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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT RECOMMENDATIONS
ON AN INTERNATIONALLY RECOGNISED STATUS
OF ELECTION OBSERVERS**

on the basis of comments by

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Introduction

1. *Following the Report on an internationally recognised status of election observers¹ adopted by the Venice Commission at the request of the Parliamentary Assembly of the Council of Europe, the need for recommendations leading to an internationally recognised status of election observers appeared palpable.*

2. *For achieving this purpose and in order to get a global vision of election observation within the Council of Europe member states, in addition to an overview of domestic legislation dealing with provisions on election observation, elections observation missions' reports of the Parliamentary Assembly of the Council of Europe as well as similar reports from OSCE/ODIHR have been scrutinised in the present document.²*

3. *On the basis of international election observation missions' reports which underline possible improvements in national electoral legislation (I.), the Venice Commission has elaborated in the present document recommendations for an internationally recognised status of election observers (II.).*

4. *These draft recommendations have been adopted by the Council for Democratic Elections at its ... meeting (Venice,) and the Venice Commission at its ... session (Venice, ...).*

I. Possible improvements in national electoral legislation on the basis of international election observation missions' reports

5. Various countries, mostly "new" democracies amended their domestic electoral legislation in order to bring them in line with the 1990 OSCE Copenhagen Document. On the contrary, no older democracies implemented such international standards in their legislation, probably due to the absence of international monitoring and to confidence in the electoral process. Moreover, in the latter case, electoral processes are guaranteed by the presence of candidates or parties' proxies.³

6. In this regard, it is important to legally recognise proxies' rights at the same level as non-partisan observers' rights.⁴ Additionally, it should be noted that party proxies are sometimes under the responsibility of their political party and do not require any official accreditation.⁵

7. Various election observation missions' reports underline transparency and public credibility in the electoral process strengthened by the active involvement of the civil society.⁶ It has been underlined in this regard that a distinction between domestic and international observers should be avoided in order not to limit the rights of domestic observers compared to international ones.⁷

¹ Report on an internationally recognised status of election observers, on the basis of comments by Mr Valriy Musin (Substitute Member, Russian Federation), Mr Owen Masters (Expert, United Kingdom), Mr Olivier Pohler (Expert, France) and Mr Ángel Sanchez Navarro (Member, Spain), adopted by the Venice Commission at its ... plenary session (Venice, 13-14 March 2009, CDL-AD(2009)...).

² For OSCE/ODIHR reports, see www.osce.org/odihr-elections/14207.html. For Council of Europe Parliamentary Assembly reports, see www.assembly.coe.int.

³ Final Report on the 22 April and 6 May 2007 Presidential Election in France. Needs Assessment Mission Report ahead of the 9 March 2008 Parliamentary Elections in Spain.

⁴ Final Report on the 10 June 2007 Parliamentary Election in Belgium. Final Report on the 25 November 2007 Parliamentary Elections in Croatia.

Final Report on the 2006 Presidential Election in Bulgaria.

⁵ Final Report on the 7 October 2007 Parliamentary Elections in Latvia.

⁶ Final report on the 10 September 2006 parliamentary elections in Montenegro.

⁷ Final report on the parliamentary elections in Albania, 3 July 2005.

Final report on the local elections in Albania, 12 October 2003-25 January 2004.

8. Concerning international election observation missions, it is important that the legislation provides provisions on the competent authorities able to invite international organisations to observe elections.⁸

9. Election observation missions' reports advise national authorities on improving the fulfilment of rights for domestic and international election observers' rights in their domestic electoral legislations. The observation process has therefore to be helped by local authorities. For proper and efficient observation as well, polling stations and counting centres have to be accessible to the observers and well organised (e.g.: shortening the distance between observers and counting tables for better observation).⁹ Election commission meetings should be widely accessible to all kinds of observers, including tabulation of results process.¹⁰ Freedom of movement for observers should be guaranteed for a wide observation process during all stages of the electoral process.¹¹

10. Remedies should be ensured to observers before national or local authorities in case their rights are denied in the course of the observation process.¹² Competent authorities should quickly solve such complaints since the electoral process is short.¹³

11. All electoral legislations provide provisions regarding the accreditation process that may concern individual observers, NGOs and international institutions. Such a process should be simple,¹⁴ and its attribution criteria as well as deadlines be clearly defined in legislation.¹⁵

12. Attribution criteria for observation accreditation should not be restrictive. Concerning international observation missions, countries cannot refuse the presence of any particular nationality.¹⁶ In a few cases, the country stipulated as a condition that observers have prior experience in election observation.¹⁷ Even if such an argument may be of interest, the hosting country should not impose such criteria, the competence belonging to the international institutions invited or to the country of the considered nationals.

