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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
(VENICE COMMISSION)

**REPORT**  
**ON AN INTERNATIONALLY RECOGNISED STATUS**  
**OF ELECTION OBSERVERS**

**Adopted by the Venice Commission**  
**at its 78<sup>th</sup> plenary session**  
**(Venice, 13-14 March 2009)**

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## **Introduction**

1. On 15-16 February 2007, the Parliamentary Assembly organised in Strasbourg a Conference on the parliamentary dimension of election observation: “applying common standards”, bringing together a wide range of participants from the observer community, such as parliamentarians, international organisations, the civil society and electoral administrators, not only from Europe but also from Africa and the Americas. Among other issues raised, a specific issue was highlighted: the need for an internationally recognised status of election observers (both international and national observers) which could then be embodied in domestic legislation. The Parliamentary Assembly indicated that it was ready to initiate this process.

2. Further to a decision of the Assembly’s Bureau on 15 March 2007, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (“the Parliamentary Assembly Committee”) was mandated to prepare a report on “an internationally recognised status of election observers”. At its request, the Venice Commission was invited on 6 May 2008 to “prepare an opinion on the questions raised in the document AS/Jur(2008)17<sup>1</sup> of the Parliamentary Assembly (PACE), indicating, in addition, which Council of Europe member states and observer states, if any, do not provide for election observation in their domestic legislation”, in order to assist the Committee’s work on this report. The present document aims at making an inventory of international and national texts and standards related to the rights and duties of the election observers. It will be followed by another document on recommendations in this field.

3. This report has been adopted by the Venice Commission at its 78<sup>th</sup> plenary session (Venice, 13-14 March 2009).

## **Background context for elaborating a Report on an internationally recognised status of election observers. From elections to election observation**

4. Following the February 2007 Conference on the parliamentary dimension of election observation,<sup>2</sup> the Parliamentary Assembly Committee on Legal Affairs and Human Rights underlined the importance of election observation as an instrument in international co-operation, “a crucial tool to assess an election process” and “a fundamental instrument for ensuring (or not) the legitimacy and credibility of the electoral process”.<sup>3</sup>

5. The Parliamentary Assembly Committee also recalled what the election observers are, on the basis of the Venice Commission Code of good practice in electoral matters.<sup>4</sup> According to the Code of good practice in electoral matters, “there are three different types of observer: partisan national observers, non-partisan national observers and international (non-partisan) observers. In practice the distinction between the first two categories is not always obvious. This is why it is best to make the observation procedure as broad as possible at both the national and the international level.”<sup>5</sup>

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<sup>1</sup> Parliamentary Assembly of the Council of Europe, Information memorandum, Committee on Legal Affairs and Human Rights, An internationally recognised status of election observers. Rapporteur: Mr Frans Weekers, Netherlands, ALDE (hereinafter “PACE Information memorandum”; AS/Jur(2008)17).

<sup>2</sup> See Introduction, par. 2.

<sup>3</sup> PACE Information memorandum, par. 1.

<sup>4</sup> Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report – Adopted by the Venice Commission at its 52<sup>nd</sup> Session (Venice, 18-19 October 2002; hereinafter “the Code of Good Practice”; CDL-AD(2002)023rev).

<sup>5</sup> The Code of good practice, par. 87.

6. The Parliamentary Assembly Committee adds then an additional and relevant distinction “between the parliamentary and non-parliamentary dimensions of election observation”<sup>6</sup> and lists on such a basis the ‘community’ of international observers, i.e.:

- Members of international parliamentary assemblies: Council of Europe Parliamentary Assembly (PACE), OSCE Parliamentary Assembly, European Parliament (EP), NATO Parliamentary Assembly, Pan-African Parliament, the Interparliamentary Assembly of Member Nations of the Commonwealth of Independent States (CIS IPA), Interparliamentary Union (IPU);
- Representatives of international organisations and institutions: United Nations, OSCE Office for Democratic Institutions and Human Rights (ODIHR), Congress of Local and Regional Authorities of the Council of Europe, European Commission, Organisation of American States (OAS);
- Think tanks and non-governmental organisations (“NGOs”) involved in election observation and administration: the Carter Centre, National Democratic Institute (NDI), former “International Foundation for Election Systems” (IFES), European Network of Election Monitoring Organisations (ENEMO).

7. Before going into further development, there is a need for justifying an internationally recognised status of election observers. Since, as underlined by the Parliamentary Assembly Committee, “observation missions deal with the level of legitimacy or credibility of an election”,<sup>7</sup> considering the risk that national authorities may “be tempted to impose unacceptable constraints on observers or question the legitimacy/credibility of election observers when the latter are expected to be – or indeed are – critical of the election process”<sup>8</sup> and of “a risk of ‘forum shopping’”,<sup>9</sup> “an internationally recognised status of election observers could reinforce the impact and the credibility of election observation”.<sup>10</sup>

8. Today, the relevance of election observation is widely acknowledged. It is generally and peacefully accepted that it is an important tool to evaluate the quality of democratic regimes, to monitor the evolution of democracies in transition, and to put into practice any electoral and institutional assessment. Therefore, “election observation is not an end in itself”, but “one of the most transparent and methodical ways to promote and encourage democracy and human rights”, and therefore “an extremely valuable tool for supporting and promoting democratic processes and governance”.<sup>11</sup>

9. This instrumental notion of election observation has to be borne in mind when making any reflection on its legal status. This assertion may be held in reference to the election observation as a whole, or to any of its components, as it is now the case. Because when we wonder about the status of election observers, we are obliged to answer some previous questions about the status of election observation as a whole.

10. In fact, the issue of election observation is relatively new. Nevertheless, its purpose is to analyse the working of democratic regimes by looking at such a traditional process as elections, provided that, as it is commonly said, “wherever there are democracies, there are elections”. This situation has to do with a certain change of institutional and political paradigms or, better to say, with the failure of an alternative paradigm of democracy. In other words, after the defeat of fascist regimes in World War II, the collapse of the Soviet Union and the end of the “Cold War”

<sup>6</sup> PACE Information memorandum, par. 9.

<sup>7</sup> PACE Information memorandum, par. 35.

<sup>8</sup> PACE Information memorandum, par. 37.

<sup>9</sup> PACE Information memorandum, par. 38.

<sup>10</sup> PACE Information memorandum, par. 39.

