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Working Session III: Role of electoral management bodies in follow-up

Implementation by the Russian Federation of its OSCE commitments to provide an opportunity for international observation of elections and the problems concerning election monitoring by the OSCE Office for Democratic Institutions and Human Rights

Assessment by the Russian community of experts

A total of 1,100 international observers monitored the elections to the first convocation of the State Duma of the Federal Assembly of the Russian Federation on 12 December 1993. The elections to the second convocation of the State Duma on 17 December 1995 were monitored by 993 international observers from 61 countries. The elections to the third convocation of the State Duma on 19 December 1999 were monitored by 1,185 international observers from 58 countries and 105 international and foreign organizations. The elections to the fourth convocation of the State Duma on 7 December 2003 were monitored by 1,168 international observers from 49 countries and 36 international and foreign organizations, 480 of these observers being sent by the Office for Democratic Institutions and Human Rights (ODIHR). In what other OSCE participating States have such a number of international observers been present to ascertain the genuinely democratic nature of national elections?

Election experts regret the fact that in 2007 and 2008 the ODIHR decided to refuse to monitor the State Duma and presidential elections in the Russian Federation. The Russian electoral system did not suffer any harm from the ODIHR leadership's decision not to monitor elections in Russia, however, and there was no loss of public confidence within the country. Nor has the democratic development of the State ceased. The same cannot be said of the reputation of the ODIHR in Russian national public opinion. After the failure to monitor the Russian elections, the Office's reputation diminished even further amongst the Russian community of experts when the ODIHR leadership agreed to send a limited observation mission with no legal basis to monitor the presidential elections in the United States of America.

At that point questions regarding the OSCE's election work in general once again arose among the Russian community of election experts:

- What is being done in the OSCE area of responsibility to bring the national legislation of participating States (notably the United States and a whole series of Russia's European colleagues in the OSCE) into line with existing common commitments guaranteeing access to national and other elections for national and international observation institutions?
- How is the OSCE implementing the initiatives of a group of countries and international organizations to elaborate a new document according to the "Copenhagen Plus" formula on elections, which has been up for discussion here in Vienna for five years now?
- Why has the draft document proposed by the member States of the Collective Security Treaty Organization and the Commonwealth of Independent States (CIS) for consideration in the OSCE on the establishment of basic international election observation principles, to be applied among other things to the ODIHR's work, still not been discussed further?

The Russian Ministry of Foreign Affairs has already put these questions to the OSCE in the past. However, in the course of this year, new questions have arisen for the Russian expert community on the problems of increasing confidence in national elections and on a comparative analysis of international experience:

- Why has the OSCE Parliamentary Assembly refused this year to continue work with the CIS Interparliamentary Assembly to improve the practice and principles of international monitoring, and on the contrary has argued against improvement but in favour of what is commonly referred to as the "gold" standard (in other words, methodology) of the ODIHR?
- Why does the growing autonomy of the OSCE's Warsaw office from the decisions adopted by the OSCE participating States and the Permanent Council not warrant attention from the participating States and the OSCE Chairmanship?

Russia has not forgotten that, for a similar seminar held in Vienna last year under the auspices of the Finnish Chairmanship, the same Russian election experts prepared a whole package of proposals to help reorganize the election monitoring system that had naturally evolved during the 15 years of the ODIHR's practical activities.

Some of these arguments could be voiced again today. They are no less convincing in 2009.

In accordance with the Copenhagen Document of 1990, all OSCE participating States undertake to invite observers from participating States of this Organization to "observe the course of their national election proceedings, to the extent permitted by law". This means that the time-frames and modalities for election monitoring must be determined in accordance with the national legislation of the country holding the elections.

In line with the election organization procedure, the deadline for sending an invitation to monitor an election should normally coincide with the end of the registration procedure for participants in the elections. The powers of the international observers should commence

from the moment of their accreditation in the host country and end on the day of the official announcement of the election results.

The commitments of OSCE participating States as regards international election monitoring, as delegated within the mandate of the ODIHR, could be strengthened by the following new basic requirements:

Universality

In keeping with the Copenhagen Document and the Charter of Paris for a New Europe (1990), all participating States undertake to invite international observers to their national elections and to ensure that their national legislation and its practical implementation provide for a uniform legal status for international observers.

Reciprocity

Only representatives of those States whose legislation enshrines the institution of international observation and in which there is an established practice of inviting international observers to its own elections may participate in international election monitoring.

Transparency

Decisions on the dispatch of international election monitoring missions, including organizational and structural criteria for their activities, must be taken in a transparent manner and be approved by the OSCE Permanent Council as the Organization's collegial body.

Authority

Observation mission heads must be authoritative political figures with professional knowledge of electoral processes and authorization by dint of decisions of the collegial bodies of the relevant international organizations.

Professionalism

Only persons who have sufficient knowledge of the electoral law and process and the necessary experience of international monitoring and who have undergone specialized training may serve as international observers. The mission should not be made up of unprepared and ill-trained persons (students and "political tourists"). A citizen of the country holding the elections may not serve as an international observer.

Sovereignty

International election monitoring should be carried out in a manner that respects the sovereignty of the country holding the elections and fully observes the rights of the electorate. International observers must respect the laws of the country holding the elections and also show respect for the national authorities, including the electoral bodies, and carry out their activities in a manner compatible with respect for and promotion of human rights and fundamental freedoms. For that reason, the mission format, choice of mission head, number of international observers participating in the mission, time-frame of the observation

and other issues connected with the country's sovereignty should be co-ordinated by the OSCE with the country holding the elections.

