

24. The accreditation of international observers by the EMBs is a key element of the cooperation between observers and election officials. While international observers should respect the legal requirements for accreditation, electoral officials should facilitate the process as much as possible. In line with the CoE Guidelines,³³ EMBs should facilitate accreditation of domestic observers in a similar manner. While EMBs could offer training to domestic observers, this should be treated as a privilege, rather than an obligation for these observers. Licensing of domestic observers by EMBs could only deter observation by domestic observers and allow EMBs to pick and choose among them.

25. It may happen that EMBs and/or observers have limited experience in such partnership. In such circumstances advice could be sought as early as possible in the process, rather than passive anticipation to see what is going to happen. Appropriate briefings for electoral officials could be provided by representatives of the Ministry of Foreign Affairs of the host State or the resident diplomatic community.

³³ Please see Section 3 of this presentation (last but one paragraph).