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Kazakhstan's Upcoming OSCE Chairmanship: Election Related Issues

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Introduction

Electoral standards and commitments are at the core of the OSCE Acquis in the human dimension. The most urgent election-related challenge is the implementation of existing standards and commitments. However, instead of identifying and considering pathways towards better implementation of standards and commitments, OSCE participating States over the past years manoeuvred into a political deadlock. As OSCE Chairman, Kazakhstan should help identify creative ways in which to achieve better implementation of existing standards and commitments. Kazakhstan could also foster consensus on additional electoral commitments, supplementing existing ones.

Democratic Elections from Copenhagen (1990) to Istanbul (1999): Setting the Standards and Developing the Methodology

At the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, participating States acknowledged that free and fair elections are the basis of the authority and legitimacy of all government. Complementing their commitments in Paris (1990), Lisbon (1996) and Istanbul (1999) they crafted a set of electoral standards and commitments to be implemented by all participating States as a basic prerequisite to the conduct of free and fair elections (Copenhagen Acquis).[1]

Resolved to enter a new era of democracy, peace and unity in Paris, participating States decided to create institutional structures in order to assist the conduct of free and fair elections in accordance with the Copenhagen Acquis. They established an Office for Free Elections in Warsaw which later evolved into the Office for Democratic Institutions and Human Rights (OSCE/ODIHR). While broadening OSCE/ODIHR's mandate, participating States agreed that the promotion of democratic elections should remain the cornerstone of OSCE/ODIHR's activities. Election observation has been enhanced as the most important tool to detect deficiencies and give recommendations to States on ways to improve implementation of common standards and commitments. In order to ensure that election observation is conducted in accordance with the highest professional standards and strictly impartial, OSCE/ODIHR developed a comprehensive election observation methodology as outlined in the OSCE/ODIHR Election Observation Handbook (Blue Book).[2]

To this day, the Copenhagen Acquis of electoral standards and commitments and the achievements of OSCE/ODIHR in the area of election observation are widely known and generally recognized. OSCE/ODIHR has been at the forefront of setting the standards and developing the tools of international election observation. The OSCE/ODIHR election observation methodology is serving as a unique model throughout the United Nations and inspired the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers commemorated October 27, 2005, at the United Nations[3].

1 The OSCE/ODIHR publication 'OSCE Human Dimension Commitments', Vol. 1, 2nd Edition 2005, available at www.osce.org, contains a compilation of electoral standards and commitments.

2 The fifth edition of this handbook can be found at www.osce.org/odihr/publication.

3 This document is available i.a. at www.osce.org/documents/odihr/2005

From Porto (2002) to Ljubljana (2005): Erosion of Consensus — blaming election observation as a scapegoat

Nevertheless, following the Porto Ministerial Council a number of participating States started to question the Copenhagen Acquis and embarked on heavily criticizing OSCE/ODIHR's election observation activities. Building on a initiative launched by Belarus in 2003, the 2004 Astana Appeal of the CIS member states to the OSCE partners[4] called for the development and adoption of uniform objective criteria for the evaluation by the OSCE/ODIHR and the OSCE missions of electoral processes, including the realization of a comparative analysis of the electoral legislation and law enforcement practice of the OSCE participating states. Subsequent discussions presumed OSCE/ODIHR to be politically biased, not serving OSCE participating States east of Vienna and practising double standards. The Astana group of countries called on OSCE/ODIHR to further develop geographic balance in election observation, to increase transparency of recruitment to electoral missions and to augment training programmes for observers. They also called for close supervision of OSCE/ODIHR by the OSCE Permanent Council.

At the same time, a discussion arose among participating States whether new election technologies such as electronic voting would require new electoral standards and commitments.

In order to thoroughly review election related standards, commitments and activities, the Bulgarian and Slovenian Chairmanships (2004 and 2005) made elections a priority of their annual working programme in the human dimension. Supplementary human dimension meetings on 'Electoral Standards and Commitments' (2004) and 'Election Technologies and Procedures' (2005)[5] brought together a range of proposals for possible new standards and commitments to complement existing standards and commitments, in particular with regard to issues of transparency, accountability and public confidence in the election process. Recommendations related to new election technologies came to the conclusion that new systems should be designed to fully comply with existing standards and commitments. In order to ensure accountability of the election administration it was proposed to develop standards for security and verification of e-voting systems. Participants agreed that when introducing new election technologies broad public confidence is critical.

Both meetings identified ways on how to further participation of election observers from States east of Vienna in OSCE/ODIHR election missions on all levels. While the importance of geographical balance in general was stressed, discussions made the point that election observation should be conducted in situations where support through election observation is most needed. Discussions came to the conclusion that the OSCE/ODIHR election observation methodology as outlined in the 'Blue Book' is the best tool to ensure unbiased election observation based on facts and consistent with the international principles for impartial, accurate, transparent and effective election observation. Lack of implementation of existing standards and commitments has been identified as the most urgent election-related topic. Therefore, recommendations proposing future activities of OSCE/ODIHR focused on activities to increase assistance in improving implementation of the Copenhagen Acquis.