Impartiality

International election observation should be impartial with respect to the national participants in the political contest. In the course of their work, election observation missions should not interfere in the political and electoral processes of the country holding the elections. Public statements in the media on the outcome of the monitoring are permitted only after the publication (proclamation) of the final results of the voting and the presentation of a report to the OSCE Permanent Council.

Political neutrality

In the course of their work, observers should not express any preferences or assessments with regard to the electoral bodies, the State authorities or organs of local self-government, officials or participants in the electoral process. They are called upon to refrain from any activities that may be interpreted as giving preference to one of the participants in the electoral process and also to refrain from wearing or displaying anything signifying allegiance to a particular participant in the electoral process.

Orientation towards effective assistance

Election monitoring focuses on the electoral process itself and is not concerned with the specific results of the voting. It is interested in the election results only to ensure that the declaration is truthful and accurate and that it is made transparently and within the prescribed time-frame. International observers should immediately inform the election organizers of any violations of electoral laws they identify both prior to and on voting day and during the counting of the results.

To implement these requirements, key decisions on the organization of election monitoring should be adopted by the Permanent Council or another OSCE collegial body but not by the ODIHR director, who is a "head of a section" within the Organization. The Permanent Council should approve a document determining the status of the observation mission and also of the technical units set up within the OSCE to monitor elections.

The annual budget for election monitoring approved by the Permanent Council should always include a list of elections in participating States whose observation has been included in the programme of ODIHR activities for the year as agreed upon with the OSCE Permanent Council. In the event that the Permanent Council adopts a decision to conduct unplanned election monitoring, additional funds can be allocated from the OSCE budget. The financing of an election observation mission and electoral assistance cannot be provided from other extrabudgetary sources and must be accountable to the participating States.

Election monitoring missions should be formed on the basis of a broad representation of all participating States. The number of citizens of a single participating States should not exceed 10 per cent of the total number of mission members. This rule (of proportionality) should also be extended to all the mission's components.

The working languages of the mission should be English and the official language(s) of the country holding the elections. Another working language may be added if it is widely spoken in the host country. This will ensure closer co-operation with the participants in the electoral process and thus make the monitoring process itself more objective and transparent.

The candidates for the election observation mission head and deputy head should be appointed by the OSCE Permanent Council, with the possible involvement of the OSCE Parliamentary Assembly, on the basis of consultations with the country holding the elections. In that connection, none of the members of the OSCE Permanent Council may have any objections to the proposed candidates (consensus principle). The observation team should be formed as soon as the selected international observation format has been agreed upon with the country holding the elections.

Once in the country holding the elections, the mission head should make an official statement on the start of his or her work, indicating the places and territories (districts), composition of the mission and time-frame for conducting the observation agreed upon with the host country.

The mission head should notify the host country and the election organizers in good time of the results of the election monitoring and also of any violations identified with regard to the electoral rights of citizens, electoral laws and the international commitments of the country holding the elections.

To ensure an objective assessment of the elections, the head of the observation mission should hold regular consultations with the official representatives of the host country so as to take their opinion into account on all facts that will be reflected in the preliminary statement prior to its publication (proclamation). The mission head should regularly inform the electoral bodies of the country holding the elections of comments, conclusions and recommendations that are useful for improving the electoral laws and process.

Following the announcement of the official election results, the head of the international monitoring mission should submit a report in the first instance to the country in which the monitoring took place (the goal of international monitoring is to provide information and to prevent conflict situations) and also make this report available to the collective executive bodies of the OSCE. The reports should contain factual information on the implementation by the country of its election-related commitments within the OSCE on the basis of the data provided by all the observers making up the mission. Assessments by individual members or a group of members of the mission expressed after the elections have been observed can be regarded only as their personal opinion and not as having any official status.

The preliminary conclusion on the outcome of the monitoring should not contain political assessments. Essentially, it is a statistical report on the work carried out by the mission and the material collected.

At the request of the country holding the elections, provision should also be made for the mission head to enable representatives of the host country to study the observation material on which the mission based its findings once the preliminary conclusion has been published.

The country holding the elections should be given an opportunity to respond. One option is the inclusion of an annex to the final report containing the remarks and comments by the country holding the elections.

For the sake of completion, it should once again be recalled that these proposals were heard at last year's meeting. However, as the ODIHR's election observation practice in 2009 has shown, they have still not yet been "heard" by the community of OSCE participating States and the ODIHR's apparatus, nor has there been any public discussion of them. The question inevitably rises as to who these proposals should be addressed to. It would be appropriate to discuss them with the organizers of elections in OSCE States. This would provide the ODIHR with solid support for its future activities from election professionals.

It is well known that the Russian Federation has consistently supported the idea of increasing the OSCE's role in the electoral process and has continually made fresh proposals in this area. The credibility of the OSCE's structures could obviously be improved by fundamentally modernizing the institution of international election observation through an increase in the role played by the OSCE Permanent Council in this process, clarification of the ODIHR's mandate and a possible reorientation of the Office's activities from assessment to assisting in elections.

In our own national forum in Russia, international election observers have equal rights and freedoms and also the opportunity to monitor elections. Their work is governed by the national election laws and our OSCE international commitments.

It should not be forgotten that Russia is a signatory to the Convention on Standards for Democratic Elections and Electoral Rights and Freedoms in CIS Member States. It is also a party to the Declaration on the Principles of International Observation of Elections and Referendums in CIS Member States adopted by the CIS Interparliamentary Assembly on 25 November 2008, in which the rights and obligations of all participants in international monitoring are enshrined in documents of international law.

In this context, the understanding in the Russian expert community is that until similar documents under international law are elaborated within the OSCE, the commitment to invite international observers to national elections will be based in the first instance on the aforementioned documents. They have priority for national elections over the ODIHR methodology and monitoring guidelines, which have not been agreed upon with the Russian Federation.