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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS
ON THE MISSION OF OBSERVATION
OF THE PRESIDENTIAL ELECTION IN PALESTINE
(7 - 10 January 2005)

by

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1. Early in the morning of 7 January 2005, I arrived at Tel Aviv Airport, Israel and was driven to Jerusalem, where I was to be based during the days of observation. As I was stayed in the same Hotel as Mr. Serguei Kuznetsov of the Secretariat, the collaboration between us during this period was as close as possible. We also met frequently, and travelled with the members of the Observer delegation of the Parliamentary Assembly of the Council of Europe (some of whom were stayed in the same Hotel whilst others were lodged in another Hotel just across the street) and shared the programme prepared for this Ad Hoc Committee.
2. On the same day we met with the whole Committee and later on received briefings from Ambassadors of the Council of Europe member States, and from the EU representation. In the afternoon we were taken, together with the members of the Ad Hoc Committee to Ramallah where we met the President of the Palestinian Central Election Commission, Dr. Hanna Nasser, and two members of that Commission. Dr. Nasser and one other member meeting us, are academics [Physics and Law], whilst the other member was a judge. The meeting was frank, to the point and informative. We also met the Speaker of the Palestine Legislative Council who explained the considerable obstacles to the proper functioning of the Council. The Gaza deputies are prevented from attending and the Council has to meet in video conference. Later we had a meeting with experts from that Council who explained the Palestine Authority's role and certain aspects of the policy. Before returning to Jerusalem in the evening, the delegation paid a visit to President Arafat's grave.
3. On 8 January, we had a long series of meetings with the Prime Minister, the Deputy Minister of Foreign Affairs, and a number of high officials. In the afternoon, we had meetings and a discussion with two opposition members of the Council. Although very critical of the Government and of the policies of Al Fatah, these members did not express any misgivings about the way the election was being conducted, and expressed their trust of the Central Election Commission. I agreed with the Ad Hoc Committee that Mr. Kuznetsov and myself should be deployed for the purpose of observation together with the other members of the Secretariat and the Parliamentarians. We were allotted the Ramallah area together with the leader of the delegation of the Assembly, Lord Kilclooney, Mr. Tom Cox M.P., and Mr. Vladimir Dronov.
4. On election day itself, we started at 8.00 a.m. from Jerusalem in a minibus and visited a number of election stations in Ramallah and the surrounding towns and villages. We inspected the arrangements; spoke to the presiding officers, to the observers representing the presidential candidates, as well as to members of the public in the vicinity of the stations. The stations were organised in schools and most of the personnel supervising was made up of teachers, some of whom had a good mastery of English. Occasionally I tried to communicate with others (villagers at Ein Karim, for example) by making use of some Arabic words and phrases. Invariably we were welcomed by officials and common people alike and when the word "Europe" was mentioned, we were greeted as friends.
5. The election process was obviously considered very positively by the people we met in the streets and those in the immediate vicinity of the Polling Stations. In Ramallah and the surrounding villages one could sense that there was some interest in the competition seen as mostly between the two main candidates, though the antagonism was mild, as the resentment for the Israeli occupation absorbed most of the passion and the absence of Hamas from participation in the process seemed to deaden the more extreme

controversial feelings. The percentage of voters actually casting their votes was however uneven. In some places near Ramallah it was very high and by mid-afternoon nearing eighty percent; in others, such as Betunia, closer to Jerusalem, the votes cast by the end of the poll at 9.00 p.m. was less than fifty percent.

6. There exists in Palestine a tradition for voting in municipal elections which goes back to the times of the British Mandate (the first Jerusalem Elections on 27 September 1927), and which continued until those of 23 December 2004. Though this was only the second time that Presidential Elections were being held, it was obvious that people in general considered the electoral process as the proper, most natural and expected method of selecting a leader of the nation, in the same manner as they elected their mayors and councillors. It was evident that most Palestinians wanted to show their adherence to the democratic way of life and were convinced that the election would give them a chance of demonstrating this to the World. In this context all foreign observers were deemed helpful, as useful witnesses. The United States Ambassador was given a front seat during the counting of the votes at Betunia, even though in most of our discussions with people of all classes, a very critical view was taken of United States policy in the Middle East.
7. We could not be described as long-term observers, and we tried to supplement our knowledge of the situation during the election campaign, through our briefings from the Ambassadors of some of the member countries. Four very important facts emerged:
 - a. all the candidates encountered difficulties in presenting themselves and their programmes to the whole range of their electorate. The obstacles to free movement were more obvious in East Jerusalem and Gaza, but the frequent checkpoints and the construction of the wall [we were perplexed by the convoluted route of its planned as well as its already implemented construction]. Israeli soldiers kept one of the candidates from entering one area and the photograph of this confrontation became a much publicised campaign poster;
 - b. whilst access to the media was assured to candidates willing to pay for insertions and advertisement, Mr. Mahmoud Abbas (Abu Mahzen), Chairman of the P.L.O. and ex-Prime Minister, as well as, to a much lesser extent, Mr. Mustafa` Barghouthi, received much more television, radio and newspaper coverage than the other candidates;
 - c. there was no television debate between these two "most prominent" candidates, but two other minor candidates did in fact confront each other in a television programme;
 - d. the poster campaign was very unequal with Mr. Abu Mahzen and Mr. Mustafa` Barghouthi's faces appearing much more frequently than any of the others. All in all the impression that we formed was that notwithstanding that the great impediments to freedom of movement was faced by all candidates, it was the lesser known candidates who were most disadvantaged. The resources available to Mr. Abu Mahzen were far superior to those at the disposal of other candidates, because the organisation of Al Fatah as well as the connection with the P.L.O. and the Government worked in his favour. Mr. Barghouthi also seemed to have had a good campaign fund and a well articulated organisation at the grass roots level. When we met Mr. Bassam Al-Salhi of the People's Party of Palestine, one of the other presidential candidates, outside a Refugee Camp polling station on the day of the poll, his comments were in line with the impressions that we had already formed, as expressed here.

