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AD HOC COMMITTEE TO OBSERVE THE PRESIDENTIAL ELECTIONS IN GEORGIA (5 January 2008): PRE-ELECTORAL MISSION (Tbilisi, 5 to 7 December 2007)

MEMORANDUM

Prepared by Mr. Mátyás Eörsi (Hungary, ALDE), Chairman of the Ad Hoc Committee.

- (1) The Pre-electoral Mission visited Tbilisi from 5 to 7 December 2007 to assess the preparations and political climate in the run-up to the extraordinary Presidential Elections in Georgia, scheduled for 5 January 2008. The cross-party pre-electoral delegation consisted of Mr Mátyás Eörsi (Hungary, ALDE), Chairman of the Ad Hoc Committee and Head of Delegation, Mr Kastriot Islami (Albania, SOC), Mr Andres Herkel (Estonia, EPP/CD) and Ms Ganira Pashayeva (Azerbaijan, EDG). Unfortunately, due to the short notice in which this mission was organised, the Unified European Left Group was unable to identify a representative available to be present on the delegation.
- (2) The statement issued by the delegation at the end of the visit is appended.
- (3) During its visit to Tbilisi, the delegation met with, *inter alia*, the acting President of Georgia, the acting Speaker of the Parliament, the Chairman of the Central Election Commission, the Chairmen of the Supreme and Constitutional Courts, the Deputy Minister of the Interior, the General Prosecutor, a cross-section of candidates running in the elections, representatives of opposition and governing parties, representatives of the international community in Georgia, as well as representatives of the mass media and civil society. The Pre-electoral mission wishes to thank the Parliament of Georgia, as well as the Special Representative of the Secretary General of the Council of Europe in Tbilisi, for the excellent programme and logistical support provided to the delegation.
- (4) After several days of tense political protests in which early elections were demanded, President Saakashvili declared, on 7 November 2007, the state of emergency in Georgia, citing threats to the stability of the country. Subsequently, on 8 November 2007, the President announced that he would call for early Presidential elections, on 5 January 2008, as a means to resolve the political crisis in the country. In addition, he decreed that a non-binding referendum would be held on the same day, asking the Georgian public whether they wished to have Parliamentary elections in the spring of 2008, as demanded by the opposition, or in autumn 2008, as foreseen in the recently amended Constitution. On 25 November 2007, President Saakashvili formally resigned, after which extraordinary Presidential elections were formally called for 5 January 2008, conform constitutional provisions.

- (5) In a move that most interlocutors interpreted as aimed at increasing the turnout for the elections, President Saakashvili announced on 24 November 2007, the day before he resigned, that an additional plebiscite, on NATO membership, would be organised on 5 January 2008.
- (6) In the opinion of the Venice Commission of the Council of Europe, the electoral code of Georgia forms an adequate legal basis for the conduct of democratic elections. However, as part of the dialogue started between the government and opposition in the wake of the calling of elections, the electoral code was amended to incorporate a set of wishes from the side of the opposition. While the Venice Commission has not yet been able to give an opinion on the amendments to the electoral law, the amendments mostly seem to address previous recommendations from the international community, including the Assembly, Venice Commission and the OSCE/ODIHR. The late adoption of these amendments, on 7 December 2007, could affect the training of election commission members and potentially lead to a degree of confusion on Election Day.
- (7) The amendments to the electoral law, *inter alia*, changed the composition of the Central Election Commission (CEC) and Polling Station Commissions (PECs); lowered the number of signatures needed to nominate a candidate for the Presidential Elections; lowered the maximum number of voters per polling station; introduced the possibility for voters to be added to the voters' lists on Election Day; improved the provisions for allocation of free airtime and campaign finances; changed the election system for Parliamentary elections and lowered the threshold to enter Parliament from 7% to 5%.
- (8) In line with the amendments, Political parties will now be represented on the CEC and PECs. In addition to the 6 members nominated by the President and appointed by the Parliament, each faction in parliament or party that received more than 4% of the votes in the recent nation-wide elections will now have one representative on the above-mentioned election commissions. Practically, this means that the CEC and PECs will be composed of 13 members, 6 of which representing the opposition. A number of decisions will have to be taken by a 2/3 qualified majority, but "technical" decisions only require a simple majority. Notably, the delegation was informed that the announcement of the final results of an election was considered to be a technical matter which would therefore only require a simple majority in the election commissions. The composition of the District Election Commissions has not been affected by the latest amendments. However, their role and power have been significantly reduced in the amended election law.
- (9) The introduction of the possibility for voters to be added to the voters' lists by the PECs on Election Day is an issue of concern. While explainable in the context of the current state of the voters' lists in Georgia and the redrawing of polling station boundaries as a result of the reduction of the maximum number of voters per polling station, same-day registration can be used as an avenue for electoral fraud and could undermine public confidence in the election process. Although the delegation expressed its opposition to the principle of same-day registration, it reluctantly accepted that this will be necessary for the elections on 5 January 2008. However, the delegation strongly recommended that the authorities abolish the possibility voter registration on Election Day for future elections. In addition the delegation called upon the authorities to explain to electors that same day registration can be no substitute for checking the information pertaining to them before Election Day.
- (10) The political climate in the run-up to these elections is dominated by the schism between government and opposition and the resulting charged polarised political debate and atmosphere of mutual mistrust, which risks undermining the public confidence in the electoral process and its outcome. This is exacerbated by the strategy of a number of Presidential candidates already to question the credibility of the electoral process, and its outcome, before

