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AND ELECTION OBSERVATION**

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**The international culture of foreign interference in national elections**

The institution of international public law is coming under great pressure from several international organizations and individual States. Against the background of the situation in Egypt, Libya, Syria and other countries it is not clear what guarantees against the use of force and intervention in internal affairs can be offered to States by international organizations, which are at times abandoning their statutory objectives and being directed by political motives.

The concept of national sovereignty is being severely eroded. In the Council of Europe in 2011, a resolution was adopted on the need to clarify the State (national) sovereignty of young (newly formed) States resulting from national self-determination, which could be interpreted as an attempt to impose control on this. Even the term “sovereign democracy” is under attack. Critics of this concept maintain that it does not refer to the protection of a State against foreign intervention but signifies a political system that is qualitatively different from a refined democracy.

The oversimplified interpretation of “sovereign democracy” contradicts the original meaning of the term. Meanwhile, for Jean-Jacques Rousseau, “sovereign democracy”, as he defines the political system of Switzerland, is a model to imitate in establishing a fair system of political governance.

As another example, founder of contemporary economic theory Adam Smith defined the most important duty of a sovereign in a system of natural freedom as the obligation to protect the public from violence and invasion by other independent societies.

There are sufficient examples of the interference of these “independent societies” in the electoral affairs of a number of European States, such as post-war France and Italy, where left-wing forces were strengthened during the post-war period.

And today, some States and international organizations are trying to monopolize the concept of “democracy” and a “democratic State”, proposing ready-made models and, fundamentally, monitoring the implementation of these against a “gold standard”. Attempts by nation States to reject custom models in favour of truly effective political ones are met with accusations of refusing to make their political system democratic and of violating human rights and freedoms. Meanwhile, attempts to force superimposed political systems to work in Iraq and Afghanistan and in the Palestinian autonomous area have not been crowned with success. Imposed models are not only ineffective at present, but lead to disillusionment among the local population with democratic values that are so strongly associated with aggressive foreign intervention.

We are witnessing the establishment of a special international culture of foreign interference in national elections, and not only as an instrument for compromising the national sovereignty of some countries, on the one hand, but also, on the other, for ignoring human rights violations in others. Up to now, this culture of interference has been embodied only in concrete mechanisms based on a policy of double standards, which is not being applied less, as some political figures and international organizations would have it, but more. This tendency must be opposed, leaning for support on democratic institutions of international law and court decisions and strengthening national sovereignty that ensures rights and freedoms for all the inhabitants of a country.

Even the institution of international observation is an established vehicle for double standards. The “old” democracies, despite their international commitments, do not officially recognize or do not fully recognize this institution on their territories, while the OSCE and the Office for Democratic Institutions and Human Rights (ODIHR) do not manage to ensure that the commitments are properly met. The existence of the problem of the large-scale deprivation of “non-citizens” of their voting rights, condemned by international organizations, does not prevent the ODIHR from rating election organization positively in a number of countries. Elections in which from 7 to 17 per cent of the population are unable to participate are deemed “democratic”.

The European Union and European Parliament are establishing unlawful groups to monitor elections in non-European Union countries. An example of this practice is the Ojuland group, named after the former Minister of Foreign Affairs of Estonia, Kristiina Ojuland, which “observes” elections in Russia. After the sixth State Duma elections Ms. Ojuland called for new elections to be held, on the basis of information that was neither verified at the time nor confirmed later, about alleged large-scale falsifications as well as manipulation and refusal to register opposition parties.

Election observation by the European Union is based on a non-binding document not adopted by the European Union governing bodies, the Handbook for European Union Election Observation. One paragraph in that document is clearly discriminatory, stating: “An observation mission may not be sent to a country where from the outset an election cannot be expected to fall substantially short of international standards or where a country’s democratic practices are considered to be generally sound.” The document contains neither clearly defined grounds for expecting elections to “fall short” nor straightforward criteria for determining sound democratic practices.

The Council of Europe and the Parliamentary Assembly of the Council of Europe instruct the Venice Commission to scrutinize the legislation on elections and political parties,

in particular in the Russian Federation. Legitimate criticism of laws is a requirement for any Council of Europe Member State. However, on this occasion, the conclusion for Russia was highly politicized. Criticism was levelled at the federal laws on political parties, on elections of deputies to the State Duma of the Federal Assembly of the Russian Federation and on assemblies, meetings, demonstrations, processions and pickets, and at amendments made to them. In deciding whether the legislation in force in Russia was in line with European “standards” (in a very one-sided way), the Commission substituted many conjectures for arguments. For example, regarding the requirements for candidates set out in the law on elections of deputies to the State Duma of the Federal Assembly of the Russian Federation, it was assumed that there was a risk that such arguments would be used as a basis for the elimination of undesirable competition, and not for protecting democracy.

It is not known what basis the European Court of Human Rights uses for considering complaints requiring the withdrawal of voting rights in nation States. It does not have any real experience of considering such matters (especially in connection with presidential elections) and the legal basis for such intervention and its consequences are unclear and do not feature whatsoever in article 3 of protocol No. 1 on holding free elections to legislative authorities. Pursuant to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights is not the highest instance in relation to the courts of States Parties to the Convention. It reviews only specific complaints about violations of Convention provisions. However, its desire to overstep the bounds of the powers defined by the Convention has been instigated by certain forces that are inducing it to review matters beyond its remit.

The practice of the experts of the Group of States against Corruption is not clear-cut. While monitoring political corruption in the legislation and practice of the funding of parties, including during elections, they are allowed to probe for political sleaze.