8. The Palestine National Authority Law number 15 of 1995 relating to Elections, which provided the legal basis for the holding of these elections seems to be adequate and conforms to the generally recognised democratic standards. Part III of that Law concerns the bodies entrusted with the “administration” of the election. A Central Election Commission composed of nine persons selected from the Palestine Judiciary, outstanding academics, and lawyers with a reputable professional career and experience is the supreme organ conducting and controlling the elections (Article 22). In addition, the Law provides for District Election Commissions and Polling Station Commissions. We met with three members of the Central Election Commission, including its President, and were impressed by their competence and honesty of purpose. We did not meet with the District Election Commissions formally, though we met members during our visits to Polling Stations. We spoke to several Polling Station Commissions. The Law specifies that the district commissions had to be composed of five members, selected by the Central Commission from among University Professors and Lecturers, lawyers, political scientists, economists, sociologists and public administrators (Article 27 (2)). Most of the Polling Station Commissions we found to be school teachers, and this explained the remarkably strong female presence in these Commissions. We were favourably impressed by the way these Polling Booth Commissions conducted the proceedings.
9. The Presidential Elections Guidebook issued by the Central Election Commission, a copy of which was provided in the information pack available for observers and journalists, was professionally done and admirably informative as well as clearly indicative of the norms and regulations. At least, in Ramallah, the instructions were adhered to very closely.
10. We must note down certain small matters which could be further improved. First of all, the ballot boxes are made of very thin pliable plastic. This makes for transparency, but in a future election which would not be as overwhelmingly scrutinised by national and foreign observers, could tempt unscrupulous members of the polling station commission to lift the lid and insert “votes” without touching the seals. These plastic boxes are light, which would be an advantage where ballot boxes are carried to a central counting hall: in Palestine, the counting is done in the same polling booth, and the boxes are merely unsealed and then turned down to be emptied.

Secondly, too many persons are present in the polling stations and the polling booths themselves at any one time. Whilst in this case observers were welcome and necessary (mainly for demonstrative reasons), measures should be taken in future to limit the number of outsiders in the polling station so as to lessen the possibility of interference with the voters and of incidents with other interested observers, happily absent this time.

Some more strict regulations with regard to the affixing of posters close to the Polling Stations, could in future be issued and enforced. In some cases campaign posters could be seen in the immediate vicinity of the entrance to a Polling Station. When we mentioned this, an official explained that the house in question belonged to a member of the family of one of the (incidentally less voted) presidential candidates who had insisted that the posters should not be removed.

Voting in East Jerusalem was very irregular. Palestinian voters in Jerusalem were, in general, denied the right to vote in their own city. Whilst purportedly following the Oslo Accord, a small percentage of five thousand were allowed to “post” their vote in the Post

Offices run by the Israeli Government, the great majority could only exercise their right to vote by going out of the city, passing through checkpoints, and voting in a neighbouring town or village. The post office votes were transported by Israeli officials without any Palestinian or foreign supervision. President Carter intervened with limited success at one Post Office to ease this matter. The Election Commission informed us that even this almost token Jerusalem voting had been assured very late in December 2004.

We were also not very happy with the fact that whilst the voting registration lists were regularly publicised, challenged, and revised, with the addition of 33,000 in November/December 2004, later in December 2004 the Palestinian Legislative Council decreed that those listed in the Palestinian Civil Registry, even if their names did not appear in the voting lists, would be entitled to vote. Whilst one understands that this was done so that no Palestinian would be denied his or her rights because of the difficulties created by the occupation, one would suggest that the revision of voting lists should not be a matter to be tackled in the immediacy of a vote, but should be on-going with periodical publication and revision.

This also leads to the question of more permanency for the Central Electoral Commission and perhaps the District Electoral Commissions. We briefly brought the matter up during our interview with the President of the Central Electoral Commission, suggesting that though the present Commission seemed to enjoy the confidence of the whole country some guarantees of non-removal during a given period would give the Commission more independence as well as more time to dedicate to the minutia of the voting process.

The voting documents were bound and given a serial number. This rendered the tally of unused ballots with the ones actually used. However the serial number on the ballot could theoretically render traceable the identity of the voter who casts a particular vote because of the sequence of voters. The usual practice of printing ballot papers without any serial number appears to be safer so as to obviate against any possible identification of a particular voter's preference.

The time allowed for voting was extended in the evening from 7.00 p.m. to 9.00 p.m. This was justified given the circumstances, especially those in East Jerusalem, but we would suggest that the common European practice of extending voting time only for the benefit of voters already in the Polling Station queue, should be the general prescribed rule.

Although most Polling Booth Commissions were seen to be *au courant* of the usual rules and practices, we would suggest that in future Palestinian members of the Electoral Administration be invited to attend some of the Training Seminars organised by the Venice Commission.

11. All in all we were satisfied with the organisation of the electoral process. The election was free from any restraint exercised by the Palestinian authorities. Only the circumstances of occupation rendered this election less than completely free for a substantial number of Palestinians, especially those in East Jerusalem. The voting arrangements themselves were also fair to all the candidates. We have no doubt that the published results reflect the wishes of the Palestinians who were able to vote and did so.