<sup>11</sup> “Statement by Mr. Halvdan Skard, President of the Congress of Local and Regional Authorities of the Council of Europe”, in *Conference on the parliamentary dimension of election observation: Applying common standards* (Strasbourg, 15-16 February 2007), “Proceedings”, p. 21.

did not imply “the end of the history”, but something similar to the consolidation of the democratic paradigm, which seemed to stand as the only legitimate one. Therefore, the model of elections, based on a framework of fundamental rights and freedoms, was also considered as the only acceptable.

11. In that context, the multiplication of political transitions to democratic regimes, the consequent multiplication of elections, and the rise of international institutions based on democratic values led to a practically new activity, the election observation. An activity which usually implied some kind of external intervention on political elections, traditionally considered as a purely internal process. Consequently, elections, the main instrument for the expression of citizens’ will, the main expression of national sovereignty, were submitted to a basically international scrutiny, which was moreover intended to evaluate it, and therefore implied a foreign control on the national capacity to organise and hold political elections.

12. This is the main problematic feature of election observation, as it is today conceived. One should remind that election observation has always existed, as an element inherent to democratic elections. All democratic elections are based on the existence of a system of rights and freedoms which allows to the political actors to take a – more or less – active part in almost all parts of the electoral procedure, to analyse and appeal almost all the decisions which compose it and, in general, to play an essential role in the development of elections.

13. This traditional conception was not sufficient when applied to new democracies, wherever they could flourish. Many of these democracies were born in former authoritarian or totalitarian regimes, where elections were perfectly known. But they were not instruments for freedom, but for reinforcing oppression and political domination

14. This different context gave birth to a different approach of the electoral process. In this regard, the Venice Commission Opinion on the Draft ACEEEO Convention on Election Standards, Electoral Rights and Freedoms underlines:

“10) [...] In general, the right to political participation appears linked to general concepts such as national/popular sovereignty, rule of law, and so on. Modern states (be it parliamentary Britain, be it revolutionary France) give birth to new political structures, based on national/people’s will, and the rule of law as expression of that will. At first glance, elections, and electoral traditions, are not democratic, in the sense of not being based on universal suffrage. Nevertheless, they evolve, more or less peacefully, by enlarging the right to vote and the right to be elected. In this sense, in most countries of Western Europe, there is an “electoral heritage” which is linked to democratic values. Elections express the will of the nation, first, and of the people, after. However, the perspective is individualist, as in most of the liberal Declarations of rights. The vote is (must be) direct. The votes are (must be) equal.

11) In [the Draft ACEEEO Convention] however, there is not a wish to describe the principles of “the European electoral heritage” [...], but to prescribe the principles which should contribute “to the development of democratic traditions”, according to [its] explicit purpose [...]. In a sense, it could be said that the Draft [Convention] tries to develop a democratic tradition that already exists in other countries and spheres. In western traditions, the development of elections is more or less parallel to the development of democracy. However, in the Draft [Convention], there seems to be the idea that elections can be not democratic at all.

12) The consequence is what could be called a “structural/global” approach, more than an “individual” one. In other words, the Draft [Convention] seems to point out how elections have to be held to be democratic (free elections, genuine elections, fair elections), more than the features of the democratic vote (free, universal, secret, direct suffrage), which

seem to be more or less known. That is why the Draft [Convention] primarily defines standards, rather than the right of the voters. These are, of course, also considered. But the Draft Convention emphasises other aspects, such as real political pluralism, multi-party system and real and law-based possibility of election, as previous requirements [...]; the right not to participate in elections [...]; or the definition of the rights of national and international observers [...].

13) In a way, it could be even said that this Draft [Convention] responds to a previous heritage of non-democratic elections. The suffrage is well-known, but the functioning of the whole system may not be democratic. The emphasis is not as much in the suffrage as in the election as a whole. Of course, democratic elections require universal, free, secret, direct, equal votes. That is not enough. Without real pluralism, multi-partism, freedom not to participate, without observers [...], the votes can be considered useless in democratic terms. Elections can be fraudulent.”<sup>12</sup>

15. On the basis of such considerations related to emerging democratic societies and recent pluralistic elections, election observation as such becomes an exercise of a limited scope. It is indeed mainly addressed to “new democracies”, States which have left non-democratic systems and are beginning to walk through the democratic path. This is, in fact, the reason of the newly born idea of “election observation”, linked to the transitions which took place since the mid-80s and the early 90s in Latin America and Europe.<sup>13</sup> Once democracy has settled, elections may be – and effectively are – freely observed by national or international observers, because the principles of publicity and transparency of the whole election process, and the basic freedom to participate in public affairs, allow it without any particular effort, thus not requiring any particular rules.

16. Therefore, in these “older” democracies, the observation and control of elections – in the traditional sense – is fully implemented “within” the electoral process by its participants, using the general legal tools provided by the constitutional and legal system. International election observation missions (usually named EOMs) may indeed be organised, but they lose their essential meaning: political parties or groups compete among themselves, and thus control the working of the system, which is democratically satisfactory (although some points, indeed, may be criticised or deserve to be debated in depth). Consequently “election observation” *stricto sensu* is possible, but is not explicitly foreseen, because its aim may be reached by other regular means.

17. Therefore the idea of election observation, as it is usually understood at present times, is much more limited than the “traditional” one. Moreover, it is essentially called to be provisional: once democracy is seen to have settled in a given State, whose elections clearly met the requirements to be considered as purely democratic, it should “vanish” opening the door to usual – and essentially domestic – controls on the working of the democratic system as a whole, and of the election process in particular. This assertion does not mean that “election observation” became impossible, but that it can simply follow the basic rules of the system. Rules which, of course, and for instance, do not specify “the places where observers are not entitled to be present”. Because the rules are general: they can be present anywhere. These

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<sup>12</sup> Opinion on the Draft ACEEEO Convention on Election Standards, Electoral Rights and Freedoms adopted by the Venice Commission at its 58<sup>th</sup> Plenary Session (March 2004; CDL-AD(2004)010). The general approach reproduced here may be originally found in the *Comments* done by Mr. Christoph Grabenwarter (CDL-EL(2003)014).

<sup>13</sup> According to the participants in the previously mentioned *Conference on the parliamentary dimension of election observation* (par. 2 of the present Report), the first EP election observation mission took place in El Salvador, in 1984 (pages 16 and 37); the Parliamentary Assembly began to observe elections in the late eighties (pages 12 and 61); the OSCE Parliamentary Assembly in 1993 (pages 14 and 39); the Congress of Local and Regional Authorities of the Council of Europe in 1990 (page 21); and the European Commission in the nineties (page 18).

are usually clearly defined bodies, whose composition is also clearly defined by the law, and which consequently may not accept any external intervention: their decisions may be analysed, controlled and, most of the times, appealed, through their arguments.