the elections have taken place. It seemed to the delegation that, for some, the events of the Rose Revolution have set a standard for affecting political change in Georgia. The delegation therefore called upon all political actors to refrain from already questioning the credibility of, and undermining public confidence in, the electoral process and to jointly work to resolve any possible shortcomings found.

- (11) The apparent lack of trust and polarised political climate underline the importance of the international election observation effort. However, regrettably, part of the political strategy of some candidates seems to be to question the credibility of the international observation effort. In what seemed to be a concerted effort, partly aimed at the media, a number of candidates whom the delegation met accused the international community, including the partners in the IEOM, of being biased in favour of the governmental forces. While this may be seen as a political strategy, it highlights the importance of ensuring that these elections are observed jointly with all partners according to the customary high standards used for election observation.
- (12) Despite the unexpected announcement of these elections, and the short period in which they will have to be organised, the technical preparations for these elections seem to be well under way. Although it is clear that the short time span between the announcement and the election date will affect the pre-electoral period, none of the candidates whom the delegation met mentioned this as a problem for their campaigns.
- (13) Democratic elections demand a level playing field between all candidates. In this respect, the possible abuse of administrative resources and the question of equal access to the media are of concern to the delegation.
- (14) The amended electoral law contains adequate provisions for the allocation of free airtime and equal conditions for paid advertising on both private and public broadcasters. The pre-electoral delegation received no indications that these regulations will not be fully implemented according to the law. The electoral law makes a differentiation between qualified (e.g. supported by parties that won at least 4% of the vote in the last parliamentary elections and at least 3% of the vote in the last local elections) and unqualified candidates. While this may be understandable in the context of the relatively low barriers for the nomination of a candidate, it could hinder media access for the so-called unqualified candidates, especially to the private broadcast media.
- (15) Equal provision of free airtime and equal conditions for paid political advertising is only one part of equal media conditions during the campaign period. An equally important aspect is the balanced and unbiased coverage by the media of the election campaigns of all Presidential candidates. While a *de facto* incumbent candidate has always a certain advantage in this respect, it is undeniable that the current news coverage is dominated by the campaign of the former President. The delegation therefore stressed the responsibility of the media in this respect and called upon all media to respect both the letter and spirit of the law and to ensure a balanced and unbiased coverage of the campaign period.
- (16) The closure by the authorities of Imedi, a broadcaster that openly supports the opposition, has negatively affected the media environment in the run-up to the elections. Not only did this skew the coverage in favour of the former President but it also sent out a chilling message to journalists who seem to be more inclined to apply self-censorship than before. In this respect, the delegation welcomed the decision of the authorities to allow Imedi to resume its broadcasting activities.

- (17) The pre-electoral delegation is concerned with the abuse of administrative resources in the election campaign. The alleged use of state resources, including the active involvement of local and central state officials in all levels of the campaign of the former president - even if they are within the limits of the law - could undermine public confidence in the fairness of the elections. In addition, the sheer number of allegations of intimidation and pressure, while unverifiable by the delegation, is too high to be comfortable. While such allegations may also be part of the current campaign rhetoric, the governing authorities bear special responsibility to demonstrate to the public and to electoral contestants that no-one is above the law in this respect. It should be clear that intimidation and pressure on campaign activists and voters have no place in a democratic society.
- (18) In order to provide legal proof in the case of alleged electoral violations, the election code foresees the installation of two video cameras in each polling station. This provision has given rise to numerous rumours in Georgian society that the vote will not be fully secret on Election Day. The delegation therefore called upon the authorities to adopt all necessary measures to ensure that the principle of the secrecy of the vote is guaranteed in practice. Furthermore, the installation of video cameras could also be problematic in the light of relatively weak provisions for data protection, as the footage of these cameras could provide a record to third parties of who voted and who did not vote on Election Day.
- (19) The accuracy of the voters' list continues to be an issue of concern in Georgia. The preliminary voters' lists were published during our stay in Georgia and reportedly still show a large number of incorrect and missing entries, despite the laudable efforts of the authorities to improve the lists. The pre-electoral delegation strongly recommended to the authorities to organise a public awareness campaign, aimed at urging voters to check their data on the voters' lists.
- (20) In spite of the difficulties and concerns noted, the upcoming Presidential elections will be the most competitive elections since Georgia regained independence.

