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CONFERENCE ON

**“THE EUROPEAN ELECTORAL HERITAGE:
TEN YEARS OF THE CODE OF GOOD PRACTICE
IN ELECTORAL MATTERS”**

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**THE IMPLEMENTATION OF THE CODE OF GOOD PRACTICE
IN ELECTORAL MATTERS -
THE EXPERIENCE OF THE CONGRESS**

by Ms Gudrun MOSLER-TÖRNSTRÖM, Member of the Congress of
Local and Regional Authorities of the Council of Europe
(Chamber of Regions)
Vice-President of the State Parliament of Salzburg (Austria)

Dear Speaker of Parliament,
dear President and members of the Venice Commission,
dear Ambassadors,
dear fellow parliamentarians,
ladies and gentlemen,

1. Before speaking about concrete experience of the Congress in implementing the Code of Good Practice in Electoral Matters, I would like to outline the Congress activities in the field of election observation: Why and how does the Congress observe local and regional elections?

2. When after the fall of the Berlin Wall, the Council of Europe began to observe elections as part of the accession process of new democracies, it was quite natural, that the Congress – as the Council's main institution to safeguard local and regional democracy – was given the task by the Committee of Ministers to observe local and regional elections in wider Europe. It was the aim to supplement the Parliamentary Assembly's work in this field which is focussed on presidential and national parliamentary elections.

3. Since 1990, some 100 election observation missions have been organised by the Congress. Election observation has meanwhile become a political priority for our institution and Congress members agreed on a policy for improving its quality and increasing the impact. Congress Resolution 306(2010) lays down rules and strategies for election observation and includes the whole election process as well as the essential preconditions for genuinely democratic elections: the legal and political context, the election campaign, the role of the media and the post-electoral situation.

4. All Congress observers are – like me – elected local and regional politicians from the 47 Council of Europe member states. This means that our observation takes place in a peer review context. When we are observing and assessing electoral processes in other countries we can revert to experiences in our home countries and base our recommendations also on the exchange with our fellow Congress members. It is important that election observation is not understood as a one-way street but as an exchange of views between local and regional politicians from 47 member countries and as a dialogue with the country in which the election observation takes place. The fact that the Congress observes elections only upon an official invitation from the relevant national authorities in one of the Council of Europe member states gives weight to this interactivity. Each delegation comprises between 10 and 15 Congress members and its composition reflects a political and geographical balance and gender parity. Also members of the European Union's Committee of the Regions usually form part of Congress election observation missions which underlines the co-operative character of our missions. If the Congress is not the only international institution observing local and regional elections in a particular country, it may join an international elections observation mission. The Congress co-operates very closely with OSCE/ODIHR in this context.

5. To ensure appropriate follow-up to its recommendations and to achieve tangible results, the Congress has put in place a post election assistance procedure which includes mandating our Monitoring Committee to supervise the implementation of specific measures but also concrete programmes in the countries concerned. I am pleased to say that in the framework of its new action to support local and regional elected representatives and improve their leadership capacities, since the last local elections held in Albania on 8 May 2011, the Congress, together with different partners, has started a series of events in order to strengthen dialogue and co-operation capacities of local elected representatives in our host country. This is a very concrete and positive example of how election observation can result in concrete action in order to improve the situation of grassroots democracy.

6. I would like to turn now to the actual reason of our meeting here in Tirana, the 10th anniversary of the Code of Good Practice in Electoral Matters, which was adopted by the Venice Commission in October 2002. As for many other international observers, this is the field guide for members of Congress delegations, a source of information, orientation and also inspiration. Before I start to lead you through the guidelines from Congress perspective, allow me some general remarks on the pillars of election observation in the international context.

7. Election observation - as a matter of concern for international organisations – has become widely accepted and plays an important role in providing assessments about the nature of electoral processes which are based on the experience and specific skills of the observers and on their impartiality. Election observation has the potential to enhance the integrity of electoral processes, by deterring and exposing irregularities and fraud and by providing recommendations for improving processes.

