

USING INTERNATIONAL ELECTION STANDARDS



**Council of Europe handbook
for civil society organisations**

**Programmatic Cooperation Framework for
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**

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COUNCIL OF EUROPE



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by the Council of Europe

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Foreword

The right to free elections is guaranteed under the European Convention on Human Rights. Of all the democratic safeguards against the abuse of political power, it is one of the most fundamental. The ability of individuals to express their identities and choices peacefully, at the ballot box, is central to stability in any society, and so to Europe's democratic security too.

The tasks performed by election observers are therefore extremely important. Elections must be prepared with diligence and integrity, and observers must perform their duties in an unbiased and transparent manner. Their presence and professionalism helps ensure the confidence of voters, as well as of the international community. The Council of Europe and our partner organisations therefore strive to assist organisations conducting observations to do so to the highest standards.

This handbook draws on methods for electoral assistance developed by our Organisation over many years. It aims to help observers to become more efficient and to produce reports which are more effective. Our starting point is that, far from watching passively from the sidelines, observers play an active role in developing national electoral procedures through their advice and recommendations. It is therefore vital that mission reports and advice issued to national authorities are easily understood and can be translated into concrete action. There are also a number of important principles to which we believe observers should pay special attention during an election, including the participation of women, young people, national minorities and people with disabilities.

This new edition will, I believe, provide organisations engaged in these activities with a practical, useable guide, reflecting decades of relevant experience and supporting them in their invaluable work.

Thorbjørn Jagland

Secretary General of the Council of Europe

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Introduction

ELECTIONS – CORNERSTONE OF DEMOCRACY

The Council of Europe was set up with the aim to achieve greater unity among its members for the purpose of safeguarding the ideals and principles that form the basis of genuine democracy. Since its creation in 1949, a number of legal texts have been adopted with a view to interpreting the notion of “genuine democracy”. Elections, in this respect, are a cornerstone of democratic regimes and therefore a prerequisite for accession to the Council of Europe. This idea is well reflected in the Parliamentary Assembly report titled “For more democratic elections”, prepared by Jean-Charles Gardetto, which cites the Kiev Forum for the Future of Democracy:

The Council of Europe's objective is to establish a common understanding about all the principles which qualify elections as being “free and fair” in compliance with democratic standards. Those standards must be fully implemented in all elections throughout the Council of Europe space and in those States aspiring to join the Organisation or engage in a privileged relationship with it.

Though the existence of democratic institutions as a precondition for joining the Council of Europe is not expressly mentioned in Articles 3 and 4 of the Statute of the Council of Europe, a decision on whether a state can join the Organisation relies on the respect of elementary democratic standards. Failure to respect human rights and democratic principles may entail a suspension of the accession process, as was the case for Belarus, which had special invitee status to the Council of Europe between 1992 and 1997. A general conclusion of the Gardetto report is that commonly accepted democratic principles should apply in each election that takes place in Council of Europe member states or those states that wish to become members or engage in a privileged relationship with the Organisation.

The Council of Europe, through its institutions and bodies such as the European Court of Human Rights, the Parliamentary Assembly, the European Commission for Democracy through Law (Venice Commission) and its Council for Democratic Elections, the Group of States against Corruption and the Division of Electoral Assistance, plays a key role in the creation of Europe's electoral heritage and standards. In turn, civil society organisations (CSOs) contribute to enhancing European standards and good practices by providing vital links between policy, standards and reality. Their role is crucial during election time, and particularly between elections.

CIVIL SOCIETY ORGANISATIONS – WATCHDOGS FOR FREE AND FAIR ELECTIONS

Council of Europe instruments and policies have long provided a solid basis for and significant encouragement to enhancing the roles and responsibilities of CSOs in decision making and actions. In the 2014 Council of Europe report on the state of democracy, human rights and the rule of law in Europe, the Secretary General pointed out that whereas improvements both in electoral legislation and practice have taken place in most member states of the Council of Europe, a number of problems recur in the implementation of the standards of European electoral heritage, as defined in the Venice Commission's Code of Good Practice in Electoral Matters (2002). The report goes on to say that proper election observation makes election violations public and therefore more difficult to accomplish and encourages reciprocal election observation, providing the opportunity for member states to learn from each other. The report also recommended improving the quality of domestic observation of electoral processes.

