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“Cancellation of election results”

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**Cancellation of election results –
Lessons learned from election observation**

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What is election observation?

The fundamental reason to conduct an election observation mission is to obtain an informed view regarding the electoral process and its credibility.

Election observation is often regarded as people running around in polling stations on the day of election, asking questions and noting down the answers. This is the most visible part of election observation, but it is far from all the work necessary to have a qualified opinion regarding an election.

One must bear in mind that an election is much more than what happens on election day. The process usually starts with the announcement that an election is going to be held on a certain date. Candidates then register, election campaigns are prepared and carried out, and voter lists are drawn up. On election day the electoral process is officially opened, voting takes place, the electoral process is closed and ballots are counted. Following this local results are incorporated into regional and national tables. This is usually done as soon as possible, but it may take some time before the final results are released.

Parallel to the formal electoral procedure, civil society is active through the media and other means of information and influence.

All the above form the basis for the functioning of elections as a part of governing through democratic processes.

Election observers require information regarding the overall functioning of the electoral process and to what extent voters can make an informed and free decision; they must therefore take into account much more than events on election day.

This is only possible with qualified persons present to follow the situation from the calling of the election until the final result is released. This might include the observation of complaints procedures and the solving of electoral disputes some time after the end of the election.

An observation mission should include observation throughout this entire period. Focus should be placed on the situation in terms of formalities and the implementation of election regulations, and the situation in general such as where the election is being held and gives it credibility.

The opinions of those involved in the electoral process are of great importance. This includes both complaints and explanations. This information can be both informative and deceiving. Nevertheless, it sometimes takes a long time to gather, check and systematise all such information.

It is therefore apparent that an organised staff must be present for some time before and after election day. Additional resources are also required on election day to observe polling stations.

Co-operation between some international organisations is very welcome. This makes it easier to take full advantage of the resources and personnel available for the observation mission. In addition, such organisations often find it useful to draft joint statements and reports when addressing the conduct of elections. However, each organisation must be able to maintain its independence and credibility.

Election observation as a standard?

Election observation alone does not make an election valid or invalid. An election is regarded as valid unless there is any major reason to declare it otherwise.

Many of the older democracies have conducted elections for decades without them being observed. This has not affected their validity.

The need to observe elections should help countries on the way to a functioning democracy. Election observation must be regarded as a temporary measure and not a long term need. The norm should be that election observation stops when it is no longer needed.

The need for election observation is usually based on the wish to help a country on its way from a non-functioning democracy to a well-functioning democracy. To do this, a country usually needs to conduct some elections in order to develop some kind of experience and traditions on how to best prepare and conduct elections.

Election observation may also be necessary in order to look into practices and irregularities that might arise. Controversy and mistrust from the electorate or candidates that would like to take part in the electoral process fall into the same category.

There are many different reasons why election observation may be welcomed by all participants, all the more so as it can also make the election result more credible.

At this Conference we shall look into the situations in which elections are cancelled and how election observations might be important in such a situation.

European Standards on electoral matters

Which standards and regulations apply to an election?

The rules and regulations of a country provide the legal framework for the conduct of elections. Each country has the right to decide on how an election is to be carried out. The member States of the Council of Europe are obliged, upon joining of the organisation, to conduct elections in line with European standards. This standard is contained in the European Convention on Human Rights, which is implemented by the European Court of Human Rights in Strasbourg.

Those European standards which are not found in the Convention can be found in the Code of Good Practice in Electoral Matters drafted by the Venice Commission. A State following the recommendations included in the Code of Good Practice would be acting in conformity with European standards on electoral matters. It is worth mentioning that the European Court of Human Rights takes the Code of Good Practice into consideration when rendering judgments. Although the Code of Good Practice is not binding, it can be regarded as a solid basis for conducting elections.

This means that a State should have a valid reason for not following the Code of Good Practice in this specific situation.

If the Venice Commission's recommendations are not followed, resulting in the filing a case based on a possible violation of the Convention on Human Rights following the election, the States needs to have a good reason for having done so.

Where to focus when observing an election?

Election observation reports provide information on the whole process from beginning to end. Problems which begin early in the electoral process become more difficult to deal with as the election approaches. If problems are identified early on as a result of a long term observation process, critical points during the electoral process can be dealt with more efficiently.