The Panel of Eminent Persons on Strengthening the Effectiveness of the OSCE set up in 2005 made several recommendations on electoral issues, including the consideration of new commitments corresponding to

4 The Astana Appeal of CIS countries (Commonwealth of Independent States) has been published by the Netherlands Helsinki Committee, Report of the Helsinki Monitor Conference on the OSCE's Future after 30 Years 'Life begins at 30', Utrecht, 2005, Appendix IV.

5 Reports on both meetings can be found at www.osce.org/odihr

evolving election issues, such as the introduction of new technologies. Regarding the implementation of human dimension standards, the Panel focused on monitoring as a particular challenge and proposed to devote special attention to the further development of election monitoring.[6]

Recommendations of the Eminent Persons as well as the 2004/2005 human dimension meetings could have been incorporated into a substantial decision of the Ljubljana Ministerial Council on enhancing democratic elections through supplementary commitments (Copenhagen Plus). However, efforts aimed at such a document were not successful. Stumbling blocks were: lack of resolve of a number of countries to reaffirm the Copenhagen Acquis; lack of political will to recognize the OSCE/ODIHR election observation methodology; and lack of political will to improve transparency of election procedures, to improve accountability on the part of authorities conducting elections and to recognize that public confidence in all aspects of the electoral process requires full respect for the rights of all voters and candidates. At latest now it has become evident that the dissent on electoral issues goes far beyond elections. In Paris 1990, participating States committed themselves 'to undertake to build, consolidate and strengthen democracy as the only system of government' of their nations. Consequently, they reaffirmed and strengthened their commitment to the conduct of free and fair elections as the foundation of a democratic government.[7]

At Lubljana participating States lost sight of their common vision of democracy as part of the OSCE concept of comprehensive security. Not reaching consensus on enhancing effective election observation also questioned the Moscow consensus on common responsibility in implementing OSCE standards and commitments. At the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991) all participating States had declared that 'commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.'[8]

OSCE/ODIHR report 2006: Common Responsibility — commitments and implementation

As a way forward, the Lubljana Ministerial Council tasked OSCE/ODIHR to submit a report on implementation of existing commitments, possible supplementary commitments, ways of strengthening and furthering its election- related activities and improving the effectiveness of its assistance to participating States.[9] The respective report 'Common Responsibility — Commitments and Implementation' issued in 2006 further underpinned findings of the Supplementary Human Dimension Meetings 2004/2005 that lack of implementation of existing standards and commitments is the most urgent election-related topic. The report suggested a set of supplementary commitments. While underlining that genuine political will of participating States is key to improve implementation of standards and commitments, OSCE/ODIHR offered a package of concrete measures to further enhance its election-related activities to assist participating States in this endeavour. Based on this report, the Brussels Ministerial Council 2006 was able to reaffirm the Copenhagen Acquis, tasked the Permanent Council to address the implementation challenges and agreed that OSCE/

6 Common Purpose – Towards a More Effective OSCE, Final Report and Recommendations of the Panel of Eminent Persons, 27 June 2005, available at www.osce.org/documents/cio/2005

7 Charter of Paris for a New Europe, All official OSCE documents quoted in this article can be found at www.osce.org.

8 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE.

9 MC.DEC/17/05, 6 December 2005

ODIHR should put into practice election-related recommendations.[10]

Subsequently, the Election Seminar organized by the Finnish Chairmanship in July 2008 stroke a first balance. OSCE/ODIHR was encouraged to continue its track of following on proposals put forward in the 'Common Responsibility' report. OSCE/ODIHR had been able to significantly improve geographical representation in election missions. For example, the number of countries of origin of election experts recruited by OSCE/ODIHR has been increased from 16 in 2000 to 38 in 2007. Taking into consideration that OSCE/ODIHR would not be able to observe all elections in the OSCE area due to limited financial means and personal resources, OSCE/ODIHR continues to conduct election missions in situations where OSCE/ODIHR assistance is most needed. Regarding the implementation of standards and commitments by participating States, the seminar highlighted progress made. However, it was stressed that the most urgent election-related topic, that a number of countries continue to lack genuine political will to implement or work towards implementation of the Copenhagen Acquis, still remains. The Chairmanship Expert Seminar on Electronic Voting on 26-27 October 2008 reiterated that e- voting systems as well as other technologies have to ensure full implementation of the Copenhagen Acquis.[11]

Most Urgent Election-Related Challenge: Lack of Implementation of Existing Standards and Commitments

There is no country conducting elections without any flaw. Each participating States is benefitting from OSCE/ODIHR's ongoing work in the area of elections, peer review in the Permanent Council and NGO monitoring at human dimension meetings.