13. Moreover, it is advisable to extend accreditation to the entire territory of the hosting country, and not to limit accreditation to specific electoral districts or precincts.¹⁸

14. In order to avoid timeframe problems in ensuring accreditations, the accreditation process should be quick once a request is received.¹⁹ In the case of prior refusal of accreditation with

⁸ Final Report on the 12 May 2007 Parliamentary Elections in Armenia.

Final Report on the 6 November 2006 Presidential Election in Tajikistan (non member state of the Council of Europe).

⁹ Final Report on the 18 February 2007 Local Elections in Albania.

¹⁰ Needs assessment mission report ahead of the parliamentary elections in Belarus, 28 September 2008 (State candidate for membership).

¹¹ Final Report on the 16 December 2007 Pre-term Parliamentary Elections in Kyrgyzstan (non member state of the Council of Europe, member state of the Venice Commission).

¹² Final Report on the 5 January 2008 Extraordinary Presidential Election in Georgia.

Final report on the 19 March 2006 presidential election in Belarus (State candidate for membership).

¹³ Final report on the elections to the State Duma of the Russian Federation, 7 December 2003.

¹⁴ Final report on municipal elections in "the former Yugoslav Republic of Macedonia", 13 and 27 March, and 10 April 2005.

¹⁵ Final report on parliamentary elections in Moldova on 6 March 2005.

¹⁶ Final Report on the 12 May 2007 Parliamentary Elections in Armenia.

¹⁷ Needs assessment mission report ahead of the parliamentary elections in Belarus, 28 September 2008 (State candidate for membership).

Final Report on the 18 August 2007 Parliamentary Elections in Kazakhstan (non member state of the Council of Europe, observer state of the Venice Commission).

¹⁸ OSCE/ODIHR assessment mission report on the parliamentary and presidential elections in Romania on 28 November and 12 December 2004.

¹⁹ Final report on the parliamentary elections in Albania, 3 July 2005.

finally a successful appeal from the observation group, the hosting country should also issue accreditation quickly, permitting accreditation in time.²⁰

15. It is assumed that domestic electoral authorities adopt a flexible attitude regarding accreditation and related deadlines to requesting organisations, especially concerning domestic organisations.²¹ Too severe an approach could be interpreted as a hostile attitude towards the observation process.

16. Moreover, refusal to grant accreditation should be open to appeal by the requesting domestic group or institution. Grounds for denying accreditation should be communicated in written form and in a timely manner.

17. According to the Code of conduct for international election observers drafted *inter alia* by the United Nations Electoral Assistance Division,²² withdrawal of observer accreditation or dismissal from the election observation mission may take place only in case of serious violation of this code and the authority for such determinations rests solely with the leadership of the election observation mission.

18. Accreditation for NGOs or NGO groups is also bound by the legislation dealing with associations. For instance, it can be requested that election observation be declared in the association by-law.²³

19. Some attribution criteria proper to NGOs do exist. For example, independence vis-à-vis the political parties has to be guaranteed by an NGO, for itself,²⁴ for all its observers²⁵ and for its bona fides as well.²⁶

20. The nationality of an NGO can also be a selection criterion. For such a reason, foreign NGOs see their accreditation rejected,²⁷ while there are more and more of them applying for observation missions in foreign countries. The foreign origin of domestic NGO funds can also be a criterion for rejecting application to observe elections.²⁸

21. Nevertheless, such criteria cannot be too severe or too strictly applied, and cannot be a reason for limiting the value of an observation process. It occurred for instance that a NGO was asked to have a national dimension in its observation process, which is almost impossible in some large countries.²⁹

22. However, the lack of domestic observers is not necessarily proof that national authorities have impeded the election observation process; on the contrary, population and civil society can show wide confidence towards the electoral process.³⁰

²⁰ Final Report on the 1 October 2006 General Elections in Bosnia and Herzegovina.

Final report on the local elections in Moldova, 25 May and 8 June 2003.