DOMESTIC ELECTION OBSERVERS CONTRIBUTING TO SUSTAINABLE DEMOCRACIES

Over the last few years, the importance of domestic election observation has grown significantly. Domestic observers cover the entire election process from beginning to end, including the pre-electoral period, election day and the post-election period. They are familiar with local languages and customs, understand the political environment, are able to follow in detail specific election procedures, and are multipliers of electoral values in their societies. Furthermore, observers follow up on election-related cases, come up with action plans for further improvement of the election process and monitor whether key stakeholders take recommendations into consideration between elections. Their observations are vital for the transparency of the electoral process in three ways:

- ▶ gathering information and documenting facts about the election process;
- ▶ assessing the facts/information in order to understand to what degree elections are held in compliance with international standards;
- ▶ engaging in implementation of the recommendations of international election observation missions, thus contributing to the reform process in post-election periods.

Domestic observers are becoming increasingly specialised and professional, and contribute to promoting confidence in the electoral process – and in the long run to the sustainability of democracy. The structure of domestic election observation missions has improved in recent years with strong teams composed of core team analysts, long-term observers and short-term observers, each receiving equal attention in Council of Europe training programmes.

While many domestic observers have become more professional and as a consequence more influential, there is a constant need for upgrading to respond to new trends in the field of elections. These include novel interpretations by the European Court of Human Rights (the Court) of Article 3 on free and fair elections of the Protocol to the European Convention on Human Rights, new electoral standards, and the changing practice of states.

THE HANDBOOK

This handbook, drafted in collaboration with CSOs from the countries of the Eastern Partnership, is a response to the recommendation set out in the 2015 report by the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe, aimed at improving the quality of domestic observation of electoral processes in the member states.

The handbook serves as a reference for domestic observers, primarily for core team members. At the same time, it may serve as a training tool for long-term and short-term observers and other electoral stakeholders who wish to familiarise themselves with international election standards (e.g. government officials, electoral administration, party representatives, judges, lawyers).

The handbook is divided into two parts, providing a brief introduction to the very concept of international standards and then proceeding to their application in election reporting.

The first part, “Election standards and general principles”, presents different types of international standards and commitments as well as international “soft law”, including general principles and good practices in electoral matters and how they relate to each other. The second part, “Application and good practices”, focuses on specific principles of each aspect of the electoral process: starting from election systems and election administrations, continuing with registration of voters and contestants as well as election campaigns and media coverage, covering specific voter categories (e.g. internally displaced persons, refugees, prisoners, minorities, women), and concluding with voting, counting, tabulation and appeal procedures.

The Council of Europe is convinced that this report, “Using international election standards – Council of Europe handbook for civil society organisations”, will further promote uniform application of Europe’s electoral heritage and of other international standards in its member states and beyond.

Part 1

Election standards and general principles

1. DEFINITION

The term “international election standards and good practices” as used in the present handbook encompasses provisions found in different types of documents.

From a geographical point of view two types of standards and good practices can be differentiated:

- international: those of the 1948 United Nations Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Civil and Political Rights (ICCPR), including interpretations of the ICCPR by the Human Rights Committee in the form of General Comments.¹ The UDHR is not a treaty, but several of its provisions are universally accepted and considered to be customary international law;
- regional: those of the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) and its additional Protocol 1.

From the perspective of their binding force on states, the standards and practices included in this handbook encompass:

- legally binding treaties (e.g. ICCPR, the Convention);
- soft law, which includes politically binding commitments such as the 1990 Copenhagen Document from the Organization for Security and Co-operation in Europe (OSCE), interpretative documents such as the ICCPR’s General Comment 25, and international good practice such as the Venice Commission’s Code of Good Practice on Electoral Matters (Code of Good Practice) and the OSCE/Office for Democratic Institutions and Human Rights (ODIHR) election monitoring observation reports and their recommendations.

1. The UN Human Rights Committee was established by the ICCPR. The covenant sets out the legal basis of the committee in treaty form, considers it a treaty body and obliges states parties to respect its authority.