8. The underlying concept of election observation is the international recognition of the right of citizens to vote and to be elected as a human right. Genuinely democratic elections cannot be achieved unless a wide range of other human rights and fundamental freedoms can be exercised without discrimination. They serve to resolve peacefully the competition for political power in a country. They are part of the process to establish democratic governance. Like other human rights and like democracy in general, they cannot be achieved without the protection of the rule of law.

9. As stressed in the Explanatory Report to the Code of Good Practice in Electoral Matters, there are five fundamental principles which together constitute the European electoral heritage: suffrage must be *universal, equal, free, secret and direct*. In addition, elections must be held *periodically*.

10. Let us have a closer look at the principle of universal suffrage and concrete Congress experiences. Apart from the conditions mentioned by the Code of Good Practice for the right to vote or to be elected, such as nationality or specific residence requirements (by the way, on an exemplary note I would like to mention here, that after local elections in Moldova in June 2011, we recommended to clarify by law whether permanent or temporary residency should be the criterion entitling a voter to cast the ballot; the situation of internally displaced persons was scrutinised by the Congress delegation during local elections in May 2010) , - but apart from this, the Congress pays a lot of attention to the electoral lists, notably during pre-election missions. The proper maintenance of electoral registers is vital in guaranteeing universal suffrage and local and regional authorities have an important role to play in this respect. The Venice Commission requires these lists to be kept permanently and regularly up-dated, at least once a year – and it's the municipal authorities who are in charge of this work. Inaccuracy of voters' lists is a persisting problem in many countries visited by the Congress. It must be also said in authorities in the new democracies made considerable efforts to improve the quality of electoral registers in their countries. Georgia and Moldova can be mentioned as positive examples in this respect, although in Moldova the introduction of a centralised electronic voter register – which was expected to further improve the process – was postponed until 2015.

11. A general matter of concern for the Congress in this context is the ongoing financial crisis and tight budgets at national level which have a negative impact also on the local and regional level because resources cannot be transferred in a way enabling the territorial bodies to take full responsibility for the proper management of elections.

12. I should like to continue with the principle of equal suffrage which includes also notions such as the political system of a given country, the drawing of boundaries of constituencies and equal opportunities for candidates and parties. The latter – which implies state neutrality in the frame of the electoral campaign and the coverage by the media – is an issue for practically our election observations. The basic idea is that the main political forces should be able to voice

their opinions in the main organs of the country's media, publicly owned media have – as mentioned above – a specific responsibility in this respect, and that all the political forces should be allowed to hold meetings. Allow me to recall, at this stage, some of the recommendations made by the Congress in recent years:

- first municipal elections of Yerevan (Armenia), May 2009: to improve media pluralism, notably concerning television;
- municipal elections in Azerbaijan, December 2009: to improve media pluralism, in particular concerning television and radio, and to create legal conditions in which independent journalists and free media can operate without intimidations or threats;
- local elections in Ukraine, October 2010: to ensure that journalistic freedoms and media pluralism are protected;
- local elections in Bulgaria, October 2011: the Congress highlights to introduce legal provisions for the allocation of free airtime on public broadcasting channels for election candidates, and underlines the necessity for the legal framework related to media to guarantee editorial freedom and equitable coverage of the election campaign for all media; thus ensuring a level playing-field for all candidates.

13. As far as the question of national minorities is concerned, prohibition of discrimination against them is key for election observation missions carried out by the Congress. This includes, in particular, the rights to elect and to be elected and the access to information in their own languages. The latter is also closely connected with the notion of free suffrage and obligations by the authorities to submit lawfully presented candidatures to the citizens' votes, to give the electorate access to lists and candidates standing for election and to provide information also in the languages of national minorities.