18. In any case and even when limited to these “states which have no established tradition of impartial verification of the lawfulness of elections”,<sup>14</sup> the prevailing notion of “election observation” should also get free of other confusing factors, as the traditional classification of observers in “partisan national observers”, “non-partisan national observers” and “international (non-partisan) observers” could be.<sup>15</sup>

19. In established democracies, as it has been pointed out, the observation, control and monitoring of the electoral process is mainly in hands of national political parties’ representatives. But in the narrower sense – limited and provisional – in which election observation is usually understood today, it obviously requires “strict political impartiality at all times”.<sup>16</sup> And that implies a “non-partisan” perspective of the observation team, be it national or international. Within a given election, members of parties – that is, partisan – are not “observers”, but “players”. In an electoral framework, members of parties (and all the citizens who, not being formally members of a party, do sympathise with any of them) will normally work for their party (in a wide sense) to reach the best result, and thus will follow “partisan interests”. Of course, election observation teams must take into account the opinions of the different parties or political groups. And “(national) partisan observers”, as any other citizen, may of course contribute to the exercise of election observation, but their intervention may be problematic: from the point of view of a regime trying to control the elections, they may always be used as a proof of the partisan bias of the observation; from the point of view of the impartial or neutral organisations trying to monitor the elections, their work has to be completed (even “neutralised”) by other means. In this sense, the basic distinction should be done between “partisan” and “non-partisan” teams of observers. And, within that scheme, “partisan” observers have to be only exceptionally accepted.

20. Of course, this “strict impartiality” is easier to reach with international observers. But, on the one side, even when foreigners do not participate actively in the domestic political life, and thus in the electoral process, they may also perfectly be “partisan” (in fact, that is the reason why international election observation missions usually include members of different parties). And, on the other, their intervention in the process may be considered as contrary to the national sovereignty and, therefore, unacceptable (in fact, some countries do still forbid to foreigners any kind of political intervention in domestic political matters, sometimes even denying them the right to give their opinions).

21. In sum, it should be clearly distinguished between traditional election controls (based on publicity, transparency and the fundamental rights of national citizens and/or foreigners), which are inherent to all established democracies; and the (new, limited and provisional) notion of “election observation”, which has developed in the last two decades, with the flourishing of transitions to democratic regimes. The former is basically in hands of national, “partisan” political actors. The latter depends basically of international organisations, which deploy their observers forming teams.

22. Certainly, this latter notion has fostered what has been rightly considered as “a nascent profession: professional election observers”; or, even more, “a growing industry of election observers”.<sup>17</sup> An industry in which many important national and international organisations do

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<sup>14</sup> The Code of good practice, Explanatory Report, par. 89.

<sup>15</sup> *Ibidem*, par. 87, which rightly affirms that “in practice, the distinction between the two first categories is not always obvious”.

<sup>16</sup> See the *Code of Conduct for International Election Observers*, adopted on October 2005 (CDL-AD(2005)036).

<sup>17</sup> The quoted expressions have been taken, respectively, from the “Keynote Statement by Ms. Véronique de Keyser, Member of the Election Coordination Group, European Parliament” and the intervention of Mr. Leo

participate, giving birth to new necessities. For instance, the “proliferation” (even, the “excessive proliferation”) of organisations has produced “competition” among them in different spheres (for instance, “in terms of media coverage”), and so new problems of “conflicting conclusions” and consequent “forum shopping by the observed”,<sup>18</sup> so obliging to search and to apply common standards to this activity.

23. A second requirement is that of defining a new status for the (new) election observers. A status which should be internationally recognised, provided that this new activity is essentially in hands of international organisations, who seek to promote democracy and fundamental rights at international level, thus intervening in any country of the world which meets certain conditions. Moreover, that status should be valid for national citizens as much as for foreigners, something which implies to treat them not as (partisan) players in the political process, but as (impartial, non-partisan) observers, because their political rights (in the domestic political process) are essentially different. This will be the purpose of the conclusions.

24. The length of the quote may be explained because this same “structural/global approach” underlies the “modern” concept of election observation, and should be taken into account when analysing the rules existing on this issue (be it at national or international level), as it is developed in a first part of the Report which exposes the existing international texts and standards related to the rights and duties of the election observers (I.-). The Report then focuses in a second part on the existing national legislations (existing or non-existing provisions in the domestic electoral legislations) on the rights and duties of the election observers (international as well as national observers) (II.-).

25. In the course of the Report, apart explicit exception, “election observers” will refer both to the international election observers acting in the framework of election observation missions (on behalf of international organisations invited by the national authorities of the country to observe) and to the domestic election observers issued from NGOs accredited to observe elections or from political parties accredited as well.

#### **I. International texts and standards related to the rights and duties of the election observers**

26. The presence of observers both international and domestic can play a key role in providing confidence to citizens of a country that the electoral process was regular, and was conducted according to international standards, and the law. Texts on the role of observers both international and national exist in a number of declarations and documents. These include (detailed afterwards):

- The Declaration of Principles for International Election Observation as established by the United Nations on 27 October 2005; United Nations (This refers only to International Observation) (CDL-AD(2005)036).
- The Copenhagen Document, 1990, OSCE.
- The Convention of Standards of Democratic Elections, Electoral Rights and Freedoms on the member states of the Commonwealth of Independent States, 7 October 2002 (CDL-EL(2006)031).
- The Code of Good Practice in Electoral Matters, Venice Commission (CDL-AD(2002)023rev).

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Platvoet (Parliamentary Assembly of the Council of Europe, the Netherlands) in the “Proceedings” of the already mentioned *Conference on the parliamentary dimension of election observation. Applying common standards*, pages 37 and 68.

<sup>18</sup> See the intervention of Mr Christian Miesch (Swiss Parliament); the report on the Working Session 2 delivered by Ms. de Keyser, and the “Conclusions” of the President of the Parliamentary Assembly of the Council of Europe, Mr. René van der Linden; all of them in the same “Proceedings” of the *Conference...*, pages 70, 75 and 81, respectively.