In order to have a solid and conclusive report on the election and the result it is necessary to understand and identify where problems are most likely to occur. Since those carrying out an observation do not have enough resources to observe everything at all times, attention should be drawn to those topics which are considered to be the most important during that specific election. This ought to be done on the basis of information, experience and local knowledge, but may amount to an educated guess.

Observations should not be carried out to prove that a country or a regime is not as democratic as it should be. Although this might prove to be the case, it should not be the reason for the observation. Nevertheless, each electoral situation needs to be considered in a critical manner. A healthy reservation towards participants in the election should not be regarded as a prejudgement or as being biased. Nor should there be mistrust of anyone focusing on observing specific topics or parts in an electoral process.

Election observation as a part of a cancellation process

An election has never been cancelled solely on the basis of statements from an observer to an election. Observers do not have the right to announce or to decide whether the election is valid or not.

Cancellation of the election can only be made through the competent national authorities responsible for handling complaints or responsible for the final decision on the validity of the election.

To challenge the result of an election, it is obviously necessary to provide evidence, for instance proof of tampering. It is not enough to be convinced of something, proof is needed.

These findings during election observation might be useful when endeavouring to prove that something untoward has occurred.

Situations that might have an impact on the election result, often occur in more than one place during the electoral process. The electoral process should be seen as a whole in order to recognise situations and trends which may have an impact on the result in general.

In order to obtain the most accurate information, it is important that the observers draft reports in a precise manner. This can include the taking of notes and pictures. In order to build a case to cancel an election result back up statements are needed. Witnesses are of course useful but it is rare that international observers stay behind to provide testimonies. In this case it is important to obtain substantial reports from the international observers which can be used as documentation to show what they observed notably the fact that neither European standards and in some cases not even the national laws have been met.

This report from election might be used to show that violations or mishaps that by themselves are not of a great importance may as whole have an impact on the final result of the election. By obtaining an overview it is possible to see how things have developed from the start of the election campaign up to election day and the result itself.

It is of course easier to find reasons to cancel an election if one or two clear and serious violations on election conduct occur on election day, rather than having to add together a number of minor mistakes which have occurred throughout the country. Should it be necessary to include problems that occurred during the electoral campaign to explain non-compliance with the country's obligations to hold free and democratic elections, the case becomes more difficult.

It is easier to prove intention should violations occur throughout the electoral process. Then it is important to discover who is responsible and who may have benefited from these violations. It

might be useful to consider the possibility that more than one person may be involved in these violations. In order for reports to be considered credible in a dispute on election results they have to be objective and include details of the violations and the details of those involved. The argument that the violations from one side can offset the violations of the other side is not acceptable.

If results and protocols have been tampered with on the way from the polling station to the Central Election Committee then this should be taken into consideration when deciding whether a result is valid or not.

What makes a country cancel a result of an election?

The decision to cancel an election result rests with the country itself.

International organisations may make statements or impose bilateral sanctions such as reducing diplomatic relations. For members of the Council of Europe, the European Court of Human Rights can determine whether there have been violations with regard to the obligations of the country involved, but cannot by any means change the result or annul it.

This means that the question of changing or cancelling the result of an election has to be dealt with by the democratic institutions within the country concerned.

For a case to totally or partially cancel the outcome of an election proof of one or more violations linked to the election and the outcome has to be provided. The closer the link to the electoral process the easier it is to make it a relevant argument.

The violation not only needs to be relevant, but it also has an impact on the result. If a candidate officially obtained 65% of the votes, but after findings it was revealed that he only obtained 59 % it is relevant but does not have an impact on whether the candidate was in fact elected. In this case it would not be necessary to cancel the result. This even if the deciding body finds the lower number to be correct.

On the other hand it is important to have an overview of the whole situation. Although one violation by itself may not have an impact on the result, several violations would. Then one can include faults in the counting and in the tables. To this can be added other issues such as problems with the list of voters etc, but this is usually a bit more difficult to prove.

When can an election result be cancelled and by whom?

Before the election results are official the institutions of a country can carry out a critical revision and decide to cancel the results. The main objective is for an election to be carried out without violation, and to ensure that standards are applied if violations have been made. Nevertheless a complaint or at least a statement in the media can be useful.