Alongside the development of the institution of foreign interference in electoral procedures, mechanisms are increasingly used to organize domestic public pressure, which in many cases receive political and financial and information support from abroad. Other tools are provocative acts during the organization of elections and blacklists of the heads of central election bodies. The representatives of the political opposition and several non-governmental organizations are trying harder and harder to replace the activities of courts with these lists, flouting the principle of presumption of innocence. A list of this type called the Churov List was drawn up by the Yabloko party after the elections of deputies to the State Duma. Based on speculative conclusions, not backed up by facts or court decisions, it includes personal information on members of election commissions at various levels, including their photographs. The list is being circulated on the Internet, endangering the safety and reputation of those individuals. This “public censure” is inappropriate and offensive and could cause pressure to be organized against these election commission members.

It is extremely important for civil society to combat the establishment of illegal alternative quasi-electoral public procedures. Various international non-governmental organizations, supported by, among others, the National Democratic Institute (United States of America) are trying to set up their own parallel vote counting systems, making active use of exit polls. However, aside from their important function in terms of monitoring, these activities might – when politically ordered – also have negative consequences. It is well known that exit polls were a factor in triggering the colour revolutions – they were used in

disputing the election results, as happened in Georgia and Ukraine. The legitimacy of the authorities was dealt a blow based on the results of exit polls of no legal consequence.

The campaigns to elect the State Duma deputies and the President of the Russian Federation in 2011 and 2012 brought to our attention new forms of organized pressure on the organizers of elections and voters. Many organizations proclaiming themselves defenders of voters' rights resorted to actions that bore the hallmarks of provocation. Most often, such projects are based on the Internet, where users are anonymous and requirements that information be credible scant. For example, during the Duma elections, the creators of the "SMS CEC" Internet project set themselves the goal of obtaining the protocol information faster than the Central Election Commission (CEC) and, capitalizing on the similarity between the name of the project and the abbreviation used for the Central Election Commission of the Russian Federation, presented voters with information that had no legal validity. Another provocative project was "Consolidated protocol", whose originators wanted to actually take the place of the CEC in drawing up the election results. The method used to collect the information led to intentional or unintentional distortions owing to inadequate attention to the procedure for verifying the information received. As a result, those involved in the projects were unable to put together election commission protocols in any significant number, although they unleashed a wave of media reports, circulating their completely unfounded negative ratings of the election process in the press.

During the organization of the observation of the elections of deputies to the State Duma and the presidential elections, there were cases where observers were insufficiently trained. This was caused both by the fact that, on a wave of public interest, many were working as observers for the first time without the necessary knowledge or experience, and by systemic mistakes in the training. Many observers' organizations came prepared in advance for a real "battle" with the election commissions, as opposed to co-operation. Several organizations tried to officially register "observers" as media representatives, but these participants in the electoral process have a different status. Essentially, this is also a form of the abuse of journalists' rights – an army is taking shape of fictitious correspondents for whom the "press pass" is merely an opportunity to get into a polling station.

There is also the blatant antipathy of the organizations training the observers to one of the candidates. A number of politicians and public figures, associated with "human rights organizations" and non-governmental associations, tried to prevent one of the candidates from winning by telling voters to spoil their ballot papers, often combining human rights measures with political ones (in the form of mass actions). Presidential candidates were called on to withdraw their candidacy in order to sabotage the elections.

The last scheme bent on undermining faith in the legitimacy of the elections involved sending out masses of complaints to every possible body, including the European Court of Human Rights. The facts in those complaints were unverified but by whipping up mass hysteria in the press and social media, they paint a picture of total fabrication.

In order to overcome these negative tendencies, the international election observation system needs to be overhauled. Firstly, documents regulating the organization of international observation need to be adopted by the decision-making bodies, not the executive bodies of international organizations. International organizations often limit themselves to non-binding documents, which is the practice of the OSCE decision-making bodies. Then the administrative body takes these documents as a basis for instructions. These instructions

cannot be accorded the status of international acts without the approval of the Parliamentary Assembly and the Permanent Council or the Committee of Ministers. International organizations also often limit themselves to adopting recommendations instead of a convention or another international legal act that is binding on Member States. A draft binding document entitled “Basic Principles for the Organization of ODIHR Observation of National Elections” was put forward in 2007 by the Collective Security Treaty Organization members, but was not considered by the OSCE decision-making bodies.

The decision-making bodies of the Council of Europe (the Committee of Ministers and the Parliamentary Assembly) have also not established clear requirements for the organization of international observation. The proposal by the Russian delegation on the need to prepare a document on an internationally recognized status for international observers at elections and referendums served as an impetus for the preparation in the European Commission for Democracy through Law (Venice Commission) of recommendations on an internationally recognized status for election observers. These recommendations were supported by the Parliamentary Assembly of the Council of Europe, including the aspect recommending that the Committee of Ministers continue work on establishing a regulatory basis for international observation of elections and referendums and on changing the Venice Commission Recommendations into the Committee of Ministers’ Recommendations.

We should not lose sight of the fact that the Parliamentary Assembly of the Council of Europe has repeatedly recommended that the Committee of Ministers revise the Code of Good Practice in Electoral Matters drawn up by the Venice Commission and approved in 2003 by the Committee of Ministers as a binding convention. However, the activities of the observers from the Council of Europe continue to be regulated by non-binding documents.

In the meantime, we have the chance to watch the new international institution of interference in sovereign States taking shape. The main issue that then arises is the prospect of its being applied to the United States and other “mature democracies” that have fundamental objections to being automatically subject to the institution of international observation.