**A. United Nations – Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers**

27. To start with, the Declaration of principles for International Election Observation and the Code of Conduct for International Election Observers<sup>19</sup> is the most detailed on these matters.

28. As highlighted in its headline, the UN Declaration of Principles only deals with international election observation; therefore, it does not contain provisions in relation to legal status of national observers.

29. As for international observation, the document, having emphasised that “international election observation is conducted for the benefit of the people of the country holding the elections and for the benefit of the international community”,<sup>20</sup> and that the term for international election observation shall embrace “pre-election, election day and post-election periods”,<sup>21</sup> then regulates relevant commitments of the authorities of the country which holds the election and invites international observers (the hosting country) in relation to international observers, on the one hand, and those of the international observers, in course of performance of their functions, on the other.

30. Relevant requirements to the hosting country’s authorities are described in Article 12 that reads:

“In order for an international election observation mission to effectively and credibly conduct its work basic conditions must be met. An international election observation mission therefore should not be organized unless the country holding the election takes the following actions:

a) Issues an invitation or otherwise indicates its willingness to accept international election observation missions in accordance with each organisation’s requirements sufficiently in advance of elections to allow analysis of all of the processes that are important to organizing genuine democratic elections;

b) Guarantees unimpeded access of the international election observer mission to all stages of the election process and all election technologies, including electronic technologies and the certification processes for electronic voting and other technologies, without requiring election observation missions to enter into confidentiality or other non-disclosure agreements concerning technologies or election processes, and recognizes that international election observation missions may not certify technologies as acceptable;

c) Guarantees unimpeded access to all persons concerned with election processes, including:

i) electoral officials at all levels, upon reasonable requests;

ii) members of legislative bodies and government and security officials whose functions are relevant to organizing genuine democratic elections;

iii) all of the political parties, organisations and persons that have sought to compete in the elections (including those that qualified, those that were disqualified and those that withdrew from participating) and those that abstained from participating;

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<sup>19</sup> Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers. Adopted October 27, 2005, at the United Nations, New York (hereinafter “the UN Declaration of Principles”, CDL-AD(2005)036).

<sup>20</sup> The UN Declaration of Principles, Article 6.

<sup>21</sup> The UN Declaration of Principles, Article 5.

iv) news media personnel; and

v) all organizations and persons that are interested in achieving genuine democratic elections in the country;

d) Guarantees freedom of movement around the country for all members of the international election observer mission;

e) Guarantees the international election observer mission's freedom to issue without interference public statements and reports concerning its findings and recommendations about election related processes and developments;

f) Guarantees that no governmental, security or electoral authority will interfere in the selection of individual observers or other members of the international election observation mission or attempt to limit its numbers;

g) Guarantees full, country-wide accreditation (that is, the issuing of any identification or document required to conduct election observations mission as long as the mission complies with clearly defined, reasonable and non-discriminatory requirements for accreditation);

h) Guarantees that no governmental, security or electoral authority will interfere in the activities of the international election observation mission; and

i) Guarantees that no governmental authority will pressure, threaten action against or take any reprisal against any national or foreign citizen who works for, assists or provides information to the international election observation mission in accordance with international principles for election observation."

31. To summarise these provisions, the hosting country shall grant international observers unimpeded access to:

i) its territory;

ii) those who are involved in organisation and performance of the elections (including relevant authorities, political parties, candidates, mass media etc);

iii) electoral technologies.

32. These guarantees are aimed to ensure that international election observation missions will be able "to issue timely, accurate and impartial statements to the public (including providing copies to electoral authorities and other appropriate national entities), presenting their findings, conclusions and any appropriate recommendations they determine could help to improve election processes".<sup>22</sup>

33. International election observation missions, in their turn, should:

"a) establish communications with all political competitors in the election process, including representatives of political parties and candidates who may have information concerning the integrity of the election process;

b) welcome information provided by them concerning the nature of the process;

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<sup>22</sup> The UN Declaration of Principles, Article 7.

c) independently and impartially evaluate such information, and

d) should evaluate as an important aspect of international election observation whether the political contestants are, on a non-discriminatory basis, afforded access to verify the integrity of all elements and stages of the election process. International election observation missions should in their recommendations, which may be issued in writing or otherwise be presented at various stages of the election process, advocate for removing any undue restrictions or interference against activities by the political competitors to safeguard the integrity of electoral processes.”<sup>23</sup>

34. The Code of Conduct for International Election Observers accompanying the UN Declaration of Principles expressly declares, *inter alia*, the following requirements in relation to international election observers:

“a) Observers must respect the laws of the host country and the authority of the bodies charged with administering the electoral process. Observers must follow any lawful instruction from the country’s governmental, security and electoral authorities. Observers also must maintain a respectful attitude toward electoral officials and other national authorities. Observers must note if laws, regulations or the actions of state and/or electoral officials unduly burden or obstruct the exercise of election-related rights guaranteed by law, constitution or applicable international instruments.

b) Observers must maintain strict political impartiality at all times, including leisure time in the host country. They must not express or exhibit any bias or preference in relation to national authorities, political parties, candidates, referenda issues or in relation to any contentions issues in the election process.

c) Observers’ judgements must be based on the highest standards for accuracy of information and impartiality of analysis, distinguishing subjective factors from objective evidence. Observers must base all conclusions on factual and verifiable evidence and not draw conclusions prematurely.”<sup>24</sup>

35. In summary, international observers, with due consideration of political impartiality and law abidance towards a hosting country, should prepare a report reflecting a true picture of preparation, performance and results of elections, and a hosting country should provide international observers with possibilities needed for them to fulfil their mission.

36. The abovementioned rules deal with a status of international election observers. Meanwhile (as it has already been noted), the election process may be attended both by national and international observers; however the former’s status is not regulated in the rules in question.

## **B. OSCE – Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE**

37. The 1990 OSCE Copenhagen Document<sup>25</sup> emphasizes that “elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings”<sup>26</sup> include, *inter alia*, “free elections that will be held at reasonable intervals by

<sup>23</sup> The UN Declaration of Principles, Article 15.

<sup>24</sup> The UN Declaration of Principles, Code of Conduct for International Election Observers, “Maintain Accuracy of Observations and Professionalism in Drawing Conclusions”.

<sup>25</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990 (hereinafter, “the OSCE Copenhagen Document”).

See [http://www.osce.org/documents/odihr/1990/06/13992\\_en.pdf](http://www.osce.org/documents/odihr/1990/06/13992_en.pdf).