In Norway there was a partial cancellation of the parliamentary election in 1981. This was owing to the fact that the number of ballots counted did not correspond to the number of voters who were noted on the list as having voted. This was reported by the officials themselves. The margin between the candidates was so small that this could have had an impact on the result. In this case it was concluded that new elections needed to be conducted in the two districts concerned. The result was that in one of the districts the first elected labour candidate lost the seat to a conservative candidate.

In the local elections in Norway in 2007 there was a question of whether a supporter of a labour candidate had bribed voters to vote for this candidate. There was evidence that people had received bribes. It was concluded on this occasion that a violation had occurred, however the

margin between the candidates was so great that it could not have had an impact on the result of the election or those elected. Therefore all parties agreed that there was no real reason to carry out a new election.

Examples:

Georgia 2003 - Parliamentary elections

This was the election that ended with the "Rose revolution".

The Pre-Election period

The build up to election day often provides an indication of what to expect on election day.

Some weeks before the Election Day, I had the privilege to participate in a pre-election mission that included meetings with several representatives from the government, opposition, media and the Constitutional Court.

One of the interesting topics was the questions on the independence of the courts in Georgia at that time. The then President Shevardnadze had publicly stated that the Constitutional Court should have consultations with the authorities before making a ruling. This was of importance if the judges serving in the court were to expect to get their salaries paid by the government. The Chair of the Constitutional Court replied that the Constitutional Court was an independent body and was going to execute their work and obligations accordingly.

There were also reports on violence that took part during the electoral campaign. This was criticised and condemned by all the parties involved, however they did not give the impression that they were trying to prevent more violence from taking place. Each party was blaming the other for the violence. Nevertheless this became a problem when the public needed to be given an informed choice between the different political parties through an effective and competitive campaign.

There was also doubt whether Georgia was able to establish a realistic list of persons entitled to cast their vote in the election. This proved to be a serious reason for concern at a later date.

And finally a better standard of transportation and establishing the results of the vote was desirable. This was followed up by the chair of the Central Election Commission. In my opinion, this was one of the reasons why it later become possible to see that numbers did not add up from the one level to the other.

Election Day

Voter lists:

There was total chaos regarding the voter lists. There were up to 3 different lists that could be taken into consideration in the polling stations. These 3 lists were 1. - Central Election Commission-list, 2. The list made for the previous election by the District Election Commission, 3. a list presented from the opposition. To be able to vote the voter had to be on at least one of these lists! But they did not have the same interpretation in all polling stations, some only used list number 1, others used lists 1 and 2, and finally there were polling stations that accepted all three lists!

Numbers did not add up:

Turnout was reported to be way out of proportion. In some areas it was officially reported to be as much as 95%, but in those districts where observers were present, they reported that the turnout was approximately 40%! It seemed that the difference tended to be in support of the

governing party by nearly 100%.

Protocols changed numbers in turnout and in favour of the presidential party at all stages from Precinct Election Committees via District Election Committees up to the Central Election Committee.

Cancelling of the result – weeks later:

The Court sent cases back to district committees due to the fact that things did not add up! But they did not cancel anything until the President had publicly stated that he had resigned from his post.

When Shevardnadze had declared that he had stepped down, the chairman of the Constitutional Court informed the Speaker of the Parliament that should the Court receive a formal complaint regarding the conduct of the election, the result of the election would have to be annulled. This is what happened!

The election result was then declared invalid and new elections had to be held for both the Parliament and President.

It is important to remember that in Georgia at that time there were strong and well organised opposition parties which had a great influence by holding important posts in parliament including the speaker of parliament. They also had experience from previously being in government. The opposition also had control of certain media in the same way as the government did at the time. This made it a more balanced battle than is often seen in newer democracies.

Ukraine 2004

This was the election that ended with the “Orange revolution”

Presidential election

The Supreme Court – did not change the result – called for a new election. (Held 26 December)

There are some significant similarities with the situation in Georgia. In Ukraine there were also persons with great experience as they had previously been in the government. The opposition also controlled quite different kinds of media at all levels. This made a balance and provided the possibility to promote their views not only in the campaign but also when they contested the numbers that were likely to become the official result of the election.

Short of European standards but not cancelled:

Kazakhstan 2004 (Not a member of the Council of Europe, but a Venice Commission observer State)

The main problem was that there was both electronic and paper voting. There was no way of checking whether a voter trying to vote electronically had already done so on paper or vice versa. This made it possible for voters to vote twice. The explanation given as to why this was not checked was that Kazakhs don't do things like that.