The most urgent challenge is that nearly two decades after Copenhagen, the OSCE still faces electoral processes marked by lack of implementation or violation of minimum electoral standards and commitments. A grave problem that remains is the disregard of free and fair media. A number of countries still refuse to allow equitable access to media for all political groupings and candidates. State-owned or state controlled media often favour one party or candidate. Independent media in a number of countries are systematically harassed or suppressed in order to prevent non favourable reporting of one dominant party or candidate. In a number of countries the right to be a candidate is deliberately undermined by administrative rules or procedures. Fraud in the compilation of voter lists is designed to deny the right to vote to certain people or to enable fraudulent voting. OSCE/ODIHR election observation missions regularly witness authorities restricting or suppressing political campaigning of opposition parties or candidates.

Further examples of a lack of implementation of electoral standards and commitments related to the right to be a candidate, voter lists, media, campaign environment, disenfranchisement, secrecy of the ballot, access for observers, participation of women, inclusion of national minorities, counting and tabulation of votes, election administration and judiciary can be found in the ODIHR report 'Common Responsibility' as well as in numerous OSCE/ODIHR election observation reports available on the OSCE/ODIHR homepage.

There is no OSCE court or other institution to ensure implementation of OSCE standards and commitments. OSCE as an implementation oriented organisation is relying on peer review among participating States,

10 Strengthening the Effectiveness of the OSCE, MC.DEC/19/06, 5 December 2006.

11 Report to the Sixteenth OSCE Ministerial Council on Election-Related Issues and Election Observation Activities in 2008, MC.GAL/10/08, 26 November 2008.

assistance by OSCE institutions and field missions as well as co-operation with civil society. Monitoring activities of civil society throughout the OSCE are most important to detect deficiencies in implementation of standards and commitments and to trigger adequate reaction at an early stage. However, in a number of countries active work of independent civil society is discouraged and access of domestic non partisan observers to election proceedings restricted or denied.

Therefore, along with genuine governmental efforts to improve implementation of existing electoral standards and commitments, participating States should create an enabling environment for independent civil society and encourage domestic non-partisan election observation.

Copenhagen Plus?: Possible Supplementary Commitments

As long as OSCE is marked by a lack of genuine political will to fully implement existing standards and commitments, participating States should focus on ways to improve implementation. Without genuine political will to implement, new commitments would remain an empty shell. However, political will to implement given, a consensus of OSCE participating States on supplementary commitments could reinforce the Copenhagen Acquis. Work in the human dimension over the past years has identified transparency of election procedures, accountability on the part of authorities conducting elections as well as the need for confidence by the electorate in the entire electoral process as areas where supplementary commitments would be most needed. Along the lines of a draft Ministerial Council Decision under discussion at the Lubljana Ministerial Council, new commitments in those areas could inter alia:

- address new voting technologies;
- ensure transparent processes for considering and resolving electoral complaints and appeals;
- deal with campaign financing;
- add to commitments related to impartial election administration
- and responsibility of authorities for investigation of election violations;
- enable equal access to government media for all political groupings and individuals.

Most important, would be a set of new commitments to ensure participation and full regard for the voting rights of all eligible citizens and to encourage participation of all citizens in public life and in the election process as both voters and candidates.

Aiming at strengthening monitoring of implementation, Copenhagen Plus should first and foremost enshrine full and unimpeded access by domestic and international observers to the entire electoral process.

The Way Ahead: Reaffirming Consensus and Improving Implementation

Concealing the political deadlock related to the Copenhagen Acquis and OSCE/ODIHR election observation is not enough. What is needed is to renew genuine political will of all participating States to implement common

electoral standards and commitments and to share their common responsibility in implementation. Such renewal should go beyond words and working on laws designed not to be implemented.

The OSCE concept of comprehensive security is based on lessons learned throughout Pan-European history that political-military security is linked to democratic government. Conducting free and fair elections in accordance with the Copenhagen Acquis would not mean to enforce a uniform system throughout the OSCE region and elections are not an end in itself. Democratic elections can be conducted under a variety of different electoral systems and laws,[12] and yet be consistent with the Copenhagen Acquis. It is important to respect the variety of systems. Renewal of genuine political will to implement the Copenhagen Acquis should place new emphasis on free and fair elections as foundation of democracy and essential element of comprehensive security.

Kazakhstans OSCE Chairmanship: Could Make a Difference

As a participating State having subscribed to the Astana Appeal in 2004, Kazakhstan is in a unique position to make a difference as OSCE Chairmanship. Kazakhstan should help bringing together all participating States in furthering implementation of existing OSCE standards and commitments and could foster consensus on additional electoral commitments. Paving new ways, Kazahkstan could combine a creative approach on electoral issues with furthering issues high on the Kazakh agenda such as rights of minorities. Working together with partners within the United Nations, Kazakhstan could also combine initiatives on election-related issues with initiatives aiming at furthering democracy and comprehensive security, of human security in general. While a substantial Ministerial Council decision on elections guided by a Kazakh Chairmanship might be desirable, there is no urgent need for new decisions. In order to improve implementation of existing standards and commitments, high quality political meetings and triggering progressive implementation of the Copenhagen Acquis — where most needed — through practical measures could be a modest but eventually more successful approach.

12 Maastricht Ministerial Council Decision on Elections, MC.DEC/5/03

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