<sup>26</sup> The OSCE Copenhagen Document, Article 5.

secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives”.<sup>27</sup>

38. It is further stipulated in Article 8: “The Participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings”.

39. As it appears from the quoted text, the OSCE Copenhagen Document distinguishes (albeit in a general terms) two kinds of electoral observers: domestic and foreign observers.

40. It may also be deduced (again without any details) that the OSCE Copenhagen Document admits involvement both of domestic and international observers at any elections regardless of their level (i.e. national, regional and local).

### **C. Commonwealth of Independent States – Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms on the Member States**

41. When assessing existing international texts and standards regarding election observation, it makes sense to look into the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States of 2002.<sup>28</sup>

42. The CIS Convention, *inter alia*, contains some details concerning the legal status both of national and international observers.

43. First of all, CIS Convention ascertains who is in a position to appoint national observers. Such a right is granted to “every candidate, every political party (coalition), another public formation (public organisation), group of voters, other subjects of elections, mentioned in the Constitution, laws”.<sup>29</sup>

44. As for international observers, they “shall receive the permission to enter the territory of the state in accordance with the procedure stipulated by the law, and they are accredited by a relevant electoral body upon presentation of a relevant invitation. Invitation may be sent by the bodies authorized by the law upon an official publication of the decision on setting of election”.<sup>30</sup>

45. The Convention also stipulates the rights of national and international observers (as listed respectively in Article 14, par. 3, and in Article 15, par. 8). These lists are as follows:

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<sup>27</sup> The OSCE Copenhagen Document, Article 5, Section 5.1.

<sup>28</sup> Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States, 7 October 2002 (hereinafter “the CIS Convention”, CDL-EL(2006)031).

See [www.venice.coe.int/docs/2006/CDL-EL\(2006\)031rev-e.pdf](http://www.venice.coe.int/docs/2006/CDL-EL(2006)031rev-e.pdf).

<sup>29</sup> The CIS Convention, Article 14, par. 1.

<sup>30</sup> The CIS Convention, Article 15, par. 3.

Rights of national observers	Rights of international observers
1	2
<p>“a) to get acquainted with the election documents mentioned by the laws on elections, to receive information on the number of voters included in the list of voters, and on the number of voters taking part in the voting, including early voting, the voting outside a polling station;</p> <p>b) to be present at the polling station;</p> <p>c) to observe the issuance of ballot papers to voters;</p> <p>d) to be present during early voting and when voters are voting outside a polling station;</p> <p>e) to observe vote count in the conditions that provide for visibility of ballot counting procedure;</p> <p>f) to observe filing of the result protocol and other documents by the electoral body, to get acquainted with the records of the electoral body on the outcome of voting, including the protocols that are compiled repeatedly, to receive the attested copies of the protocols in accordance with the procedure stipulated by the national legislation from a relevant electoral body;</p> <p>g) to address proposals and comments on the issues of organisation of voting to the electoral body;</p> <p>h) to appeal against decisions and actions (inaction) of the electoral body, members of the electoral body to the next higher electoral body or to the court.”</p>	<p>“a) to have an access to all the documents (not infringing upon interests of national security) regulating the election process, to receive from the electoral bodies necessary information and copies of the election documents stated in national laws;</p> <p>b) to contact the political parties, coalitions, candidates, individuals, workers of electoral bodies;</p> <p>c) to visit freely all polling stations places of voting, also on the election day;</p> <p>d) to observe voting, vote count and tabulation of the election results under the conditions providing for transparency of ballot counting;</p> <p>e) to get acquainted with the results of consideration of complaints (statements) and claims related to breach of the laws on elections;</p> <p>f) to inform the representatives of electoral bodies about their observations, recommendations without interference in the work of the bodies executing elections;</p> <p>g) to present their opinion publicly on preparation and conducting of elections after voting was conducted;</p> <p>h) to submit their observations and conclusions to the election officials, governmental bodies and other relevant officials.”</p>

46. It is also indicated that “in the cases and in accordance with the procedure stipulated by the laws, the rights of the national observer may also be used by candidates’ trustees”.<sup>31</sup>

47. In relation to international observers it is established that they are obliged:

<sup>31</sup> The CIS Convention, Article 14, par. 4.

“a) to observe the provisions of this Convention, constitution and laws of the country of residence and other international documents;

b) to have with them the accreditation card of international observer, being issued in accordance with the procedure stipulated by the country of presence, and to show it on request of the election officials;

c) to fulfil their functions being guided by the principles of political neutrality, impartiality, non-expression of any preferences or appraisals of the electoral bodies, governmental and other bodies, officials, participants of the election process;

d) not to interfere in the election process;

e) to formulate all their conclusions on the basis of observation and factual material.”<sup>32</sup>

48. A comparison of the rights granted by the CIS Convention to national observers, on the one hand, and to international observers, on the other, leads to a conclusion that the rights of either kind of observers, at least on election day, are roughly similar and the status of international observers according to the CIS Convention is rather in line with provisions of the documents which have been considered above.

49. Nevertheless, some provisions may be abused, as it is underlined in the Opinion on the Convention on the Standards and Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States:<sup>33</sup>

“65. Article 15 [of the CIS Convention] on international observers considers an aspect which is quite common in “new democracies”, that is the participation in the electoral process of international observers, experts usually appointed by international organisations to guarantee the respect of all rights and freedoms constitutionally, legally or conventionally established. Article 15, paragraph 8 establishes a quite comprehensive list of powers. This obviously highlights the limits the prohibition to “engage in any activity unrelated to monitoring of the election campaign” (Article 15, paragraph 7) and to “interfere in the electoral process”, as well as of the obligation to abide by such principles as political neutrality, impartiality, non-expression of any preferences or opinions with regard to elections bodies, bodies of state power and other bodies, officials, participants in the electoral process (Article 15, paragraph 9). In other words, the latest provisions should not be abused in order to prevent observers from doing their work, in particular in saying whether elections bodies, bodies of state power etc. acted or not in conformity with the law and international standards.

66. The possibility to withdraw international observers’ accreditation (Article 15, paragraph 7) could in particular lead to abuses. It should be interpreted in conformity with the principle of proportionality. The same is true for the restrictions on their rights based on national security (Article 15, paragraph 8.a) and for restrictions on the access of national observers to “documents indicated in election laws” (Article 14, paragraph 3.a). It is actually doubtful that any document related to elections might affect national security.”