It was also noted that the officially reported electoral turnout was announced before the results could have come in. There were also discrepancies between signatures on voter lists and ballots. This was explained by the electronic voting system.

(As observers we also received a phone call from the prosecutor's office after the polling

stations had closed. They asked about the registration of our visas and stated that there may be problems if this had not been carried out in a proper manner.)

There was no national pressure to cancel the election. The result of the election stood regardless of international criticism.

Moldova 2005

The election procedure was carried out on Election Day by and large according to European standards taking into account that there were some problems regarding the election relating to the situation in Transnistria.

The main problem regarding the electoral process was the campaign itself, or more specifically the lack of a campaign. This does not enable voters to make an informed choice when voting. A compatible election campaign is important not only for informing about party politics, but also to ask difficult questions and to test the different parties' credibility.

All parties involved have a responsibility to conduct their election campaign. There were some slight difficulties regarding the question of hanging up posters, but this was sorted out before the election took place. There were no real obstacles to any party or candidate campaigning, so no particular blame could be attributed.

The lack of a real election campaign is not by itself a strong enough reason to cancel an election. Other problems were not significant enough to make a case for a cancellation of any sort. This was not done by any participant either.

Azerbaijan presidential – 2005

The conduct of the election did not comply with European standards or the obligations undertaken by Azerbaijan.

The different electoral bodies and the Constitutional Court did nothing to challenge the official result even with strong international reports.

There was not strong enough national pressure to cancel the election.

Russia 2003

In Russia observation is a challenge due to the size of the country. This is because a tremendous number of people is needed in order to observe in a proper manner.

On the day of election voting, counting and the establishment of tables appeared to be carried out in a proper manner. I suppose that minor mishaps have to occur somewhere in such a large organisation and operation. This is not the same as saying that there is some kind of major violation or fraud.

The main concern in the elections recently has been that the electoral campaign was carried out in a climate where the media and the resources were very one-sided. This can result in overwhelming the voters. Voters are especially vulnerable if there is no visible opposition. On the whole the result might be a kind of unreasonable pressure for the voter to vote in a special manner.

The report from observing organisations was critical but did not contest the result as such or state that it could be invalid.

Some developing countries – not members of the Council of Europe

Countries that conduct elections are not necessarily democratic. At the same time well conducted and credible observations and reports exist which state the opposite. In this context the question of whether to cancel or not depends totally on the strength of the opposition and may even lead to violence.

Nevertheless it is important to try to observe what is going on during this kind of electoral play. It is only by carrying out observations that a certain understanding of the functioning of the different parts of the country and its regime can be obtained.

The possibility of cancelling an election result:

Election results will stand even if violations of electoral proceedings' standards and even violations of electoral laws and regulations are observed, unless there is some kind of internal pressure in the country to enable the rule of law to function properly.

For elections to form a part of what governs a country, remedies cannot only be provided within the electoral system, but need to be developed as part of the rule of law of a country. Elections are part of the governing system and cannot stand alone without the other fundamental institutions in order for a modern state to function correctly.

It is of great importance to have a free and critical press and a functioning legal system with an independent judiciary. If the control mechanism functions in general, then the means to control and act in a proper manner in the face of controversies relating to electoral matters will also function efficiently.

Election results are made more credible when the public is well informed and interested due to easy access to information on electoral proceedings. The main objective is to enable countries to conduct elections with great credibility without the need for international observers. In order to reach this goal the public must have confidence in the procedure and be able to follow the figures and see how they logically add up.

How to make the election observation credible?

It is important to bear in mind that organisations that participate in election observation may do so for their own reasons. I am not going to comment on any of the statements made by different organisations; however, in my opinion some organisations have more stability and experience than others. When the Council of Europe carries out election observations they are often in co-operation with organisations which in general have the same aims and commitments regarding elections.

Of course, election observation and the ensuing statements are taken more seriously by countries when carried out together with organisations that have credibility in the matter. It is often better than having separate and possibly conflicting statements.

When organisations with some influence observe and comment on the same kind of problems and violations they speak together with one voice and thereby make it easier to draw attention to problems during the conduct of the election procedure.

When the information has been given it is of great importance that national participants and media bring the findings to the competent bodies which handle disputes and decisions regarding the election result.