14. The Congress pays great attention to this condition: a recent example is the observation of local elections in Bulgaria in October 2011, where the Congress recommended providing persons belonging to minorities with election materials in their mother tongue, in order to enhance the understanding of the processes for all communities. Assessing the elections of the Bashkan of the Autonomous Territorial Unit of Gagauzia, Republic of Moldova, in December 2010, the Congress noted with satisfaction that information posters for voters were available in all the three official languages and regretted that – due to an information deficit – ballot papers were distributed mainly in Russian and given out in another language on request only.

15. Freedom of voters to express their wishes is also an issue followed-up very closely by the Congress. "Electors must be protected from threats or constraints liable to prevent them from casting their votes or from casting them as they wish", reads the Explanatory Report by the Venice Commission. As it is the case for vote-buying, it is difficult for international observers to translate the rather abstract term of "freedom of voters to express their wish" into concrete observations. Therefore, the Congress often encourages countries to take measures to increase public confidence in free and fair elections (in the Armenian Report on elections held in May 2009, the Congress noted that there was a "general feeling of frustration and indifference vis-à-vis the election result which was considered as predetermined"; in the Bulgarian Report on elections of October 2011, the Congress described the phenomenon of controlled votes, so-called corporate-pressure vote, and intimidation; according to a survey presented by Transparency International, 10 % of respondents would vote for a particular candidate out of fear for losing their job).

16. Procedures which undermine the principle of free suffrage include "family voting" (which is also relevant for the principle of secret suffrage on which I will speak a little later), the storage of ballot papers or the signing and stamping of ballot papers. The recommendation by the Venice Commission that ballot papers awaiting use must be in full view on the table of the senior station official, often causes problems, simply due to undersized polling stations in many countries observed by the Congress. The proposition, in comparison, that voting procedures

must be kept as simple as possible is advocated by the Congress without reservations. And I may take you up on that later, when I will be speaking on the stability of the electoral law.

17. In respect of mechanical and electronic voting methods, in particular on e-voting, the Congress can revert to observations in Finland and Norway. The latter was carried out in September 2011 and resulted in a positive assessment by the Congress delegation, based on the transparent manner in which a pilot project on e-voting in 10 Norwegian municipalities was organised and due to measures taken to ensure the verifiability of the vote.

18. Counting of the votes is another very important issue for Congress observation missions and often results in concrete recommendations, for example in the Report on municipal elections in Azerbaijan in December 2009 ("to introduce tools to strengthen transparency regarding voter participation and vote count and to revise the system to oversee the number of ballots cast") or the Report on local elections in Bulgaria in October 2011 ("to reconsider or adjust the stamping procedure of the ballots foreseen by the Election Code, in order to ensure the principle of secrecy of the vote").

19. With regard to the Venice Commission's recommendation that votes should preferably be counted at the polling stations themselves, rather than in special centres, I would like to mention that there might be exceptions to this general rule. In order to fight the severe problem of allegations of widespread vote-buying, the Bulgarian authorities organised for the counting process of local elections held in October 2011 a pilot test in a regional counting centre.

20. In Albania in 2011, in the framework the local elections, the Congress delegation observed the transfer of voting boxes from polling stations to ballot counting centres. This procedure was chosen to ensure transparency of the counting. The centres were equipped with cameras able to capture and broadcast the image of the ballots for a large audience, both in the centres and via the internet. This system imposed a very long timeframe for analysing and counting the ballots. If in most regions of the country the counting proceeded slowly - but in a transparent manner -, this extremely long counting system increased conflict in Tirana.

21. As mentioned by the Explanatory Report of the Venice Commission, also transmitting the results from the precinct commissions to the electoral district to the regional authorities and – eventually - to the Central Election Commission is a vital operation. And I don't think that international observers are underestimating the importance of transferring the results in an orderly manner. In practical terms, however, it is not easy for observers to follow-up these operations.

22. In contrast, in respect of paper votes, the principle of secret suffrage is something relatively easy verifiable for international observers. As underlined by the Venice Commission, secrecy of the vote must apply to the entire procedure – and particularly the casting and counting of the vote. Family voting – which was mentioned by me at an earlier stage – infringes the secrecy of the ballot by the fact that a given member of the family supervises the votes cast by other members. It is a common violation of the electoral law and a recurring issue during election observations of the Congress. Unfortunately, family voting is still prevailing, in particular in rural areas of new European democracies – this has to do with culture and also the traditional perception of men, women and the family.