50. Moreover, the CIS Convention, being based upon those general rules, develops them in a lot of details.

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<sup>32</sup> The CIS Convention on the Standards of Democratic Elections, Article 15, par. 9.

<sup>33</sup> Opinion on the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States, adopted by the Venice Commissions at its 70<sup>th</sup> plenary session (16-17 March 2007) on the basis of comments by Mr Christoph Grabenwarter (member, Austria; CDL-AD(2007)007), par. 65-66.

**D. Venice Commission of the Council of Europe – The Code of Good Practice in Electoral Matters**

51. The well-known Code of good practice in electoral matters – adopted by the Venice Commission and approved by various Council of Europe bodies as well as international and national jurisdictions through their case-law in the electoral field – rightly places observation of elections among the conditions for implementing the principles of “the European electoral heritage”. More precisely, as a “procedural guarantee” whose content is developed as follows:

“a) Both national and international observers should be given the widest possible opportunity to participate in an election observation exercise.

b) Observation must not be confined to the election day itself, but must include the registration period of candidates and, if necessary, of electors, and the electoral campaign. It must make it possible to determine whether irregularities occurred before, during or after the elections. It must always be possible during vote counting.

c) The places where observers are not entitled to be present should be clearly specified by law.

d) Observation should cover respect by the authorities of their duty of neutrality.”<sup>34</sup>

52. In the Explanatory Report of the Code of good practice in electoral matters which explains, defines and clarifies the Guidelines, some points deal with the role and status of election observers:

“86. Observation of elections plays an important role as it provides evidence of whether the electoral process has been regular or not.

87. There are three different types of observer: partisan national observers, non-partisan national observers and international (non-partisan) observers. In practice the distinction between the first two categories is not always obvious. This is why it is best to make the observation procedure as broad as possible at both the national and the international level.

88. Observation is not confined to the actual polling day but includes ascertaining whether any irregularities have occurred in advance of the elections (e.g. by improper maintenance of electoral lists, obstacles to the registration of candidates, restrictions on freedom of expression, and violations of rules on access to the media or on public funding of electoral campaigns), during the elections (e.g. through pressure exerted on electors, multiple voting, violation of voting secrecy, etc.) or after polling (especially during the vote counting and announcement of the results). Observation should focus particularly on the authorities’ regard for their duty of neutrality.

89. International observers play a primordial role in states which have no established tradition of impartial verification of the lawfulness of elections.

90. Generally, international as well as national observers must be in a position to interview anyone present, take notes and report to their organisation, but they should refrain from making comments.

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<sup>34</sup> The Code of good practice, Guidelines, II. 3.2.

91. The law must be very clear as to what sites observers are not entitled to visit, so that their activities are not excessively hampered. For example, an act authorising observers to visit only sites where the election (or voting) takes place could be construed by certain polling stations in an unduly narrow manner.”<sup>35</sup>

53. As underlined in the Introduction of the Report, such guidelines support need for a specific legal regulation in this sphere, at least at international level. The logical consequence is that “all states should be encouraged to provide for domestic and international election observation in their legislation”.<sup>36</sup> This is precisely the origin of the request of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe to the Venice Commission, with the explicit command to indicate “which Council of Europe member states and observer states, if any, do not provide formal election observation in their domestic legislation”.<sup>37</sup>

54. In those terms, any observer of the legal regime of elections should be absolutely shocked, at a first glance, by the lack of regulation on this matter in almost all Western democratic regimes. An initial impression reinforced when looking at the report on relevant national legislation on election observers and possible distinction between domestic and international observers, whose data refer only to “the Council of Europe Member States providing a legislation on electoral observation”.<sup>38</sup>

55. The report includes only twenty-four States: twenty of them are Central or Eastern European “new democracies”, and only four (Finland, Netherlands, Turkey and the United Kingdom) cannot be included in the same group. But the latter are only mentioned to specify that “no specific provision exists” (Netherlands): that “specific provisions are not (yet?) provided” (United Kingdom);<sup>39</sup> that “the Finnish legislation, in quite general terms, refers to “election representatives of parties, joint lists, non-aligned constituency associations or persons who have specifically been authorised in writing in a document to the election authorities”; or that (Turkish) “political parties and independent candidates may assign observers to supervise procedures performed at each ballot-box”, accompanied by “a series of incompatibilities with the observer status [...], such as the offices of administrative executive, municipal police chief and officer individual [...], member of the Turkish Grand National Assembly as well as candidate”.

56. Therefore, unless we accept that the Western traditional democracies do not provide for such a “procedural guarantee” which is a “condition for implementing” the principles of the European electoral heritage, that mere description made in the report should be enough to reveal that some kind of problem exists, which – in the terms used by the *Memorandum*, should oblige “all states” to introduce new legislation providing “for domestic and international election observation”, apart from facilitating it in practice.

57. The problem (purely formal) may have to do with different factors. However, as pointed out in the Background Part of the Report, it is particularly linked with an excessively wide (and widely spread) “new” concept of “election observation”. A concept which includes something

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<sup>35</sup> The Code of good practice, Explanatory Report, par. 86-91. The first of these points (a) is quoted in the *Information memorandum* prepared for the Parliamentary Assembly of the Council of Europe by Mr. Frank Weekers (hereinafter, the *Memorandum*). In addition, point 86 acknowledges that “observation of elections plays an important role as it provides evidence of whether the electoral process has been regular or not”.

<sup>36</sup> Par. 41 of the already mentioned *Memorandum*, which adds that all of them should “facilitate such observation in practice”.

<sup>37</sup> *Ibidem*, par. 43.

<sup>38</sup> According to the footnote in the “Overview” tables about “election observers rights in the national legislations”.

<sup>39</sup> Nevertheless, during the already mentioned *Conference on the parliamentary dimension of election observation*, reference was made to the fact that “the UK has only recently changed its legislation to allow people other than political party representatives to observe elections in the country” (“Keynote statement by Mr. Charles Lasham”, page 56).

essentially different, traditionally conceived as political participation and control, and consequently creates confusion between clearly different categories of electoral actors.

58. Effectively, and very obviously, all democratic elections are carefully observed and controlled in depth. In that wide sense, election observation is inherent to democratic elections. But in a stricter, narrower sense – as the specific new activity to which this term usually refers – it is not expressly regulated, because it has not been necessary (at least, in recent decades).