²¹ Final report on municipal elections in "the former Yugoslav Republic of Macedonia", 13 and 27 March, and 10 April 2005.

²² CDL-AD(2005)036.

²³ Final Report on the 30 September 2007 Pre-Term Parliamentary Elections in Ukraine.

²⁴ Final report on parliamentary elections in Moldova on 6 March 2005.

²⁵ Final Report on the 1 October 2006 General Elections in Bosnia and Herzegovina.

²⁶ OSCE/ODIHR assessment mission report on the parliamentary and presidential elections in Romania on 28 November and 12 December 2004.

²⁷ Final report on the presidential election in Kazakhstan, 4 December 2005.

²⁸ Needs assessment report ahead of presidential election in Azerbaijan, October 2008.

Final report on the parliamentary elections in Azerbaijan, 6 November 2005.

Final report on the presidential election in Azerbaijan, 15 October 2003.

²⁹ Final report on the presidential election in the Russian Federation, 14 March 2004.

³⁰ Final Report on the 22 July 2007 Early Parliamentary Elections in Turkey.

23. It often happens that recommendations made following election observation do not have any effect.³¹ In such cases, older democracies should show a positive example and reform their electoral legislations in order to include provisions on the observation process.³²

24. Finally, it is crucial that electoral authorities as well as domestic and international observers be well informed of their rights and duties in the election observation process to ensure a smooth observation process and in order to give citizens confidence in the electoral process.³³

II. Venice Commission recommendations for an internationally recognised status of election observers

25. Any attempt to formulate an internationally recognised status of election observers should depart from the fact that a specific status responds to a specific position. And the specificity of election observers has to be found in the activity they implement, which is that of “mere” observation, excluding all active participation in the process which is reserved to the members of the political body. Therefore, the fulfilment of their duties as observers justifies the recognition of specific rights, and their status could be based on stated duties and rights.

26. As general framework, the main terms of the election observation mission should be established in a memorandum of understanding or a similar reference document agreed upon by governmental and/or electoral authorities. This document should provide guidance for an internationally recognised status for election observers and subsequently state the main objectives and means devoted to election observation missions; and, in particular, the rights and duties of the election observers. Such an international document should facilitate a unified status for international observers to be accepted by the countries participating in the Convention for the Protection of Human Rights and Fundamental Freedoms and widely hopefully.

27. Both rights and duties of international observers as well as relevant commitments of hosting countries should be established in order to guarantee international observation missions performing their activities.

28. Both international and domestic observers should have common principles, rights as well as duties, in spite of specific norms in the domestic electoral legislations (i.e. specific formalities such as official invitations, accreditation, etc.) and of the fact that international observers are foreigners towards the hosting country.

29. In recalling the existing international texts and standards dealing with rights and duties of election observers as well as in giving an overview of domestic electoral legislations stipulating or not provisions related to rights and duties of election observers, the present Report underlines disparities in international and domestic legislations and soft-law. The Report therefore expresses a need for an internationally recognised status of election observers. The Venice Commission therefore recommends drawing of guidelines on such an internationally recognised status. For this purpose, it suggests the following directions, hereinafter.

30. This document must include the basic principles promoted by all existing international organisations, if there is to be a possibility of an ‘International Status of Election Observer’ being acceptable throughout Europe, if not the world. There is a need for the document to be flexible

³¹ Final Report on the 21 October 2007 Pre-Term Parliamentary Elections in Poland.

³² Needs Assessment Mission Report ahead of the 9 March 2008 Parliamentary Elections in Spain
Final Report on the 21 October 2007 Federal Elections in Switzerland.

Final report on the presidential election in the Republic of Serbia (Serbia and Montenegro), 13 and 27 June 2004

³³ Final report on the parliamentary elections in Albania, 3 July 2005. Final report on the elections to the State Duma of the Russian Federation, 7 December 2003.

and adaptable, for governments of all countries to embrace, and include such guidelines in their domestic legislation.

31. Any document which defines an International Status for Election Observers should also include a section elaborating the responsibilities and limitations of observer organisations, and their members.

32. As far as possible, national observers should be granted the same freedoms and rights as those proposed for international observation.

33. A status for international election observation would be more effective if all countries participating in the 'Convention for the Protection of Human Rights and Fundamental Freedoms', were to adopt an internationally agreed status, and include such status in domestic legislation.

