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For more democratic elections

Committee Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Michael McNAMARA, Ireland, Socialist Group

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Political Affairs and Democracy, Mr Jean-Charles Gardetto, on his well-balanced and comprehensive report, and supports the proposed draft resolution.
2. Considering the Parliamentary Assembly's experience in international observation of elections in Council of Europe member States, it is particularly important that this report takes stock of its contribution to the development of the "European electoral heritage". It rightly stresses the role of international and domestic observers, on whose status the committee has reflected in 2010,² in ensuring the democratic character of elections.
3. Given the political importance of this subject, the committee wishes to propose some amendments to further strengthen the draft resolution.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 5, after the words "threats, pressure, violence and intimidation carried out against candidates or voters", add " , arbitrary detention of opposition candidates and supporters".

Amendment B (to the draft resolution)

Delete paragraph 8.1.3.

Amendment C (to the draft resolution)

In sub-paragraph 8.1.11, after the words "citizens living abroad", add the following words: " , subject to reasonable restrictions in accordance with law, such as duration of residence abroad,".

1. Reference to committee: Decision by the Bureau, Reference 3629 of 25 January 2010. Reporting committee: Committee on Political Affairs and Democracy. See Doc. 13021. Opinion approved by the committee on 1 October 2012.

2. See the report by our former committee colleague, Mr Frans Weekers (Netherlands, ALDE), Doc. 12355, and Resolution 1771 (2010) and Recommendation 1945 (2010) on an internationally recognised status of election observers.



Amendment D (to the draft resolution)

At the end of paragraph 8.1.11, add the following words: “irrespective of the nature or gravity of their offences”.

Amendment E (to the draft resolution)

In paragraph 8.2.3, after the words “The presence of” delete the following words: “domestic or” and after the words “international observers should be facilitated, in line”, add the following words “with the Declaration of Principles for International Election Observation and”.

Amendment F (to the draft resolution)

In paragraph 8.2.3, after the words “National observers, including from civil society, should be authorised in all members States”, add the words “, in line with the Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations and the Code of Conduct for Nonpartisan Election Observers and Monitors”.

Amendment G (to the draft resolution)

In paragraph 10.4, after the words “notably the Assembly”, delete the words “the European Court of Human Rights”.

Amendment H (to the draft resolution)

After paragraph 10.4, insert the following sub-paragraph:

“expresses its support for the Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations and the Code of Conduct for Nonpartisan Election Observers and Monitors;”

C. Explanatory memorandum by Mr McNamara, rapporteur for opinion

1. I can only congratulate Mr Gardetto on his excellent report, which deals with a wide range of issues related to the holding of free, fair and pluralist elections. The report rightly points out some deficiencies in the electoral process in certain Council of Europe member States and proposes measures to improve the democratic character of elections.
2. I should like, however, to propose a few amendments to the draft resolution, with a view to strengthening it by emphasising certain legal and human rights issues.

1. In the draft resolution:

1.1. Amendment A

The amendment aims to add “arbitrary detention of opposition candidates and supporters” as a blatant example of election-related violations; detention of opposition candidates was mentioned in paragraph 112 of Mr Gardetto’s report. This would strengthen the resolution by adding the need to avoid human rights violations in such instances.

1.2. Amendment B

The amendment aims to align the draft resolution with the content of the report (paragraphs 167 and 168), which stresses that States are free to choose their electoral system (see also Resolution 1705 (2010) on thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member States) and pinpoints the variety of such systems throughout Council of Europe member States. Although I agree with the rapporteur that “member States should opt for an electoral system which better reflects the opinion of the people and the political composition of the electorate” (paragraph 167), I am of the opinion that it would not be coherent with the stated principle of freedom of choice of electoral systems to suggest in the draft resolution a specific solution in this respect consisting in “opening lists in proportional electoral systems to allow citizens ... to choose individual candidates from among different lists”.

1.3. Amendment C

This amendment was proposed at the committee's meeting on 1 October 2012 to reflect the fact that, for example, in certain countries the right to vote of citizens living abroad expires after a specific period of time.

1.4. Amendment D

The amendment aligns the terminology used in the resolution more closely to the case law of the European Court of Human Rights concerning restrictions on the right to vote of serving prisoners (see judgments *Hirst v. the United Kingdom* (No. 2)³ and *Scoppola v. Italy* (No. 3)⁴), mentioned in the report (see paragraphs 50-52 and 166).

1.5. Amendment E

In the report by our former committee colleague, Mr Frans Weekers,⁵ the Declaration of Principles for International Election Observation and its accompanying Code of Conduct for International Observers, which have been endorsed by the Assembly, are referred to as “the most detailed international documents concerning the rights and duties of election observers. They were prepared by the United Nations Electoral Assistance Division (UNEAD), the National Democratic Institute and the Carter Center and endorsed by 22 international governmental and non-governmental organisations on 27 October 2007.⁶ Since then, other organisations,⁷ all of which are involved in continuous informal discussions of best practices, have endorsed this document, which still remains open to future endorsement. The above-mentioned declaration and code provide a global framework for election observation”.

In Resolution 1771 (2010), the Assembly considered that congruent rules to be adopted at the European level to strengthen the status of election observation “should be based on the Declaration of Principles for International Election Observation and on the Code of Conduct for International Election Observers” and called on member States to “implement in their national legislation the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers, if they ha[d] not yet done so”.

1.6. Amendment F

The Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations and the Code of Conduct for Nonpartisan Election Observers and Monitors⁸ was developed through a consensus process by representatives of the existing and developing regional networks of nonpartisan election monitoring organisations from Africa, Asia, central and eastern Europe and Eurasia, Latin America and the Caribbean and the Middle East and North Africa that are members of the Global Network of Domestic Election Monitors (GNDEM). The representatives formed a Draft Development Group (DDG) that reviewed a large body of relevant materials in advance of a meeting on 24 and 25 May 2010 in Johannesburg. A draft was produced as a consequence of that meeting and circulated for comment to the over 125 GNDEM members. Comments were reviewed by the DDG and a final text was presented to the respective regional networks for consideration before it was opened for endorsements by domestic election monitoring organisations.

The process surrounding the development of the Declaration of Global Principles was facilitated by the United Nations Electoral Assistance Division (UNEAD) and the National Democratic Institute for International Affairs (NDI). To date it has been supported by the European Parliament, the High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the Commission, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) and the Commonwealth Secretariat. It was endorsed by the European Commission for Democracy through Law (Venice Commission) at its 91st Plenary Session in Venice on 15 and 16 June 2012.

3. Application No. 74025/01, judgment of 6 October 2005.

4. Application No. 126/05, judgment of 22 May 2012 (Grand Chamber).

5. See footnote 2 above.

6. www.ndi.org/files/1923_declaration_102705_0.pdf.

7. The Council for Democratic Elections and the Venice Commission endorsed them in October 2005.

8. www.gndem.org/declaration-of-global-principles.

1.7. Amendment G

The European Court of Human Rights has developed a considerable case law on the right to free elections (Article 3 of the Additional Protocol to the European Convention on Human Rights (ETS No. 9 and ETS No. 5)) and this case law should, indeed, be taken into account by other bodies of the Council of Europe. However, it would be inappropriate for these bodies to “consult” the European Court of Human Rights, which is a court of law, as a body “which has expertise in the field”.

1.8. Amendment H

See the explanatory note to Amendment E.