59. In fact, as the Code of good practice in electoral matters puts it, “the principle that truly democratic elections can only be held if certain basic conditions [...] such as fundamental rights [...] are met” is part of what “can legitimately be termed the European electoral heritage”.<sup>40</sup> Consequently, those “basic conditions” which allow the guarantee of the underlying principles of the European electoral heritage have to be necessarily present in European democratic states.

60. Therefore, that requirement is basically fulfilled by all the “traditional” European democracies, even if they are not explicitly considered in the preliminary report on the “relevant national legislation” in the Council of Europe Members.

61. Having repeated a mention of two kinds of observers (national and international), the Guidelines of the Code of good practice in electoral matters accompany this idea with an indication according to which their involvement should embrace three stages: 1) the time period prior to the election day (pre-election period); 2) the voting day itself; 3) a certain term after the voting day (post-election period).

62. The Code of good practice in electoral matters also expressly admits that some places may be unavailable for observers provided such places should be “clearly specified by law”.<sup>41</sup>

63. Here again two groups of observers (national and international) are mentioned; however the former group is, in its turn, differentiated into two sub-groups: partisan observers and non-partisan ones. At the same time it is specifically noted that the distinction between these two sub-groups “is not always obvious”,<sup>42</sup> and given this circumstance it is recommended “to make the observation procedure as broad as possible at both the national and the international level”.<sup>43</sup>

64. Any observer (regardless of a group he/she belongs to) should be granted a possibility “to interview anyone present, take notes and report to [his/her] organisation”; the prohibition to make comments means a requirement to maintain political neutrality.<sup>44</sup>

## **II. Overview of domestic legislation in the Council of Europe member States**

65. A thorough study of the electoral legislation<sup>45</sup> in the Council of Europe member States has enabled guidelines concerning the existence of a status of electoral observers within those countries to be identified.

66. Only 21<sup>46</sup> of the 47 member states – plus Belarus as a candidate – have domestic

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<sup>40</sup> The Code of good practice, Explanatory Report, p. 2.

<sup>41</sup> These problems have then been considered in a more detailed manner in Article 3, Section 3.2, paragraphs 86-91 of the Explanatory report (as developed in par. 52 of the present Report).

<sup>42</sup> The Code of good practice, par. 87.

<sup>43</sup> Idem.

<sup>44</sup> The Code of good practice, par. 90.

<sup>45</sup> [www.venice.coe.int/VOTA/en/start.html](http://www.venice.coe.int/VOTA/en/start.html); [www.legislationline.org/topics/topic/6](http://www.legislationline.org/topics/topic/6).

<sup>46</sup> Albania, Azerbaijan, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Hungary, Latvia, Lithuania, “the Former Yugoslav Republic of Macedonia”, Moldova, Montenegro, Poland, Romania, Russian Federation, Slovakia, Turkey and Ukraine.

provisions on election observation. Nearly all of them are recent democracies.

67. Of these 21 States, only 8<sup>47</sup> have provisions within their electoral legislation describing the status of the election observers. 6 do not provide for an explicit status but mention observers' activities in the provisions describing the electoral process. 3 give competence to their national election authorities to provide this status – such as “the former Yugoslav Republic of Macedonia” which provides a partially legal status to observers and also requests election authorities to provide a Code of the rules for election monitoring. 4 States merely mention election observation without developing any rights or duties, modalities or accreditation procedure.

68. Internationally recognised principles do exist in very different ways within the electoral legislation. None quotes them in an exhaustive manner.

69. However, fundamental principles such as free access to electoral documents, the possibility to observe all the stages of an electoral process, the accreditation process, the wearing of the prescribed identification,<sup>48</sup> are well covered in general, at least in the 13 countries which go into detail on the observation process. The other principles are more or less developed in the other parts of the legislation.

70. Several States differentiate between domestic and international observers. It can be mentioned that in two domestic legislations, observers have the same rights and duties.<sup>49</sup> Moreover, differences may be justified in exceptional situations. For example, some countries provide special protection to domestic observers: protection against prosecution concerning their opinions related to the electoral process.<sup>50</sup> Others allow domestic observers, but not international observers,<sup>51</sup> to make comments in the polling station register.

71. Freedom of travel in the territory of the country and unimpeded access to all polling stations is guaranteed<sup>52</sup> but it may occur that this freedom of movement is limited to the precinct.<sup>53</sup>

72. Another important matter in several domestic electoral legislations is that accreditation is not valid over the entire territory, but only in an electoral district or precinct. In such a situation, the electoral authority providing accreditations holds a map showing the location of all polling stations, giving details of whether they are observed or not; this map may be used for irregular purposes.

73. In order to guarantee free access for election observers to the various aspects of the voting process, secured areas or special areas where the voting process takes place are enumerated in conformity with the Code of good practice in electoral matters. This is for instance the case for military zones, within the country or abroad, for prisons, hospitals, or oil platforms.<sup>54</sup> In the case of mobile ballot boxes, the right to observe is also expressly guaranteed.<sup>55</sup>

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<sup>47</sup> Article 6, Electoral Code of Albania; Article 30, Electoral Code of Armenia; Article 42, Electoral Code of Azerbaijan; Articles 17-1 and 17-2, Election Law of Bosnia and Herzegovina; Article 70, Election Code of Georgia; Articles 105 to 117, Electoral Code of “the former Yugoslav Republic of Macedonia”; Articles 31-12 and 31-13, Federal Law on the State Automated System of the Russian Federation “Vybory”; Article 70, Law of Ukraine on the Elections of the President.

<sup>48</sup> Articles 40-13 and 40-16, Electoral Code of Azerbaijan; Article 17-2, Election Law of Bosnia and Herzegovina; Article 70-2-d', Election Code of Georgia.

<sup>49</sup> Article 42, Electoral Code of Azerbaijan.

<sup>50</sup> Article 30-6, Electoral Code of Armenia.

<sup>51</sup> For example, Articles 41-g and 34-gj, Electoral Code of Albania.

<sup>52</sup> For example, Article 17-1, Election Law of Bosnia and Herzegovina.

<sup>53</sup> Articles 69-7/70-1-b, Election Code of Georgia, article 63-5 Elections code of Moldova.

<sup>54</sup> For example, Article 40-14, Electoral code of Azerbaijan; Articles 64-4/66/67/68, Law on elections to municipal councils of Lithuania; Article 31-7, Federal law on the State Automated System of the Russian Federation “Vybory”.

<sup>55</sup> Article 56, Election code of Georgia.