34. The key guidelines resulting from international and national law and practice (cf. doc. CDL(2009)013) as well as from reports and opinions such as those quoted in the first part of the present document, could be used for the drafting of general guidelines on the status of election observers. A first set of possible guidelines is developed below.

35. The following points will include possible guidelines for legislation on election observation (**A.**) that should lead to normative acts (at the law level or through by-laws) and guidelines more directly devoted to the election observers (**B.**).

A. Guidelines for legislation on election observation

36. International observers should be given the widest possible opportunity, to participate in an election observation process. Furthermore, international observation missions should be given the opportunity to identify, and cooperate as appropriate with credible national non-partisan observer organisations. An important aspect of international observation should be to evaluate, and report on whether national observation organisations are able to conduct their activities, without undue interference or restrictions.

37. Observation of an election is not just about what happens on polling day, observation should be undertaken to ascertain whether any irregularities occurred before election day. Observation of the whole electoral process is the only way to ensure that the election has been conducted in accordance with the law, and that the election has been organised in a democratic and transparent manner. International Observers must be in a position to note if laws, actions of the state, and/or electoral officials unduly obstruct the exercise of election related rights, which are guaranteed by law, the constitution, or applicable human rights instruments.

38. The international observation of elections can be divided into three phases:

1. Pre-Election phase;
2. Election Day phase;
3. Post Election phase.

1. Pre-Election

39. The process of observation should begin with the drafting of the electoral law. This can be undertaken through consultation, and not necessarily through in-person observation.

40. Pre-election day observation should also be undertaken in many other areas of the election process, ensuring that there is an equality of opportunity for all parties and candidates. These could be:

- B. Registration of voters, and the maintenance of the voters list;
- ii) Freedom of expression for all candidates and parties;
 - iii) Campaign activities;
 - iv) Conduct of the Media both state and private;
 - v) Funding of electoral campaigns.

2. Election Day

41. Election Day observation is the highpoint of the election process.
42. Observers must be given the freedom to observe the election throughout a country, and reasons given why any areas of the country are not open to international observers. In addition, such areas must be stipulated by law.

3. Post-Election

43. All stages of an election are important, but the post-election process is a more permanent state of an election, because it can, indeed should indicate the direction to be taken, to reinforce the democratic process for future elections.
44. After election day, there are a number of processes which take place to verify and endorse candidates and political parties/entities/coalitions who have been elected. These processes should be observed.
45. Following an election, it is not unusual for there to be complaints, or disputes, and appeals. It is necessary in all countries, for there to be an effective system of appeal, if it is felt there was a failure to comply with the electoral law. Therefore, opportunity should be given by states, for international organisations to observe this part of the electoral process.

4. Rights of election observers

46. On that basis, the following rights of election observers have to be recognised.
47. As a rule, election observers should enjoy all the fundamental rights considered as basic conditions for the holding of democratic elections.
- i) The widest possible opportunity should be given for both national and international observers to participate in an election observation.
 - ii) International observation should not take place unless the country holding the election issues invitations within a time frame that will enable the observing organisation to analyse the whole electoral process.
 - iii) Observers should have the right to be fully accredited. In particular, and in accordance with the terms included in the memorandum of understanding, their official accreditation should provide them access to all official and electoral premises to implement their guaranteed functions; and to prevent any pressure, disturbance, threat or reprisal caused by official authorities, who should be responsible for any arbitrary measure taken against any of the accredited observers. Therefore, guarantees should be given, that no governmental, security, or electoral authority will interfere in the selection of members of the international election observation mission, or attempt to limit its numbers.