Press Statement

Appendix

Georgia: restoring confidence in democratic elections is the joint responsibility of all political forces

Strasbourg, 07.12.2007 - At the end of a three-day mission ahead of the observation of Georgia's 5 January parliamentary elections, a four-member Council of Europe Parliamentary Assembly PACE delegation (*) today made the following statement :

"The consolidation of democracy has, until recently, been notable in Georgia. However, the events in November have seriously damaged this process. The political schism and polarised political debate risk undermining the credibility of the upcoming Presidential elections, and its outcome, in the eyes of the Georgian public. International observers, such as those deployed by the Parliamentary Assembly of the Council of Europe, therefore play a key role in ensuring that the Georgian public enjoy confidence in the democratic nature of the electoral process.

The Parliamentary Assembly consists of members from all major political groups of the 47 member States. This is a guarantee that the Assembly's only interest is in ensuring that these elections comply with the high democratic standards of the Council of Europe with the outcome reflecting the free will of the Georgian people. For this reason the Assembly deployed, from 5 to 7 December 2007, a pre-electoral mission (*) to Georgia to assess the preparations and political climate in the run-up to these elections. Moreover, the Assembly will be back in January with a 30 member strong cross-party delegation to observe these elections jointly with its international partners.

However, the democratic conduct of these elections is not in the hands of international observers but the common responsibility of all political forces in the country. The Delegation therefore calls upon electoral contestants to stop already questioning the credibility and outcome of these elections before they take place, but instead, work to resolve any shortcomings found. Genuine democratic elections, and public confidence in them, are in the common interest of all political forces, and indeed of the country itself.

During its visit the Delegation was convinced that the preparations for these elections were well under way, despite the short time-frame in which they have to be organised. The electoral law forms an adequate basis for the conduct of democratic elections. However, the Delegation is concerned that the amendments to the law, as agreed between the Government and the opposition, have not yet been adopted and calls upon the Parliament to do so without further delay. Any possible further changes should only take place after the elections, as otherwise they may lead to confusion on election day, which, in turn, could undermine public confidence in the process.

Genuinely democratic elections demand a level playing field between all electoral contestants, and this is an area of concern for the Delegation. The alleged use of state resources and the active involvement of central and local state officials at all levels of the campaign of the former President, raise the spectre of abuse of administrative resources. Even if it is within the limits of the law, the Delegation would like to remind the governmental authorities that they have the responsibility to ensure that the public perceives the campaign as fair between all participants.

The allegations of intimidation and pressure are too many for comfort. The leaders of the law enforcement bodies should repeatedly make it publicly clear that any allegations of violations will be investigated and, if found to be valid, perpetrators prosecuted to the fullest extent of the law.

Equal and unbiased access to the media for all candidates is essential for democratic elections. While the Delegation expects that all legal requirements for access to the media will be met, it is undeniable that the current news coverage is dominated by the campaign of the former President. The Delegation wants to stress the responsibility of the media in this respect. All media should ensure a balanced and unbiased coverage of all candidates, without any form of self-censorship. The media in this respect should not only adhere to the letter, but also to the spirit of the law. In addition the Delegation would like to support the idea of regular topical

debates between all contestants in the public media. This is essential for the voters to make an informed choice on election day.

The accuracy of the voters' lists continues to be of concern in Georgian elections, especially in the context of the reduction of the size of the precincts. The Central Election Commission (CEC) should start a highly visible public voter education campaign to exhort voters to check their entry on the voters list. While the Assembly has some concerns regarding the use of additional voters' lists, it accepts that they will be used for these elections. However the CEC should adopt adequate provisions to prevent them being used as an avenue for multiple voting and should ensure that the additional ballots can not be tampered with when they are transported from the precinct to the CEC where they will be counted. The public voter education campaign should make it clear that the existence of additional lists can not be an excuse for citizens not to check their entry on the voters' lists before election day.

Last but not least, the Delegation noted the concerns expressed about possible infringements of the secrecy of the vote, especially as a result of the video cameras installed in each polling station. Secrecy of the vote - and equally the perception of the secrecy of the vote - is crucial for democratic elections. The CEC should take all necessary measures, including proper voter education, to ensure that voters cast their ballot in absolute secrecy.

The Assembly continues to stand ready to help the Georgian people with the consolidation of democracy in their country.

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(* The pre-election Delegation visited Tbilisi from 5 to 7 December at the invitation of the Speaker of the Parliament of Georgia. The cross party Delegation was composed of Mátyás Eörsi (Hungary, ALDE) - Head of Delegation, Kastriot Islami (Albania, SOC), Andres Herkel (Estonia, EPP/CD) and Ganira Pashayeva (Azerbaijan, EDG). During its visit, the Delegation met, *inter alia*, with the Acting President of the Republic, the Acting Speaker of the Parliament of Georgia, a cross section of candidates or their representatives in these elections, the Chairman of the Central Election Commission, the Deputy Minister of the Interior, the Chairmen of the Supreme and Constitutional Courts, the Public Prosecutor, a cross section of political parties, representatives of the international community as well as representatives from the mass media and civil society.