74. The possibility for core-team missions to issue public statements is rarely mentioned in domestic electoral legislations,<sup>56</sup> despite the obvious importance of such statements for the citizens of observed countries.

75. The principle of non-interference in the electoral process is generally stipulated,<sup>57</sup> and sometimes developed. This leads for example to a ban on asking voters to reveal their choice, a ban on participating directly in the counting process or a ban on responding to voters' questions (except questions regarding the observers' status).<sup>58</sup>

76. It is also often prohibited in domestic provisions for observers to give assistance to voters who are incapable of voting on their own.<sup>59</sup>

77. The strict neutrality expected from the observers is often recalled in domestic legislation, through the prohibition of, for example, wearing symbols, propaganda signs or adopting militant behaviour.<sup>60</sup>

78. The organisation of the polling station is frequently referred to and it is sometimes specified that observers must have a clear view over the whole voting process.<sup>61</sup>

79. Some details need to be clarified concerning accreditations. At first, the authorities are clearly mentioned. They can be local or national ones; however, as previously stated, accreditation should be valid throughout the whole territory.

80. The right to appeal<sup>62</sup> against a refusal of accreditation is guaranteed in all legislation which provides for the accreditation procedure. The appeal should be dealt with in a short deadline, in any case before the election day to ensure efficiency.

81. Cancellation of accreditation leads to problems. On the basis of the principle of parallelism of procedures, only the authority issuing accreditation can cancel it. International organisations<sup>63</sup> are, however, exempt from this when it concerns their own observers. These details need to be clarified in domestic legislation.

## Conclusions

82. This overview of the international texts and standards as well as of domestic electoral legislations in the Council of Europe member States concerning election observers confirms the need for an international document harmonising the status of election observers. It underlines indeed a variety of approaches and sometimes contradictions in the existing status of election

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<sup>56</sup> Article 44-8, Electoral code of Azerbaijan; Article 32-8, Federal law on the State Automated System of the Russian Federation "Vybory"; Article 70-5, Law of Ukraine on the Elections of the President.

<sup>57</sup> Article 7-2-d, Electoral Code of Albania; Article 63-5, Election Code of Moldova; Article 75-8, Law on the election of the President of Romania; Article 70-9, Law of Ukraine on the Elections of the President.

<sup>58</sup> Articles 42-3-2/42-3-5/42-3-10, Electoral Code of Azerbaijan.

<sup>59</sup> Article 5-19, Election Law of Bosnia and Herzegovina; Article 54, Act on election of the President Poland; Article 82, Law on the election of the President of Romania; Article 77-10, Federal law on the State Automated System of the Russian Federation "Vybory".

<sup>60</sup> For example, Articles 41-1/42-3-8, Electoral Code of Azerbaijan; Article 7-2-ç, Electoral Code of Albania; Articles 70-2-c/70-2-d, Election Code of Georgia; Article 106, Electoral Code of "the former Yugoslav Republic of Macedonia"; Article 75-10, Law on the election of the President of Romania.

<sup>61</sup> Article 98-5, Electoral Code of Azerbaijan; Article 94-2, Electoral Code of Albania; Article 47, Electoral Code of Armenia; Article 57, Law on elections to municipal councils of Lithuania; Article 74-13, Federal law on the State Automated System of the Russian Federation "Vybory".

<sup>62</sup> Articles 6/145, Electoral Code of Albania; Article 17-8, Election Law of Bosnia and Herzegovina; Article 77, Election Code of Georgia.

<sup>63</sup> Election Observation Handbook, OSCE/ODIHR, Handbook for European Union Election Observation.

observers, either between international and domestic observers or even within a same category.

83. At the *international level*, there is a number of international texts dealing with the involvement of observers in the electoral process in different ways: from a general declaration of importance of the observers' role in democratic elections (in the OSCE Copenhagen Document) to the regulation of their functions (as well as relevant commitments of state authorities) in some detail (in the UN Declaration of Principles, and even more – in the CIS Convention on the Standards of Democratic Elections).

84. At the level of the *national electoral legislation*, the election observers status is missing in the legislations of the majority of member States or is, at best, partially stipulated in a few other national legislations. International as well as domestic election observers need a better legal framework to provide a secure observation process.

85. National electoral legislation differs on various provisions; depending on the referred national electoral legislations, four different trends may be noted in such texts:

- 1) there are no provisions at all concerning participation of observers in the election process (e.g. Netherlands, the United Kingdom);
- 2) observers are admitted, but it is not ascertained who may be appointed to such capacity (e.g. Poland, Slovakia);
- 3) either national or international observers are admitted (e.g. Hungary, Latvia, Romania, Turkey);
- 4) both national and international observers are admitted (e.g. Montenegro, Russia or Ukraine).

86. Most of the Council of Europe member States, that enjoy consolidated democratic institutions and guarantee their inherent fundamental rights, do it in the "traditional" way by recognising to the different participants in the political process and in the elections various rights, which are judicially guaranteed. In some others, whose democratic regimes are still in a transitory period or in which non-democratic practices were so deeply rooted that they cannot be easily removed, the appointment of election observers is usually allowed to political parties or candidates, national or international NGOs, or international organisations.

87. A number of issues should be raised. For instance: should national legislation distinguish between national and foreign observers? There are reasons to justify a negative answer, at least if we consider just their status as observers; or, should the condition of observer be reserved to national citizens? From the previous considerations, it seems clear that it is an unjustifiable restriction, unless it refers to the traditional "observers" who are, *de facto*, representatives of the various political parties or candidates, acting as such in the framework of national-level elections.

88. This report on the existing international and national sources dealing with the status of election observers opens consequently the way for an international document establishing widely agreed principles and guidelines on an internationally recognised status of election observers.

89. The Venice Commission stands ready for elaborating such a document. The Venice Commission refers to the draft recommendations on an internationally recognised status of election observers (CDL-EL(2009)006) which would be useful for this purpose.

90. It should be noted however that this issue, as many others, is possibly best served with general rules, which establish general criteria applicable to all political elections (basically, with the guarantee of fundamental rights for all citizens, with the logical exception of political rights for foreigners) than with particular rules, much more addressed to specific problems. In other words, election observation is usually perfectly guaranteed through the traditional fundamental rights, and any attempt to set up new rules about this “new” activity should take into account that its best success should be to disappear, giving way to another “ordinary” model of observation and control, in the hands of the (mainly national) stakeholders in the political process.