23. I would like to share with you, at this stage, also a very recent observation made by the members of the Congress delegation who observed local elections in May in Serbia. In this case, the equipment of polling stations remained a matter of concern from the Congress perspective (by the way, this was also the case in 2008). Simple cardboard separations at tables instead of proper polling booths compromised the secrecy of the vote in most of the polling stations visited by the Congress. Even if this situation seemed to be acceptable for the

voters in Serbia, it was not acceptable for the observers. For me, this raises also the question if polling booths as standard equipment of polling stations should be added – under the item of “operating polling stations” - to the set of practical proposals for democratic elections.

24. From the perspective of local and regional democracy, most evidently, the principle of direct suffrage is something close to the heart of the Congress. According to the Venice Commission, direct election of one of the chambers of the national parliament by the people is one aspect of Europe’s shared constitutional heritage. The Explanatory Report states also that local self-government – as a vital component of democracy – cannot be thought without local elected bodies. In this spirit, the Congress has been promoting the idea to elect also mayors, notably of capital cities or big cities (and not only the members of municipal councils) in a direct manner. It must be said that for the time being, there is no broad consensus among Congress members about the advantages or disadvantages of the direct election of mayors by the people. Only some weeks ago, when the Congress observed local elections in May in Serbia, it learned that legislation had been changed there and indirect mayoral elections were reintroduced for these elections. According to the Serbian authorities, this measure was taken due to an often strong polarisation between the mayor and the rest of municipal council caused by opposed partisan positions.

25. I should like to conclude my presentation by some conditions which are pivotal for implementing the five principles of genuinely democratic elections described above: stability of law, procedural safeguards, appeal system, organisation of polling stations and funding of parties.

26. Let me start by the stability of the electoral law and quote, in this respect, the Congress Report on local elections held in Ukraine in October 2010. The principle matter of concern during this observation visit was a new election law adopted by the authorities – contrary to the recommendation of the Venice Commission not to change legislation during the last year before elections – only a few weeks prior to Election Day. As a consequence, there were severe shortcomings during the preparatory phase of these elections, in particular with regard to the registration of candidates and the composition of electoral commissions. In addition to our recommendation to submit any future electoral legislation – the authorities were discussing a unified Electoral Code – to the Venice Commission for opinion, prior to adoption by the parliament, the Congress asked for a more balanced political representation in electoral commissions at all levels, for the admission of independent candidates to run in local elections, in particular, as mayoral candidates as well as for tighter control of the ballot design and the printing process. Due to the rushed time frame in which these local elections took place, there were not only unbalanced commissions, but also the training for members of the electoral commissions was insufficient.

27. As stressed by the Venice Commission, central electoral commissions and all other lower-level commissions should be based on a maximum impartiality and on competence. At the same time, over the years practice has shown that there are persisting problems regarding the impartiality and independence of the bodies responsible for organising elections. Therefore, the Venice Commission decided to continue work in this respect and prepare a new report which will be presented in the framework of this Conference.

28. In this regard, the Congress Report on local elections in Albania pointed to the fact that “the Electoral Code left too large a scope for decisions to be taken by the parties at a simple majority” and stated that “one option, for the future concerning the electoral exercise, could be the gradual establishment of independence for the members of all electoral commissions.” Lastly, it raised issues regarding the training of members of the voting centre commissions.

29. In addition to politically well-balanced and skilled election commissions at all levels, election observation forms part of the procedural safeguards for democratic elections. The experiences

made by Congress observers with regard to the role of domestic observers are rather ambiguous. Both in the Reports concerning Armenia (May 2009) and Azerbaijan (December 2009), the Congress recommended to “clearly define the role of domestic observers by introducing measures to strictly specify those persons who are allowed to be present during voting and counting procedures.” More concretely, the Report on Azerbaijan reads as follows: “Members of the Congress delegation noticed that local observers who pretended to belong to so-called opposition parties systematically were not even aware of the number of candidates of their own faction on the list. In fact, with the exception of the sporadic presence of NGOs or representatives of Embassies there was no observation system in place which could be qualified as “independent”.