- iv) Access should be facilitated for observation of elections below the national level.
- v) There should be freedom of movement throughout a country for all observers.
- vi) Reasons should be provided for areas within a country not available for observation, (e.g. security situation), These areas should be stipulated by law.
- vii) Both national and international observers should be guaranteed access and observation to all stages of the election process and to attend any public activity, even of a political nature, anonymously and as part of their observation mission. Consequently, observation should not be confined only to election day itself but may include the various stages of the electoral process, such as: registration of voters, registration of candidates, campaign, election day and its voting process, counting process and appeals and complaints process. Such observation should include as well certification for electronic voting, postal voting and other technologies.
- viii) There should be freedom of access to all electoral premises open to the public (in particular, polling stations).
- ix) Observation of all stages as referred under point no. iv) should be possible when it takes place out of the election premises. This rule should find a logical limit related to the meetings of high bodies (such as Central Electoral Commissions, Courts or, even, the Constitutional Courts), whose decisions on electoral claims must be publicly founded on legal grounds, and usually are subject to appeal.
- x) Observers should have unimpeded access to all persons concerned with the election process, and to all parties and candidates, including any disqualified candidates or parties that have withdrawn from the election. Similarly, observers should therefore be free to contact political parties, coalitions, candidates, individuals, and workers of electoral bodies. More widely, they should be able to get in touch and interview any person in electoral premises (members of polling commissions, voters, *inter alia*), provided they are willing to participate in such contact.
- xi) Observers should be aware of the results of the consideration of complaints, and claims, in respect of the breach of laws during the election.
- xii) Authorities should respect the neutrality of international observers.
- xiii) An international observation mission should be guaranteed the freedom to issue without interference, public statements and reports, in respect of its findings and recommendations, concerning election related processes and developments. Observers should have the right to express freely their professionally accurate and politically impartial opinion about the development of the election process in their reports to the persons responsible of the observers' team.
- xiv) Observers should have the right as well to take notes and to make comments among them and/or to use technical means to record the development of the electoral operations, with full respect to the voters' rights and particularly to the principle of secrecy of the vote.
- xv) Observers should have the right to (carefully, respectfully and privately) make suggestions or comments to the authorities in charge of the electoral operations, in case they observe any irregularity which should be rectified.

xvi) Observers should have the right to make and obtain copies of electoral documents (for instance, protocols on voting results).

xvii) Guarantees should be provided that no governmental authority will pressure, threaten action against, or take any reprisal against any national or foreign citizen who works for, or provides information to an international election observation mission.

48. All these rights should be exercised with the maximum discretion, without causing any disruption or disturbance in the electoral operations. Some other rights which are sometimes considered (such as the right to familiarise with electoral documents) are inherent to the electoral process, and should possibly not be considered only as “rights” of whatever observers but also as “duties” of the organisations (partisan or not, national or international) which intend to form an election observation team. This duty may, of course, count on the authorities’ aid in the terms fixed by the laws.

B. Guidelines for election observers (their duties)

49. International observers must respect the laws of the host country, and the authority of those in charge of the election process. The condition of “election observer” implies a strict respect of the legal framework of the country holding elections, and to the principle of impartiality. This respect qualifies an observer as such: he/she (independently of being a national citizen or a foreigner) is not an active participant in the process who may interfere in it, but just someone who observes it (as it really is, as it really works) in order to give a (technically or politically) qualified opinion about its features and its respect of different (technical or political) standards. Therefore,

i) Election observers should always carry their identification documents;

ii) Election observers should always respect the laws of the country; and, consequently;

iii) Election observers should always respect the national authorities, and their decisions; consequently;

iv) Election observers should never obstruct the developing of the election process, in any of its elements; they must not interfere in the electoral process;

v) Election observers should never exhibit any personal bias or preference related to issues which may have political or electoral implications. This requirement makes it clearly difficult for national citizens to act as election observers, unless they decide to self-restrain their personal rights to express their views during the period of their activity, particularly their political, partisan views. Similarly, election observers should abstain from doing any political, partisan activity;

vi) The principles of strict impartiality must be upheld by international observers, in not expressing preference or any participant, or party;

vii) Election observers should make their reports (and, if it is the case, their suggestions), and draw their conclusions with entire freedom, most professional accuracy and strict respect to impartiality;

viii) Election observers’ behaviour should at any moment, even in their leisure time, be sound and blameless, helping to enhance the high mission of the whole team.

ix) International election observation missions must respect the laws of the host country, and the authority of the bodies charged with administering the electoral process.

x) Observers must maintain a respectful attitude towards electoral officials, and other national authorities. Observers should follow any lawful instruction from the host country's security and electoral authorities.

xi) Observers must maintain strict political impartiality at all times, including leisure time within a host country.

xii) Observers must base conclusions on factual and verifiable evidence, and not draw conclusions prematurely.

50. Therefore, if an election observer does not respect these principles (even when he or she is acting anonymously, in his/her leisure time), he/she may lose his/her accreditation, and could be deprived of his/her capacity. Nevertheless, the principle of proportionality has to be respected and such a sanction should not be abused by the authorities.