30. Let me add some details on the importance of an effective system of appeal. The Venice Commission requires election results, the right to vote and to be elected, access to the media, party funding and other issues be subject to a challenge before an appeal body – an ordinary court, special court, the constitutional court or an electoral commission. It recommends also that appeal proceedings to be as brief as possible and specifies a time limit of three to five days, for both lodging appeals and making rules. Let me quote, in this respect, a very few Congress recommendations highlighting the importance of the appeal system for the electoral process:

- local elections in Bulgaria (October 2011): the Congress invites the authorities to amend the provisions concerning complaints and appeals procedures in a way that a final appeal to a court should be possible....there should be an effective judicial procedure in place for the challenging of election results, in line with good electoral practice; the same applies to the time-limits for lodging and deciding appeals;
- local elections in Ukraine (October 2010): the Congress invites the authorities to take all necessary steps that the electoral complaint and appeal system be brought into compliance with the recognised European standards;
- municipal elections in Georgia (May 2010): the Congress invites the authorities to amend legal and procedural shortcomings in the complaints and appeals process (in particular, to be more specific about deadlines and procedures and to avoid inadequate response to complaints).

31. The mode of organising and operating polling stations – which has an effect on the quality of the voting and counting procedure – is a very practical aspect of polling and relatively easy verifiable for election observers. Poorly equipped or too small polling stations, polling stations which are – in most cases – not easy to access to persons with disabilities and elderly people, overly complex ballot papers, the absence of domestic observers (or the presence of questionable partisan observers) are shortcomings frequently noticed by Congress delegations. In addition, there is the issue of political party electioneering inside (and in the vicinity of) polling stations – I referred already to the phenomenon of “controlled votes” or corporate-pressure votes which has to do with the election climate in a specific country.

32. The funding of political parties and electoral campaigns is a further important factor in the regularity of electoral processes and regularly an issue during election observation missions organised by the Congress. The required transparency of funds – which according to the Venice Commission should be set out in a special set of carefully maintained accounts – is certainly one of the weak points of electoral processes both in new as well as in traditional democracies. Let me just add here that in my own country, in Austria, changes in legislation on financing of political parties have been launched only recently, after severe critics of the Austrian system by the Council of Europe’s anti-corruption body GRECO. Anyway, the Venice Commission speaks even of a second level of transparency, monitoring the financial status of elected representatives before and after their term in office. Personally, I cannot recall if in one of the countries observed such a system has already been proved to be effective. Certainly of great importance is the proposition by the Venice Commission that public funding of parties has to come under the principle of equality of opportunity.

33. Congress's experiences in implementing these safeguards have shown that there is a lot of room for improvement in respect of funding. Practically all Congress Reports speak of the necessity to introduce measures for increased transparency in respect of party and campaign financing and of the need to introduce mechanisms allowing for effective oversight and enforcement of legal provisions.

34. With regard to future developments, the Congress is – in particular – looking forward to receiving the comparative study, prepared by the Venice Commission, on the use and misuse of administrative resources during election campaigns. All the more, because this is a recurring issue during our observation missions. There is also a study under way on “eligibility criteria for local and regional elections” which the Venice Commission will carry out at the request of the Congress. Lastly, I would like to mention a few topics which – from the specific perspective of observing of local and regional elections – should or could be addressed in the future. Among these issues is the question of direct or indirect election of mayors (which I have brought up already earlier), there are ways to stimulate citizen participation in elections and involvement of young voters by introducing electronic tools for voting and for the training of commission members and observers and there is the issue of the capacities of local and regional authorities in the context of organising elections in times of economic crises.

35. I thank you for your attention and I wish all of us a successful conference!