

Memorandum

To: Members of the OSCE PA Bureau
From: President Göran Lennmarker
RE: Election Observation

Dear Colleague,

As you may remember from our meeting in Vienna in February, I have appointed Vice-President Tone Tingsgaard to head the OSCE PA Election Observation Mission to Armenia in May 2007. Following this appointment I asked the OSCE Chairman-in-Office, Spanish Foreign Minister Miguel Angel Moratinos, to appoint Mrs. Tingsgaard his Special Co-ordinator for these elections as foreseen by the 1997 Co-operation Agreement guiding co-operation between the Assembly and OSCE on joint election observation missions. After several weeks, Mrs. Tingsgaard, and I received an answer from the Minister last Friday, 12 April. The Minister agrees to appoint Mrs. Tingsgaard as Special Co-ordinator for this mission. However, at the same time, the Minister sets up 17 conditions for Mrs. Tingsgaard's work. These points are not only in clear contradiction with the 1997 Co-operation Agreement, but they also undermine the leadership role of the OSCE PA in OSCE election observation missions by giving the Assembly a subordinate role to that of the staff of the OSCE ODIHR on such missions.

I would like to discuss the content of the letter from Minister Moratinos and the response that we should give to this at the Bureau Meeting on Monday 23 April in Copenhagen. I had invited Minister Moratinos to come to our Bureau Meeting, but he has answered that unfortunately he will not be able to be present.

After having read the letter carefully, it is my opinion that the Assembly cannot accept these 17 conditions included in the document entitled 'Operational Procedures Framework', and I recommend that we decline the appointment under these circumstances.

As you know, the 1997 Co-operation Agreement was negotiated in order to improve co-ordination between the OSCE PA and the OSCE ODIHR in the field of election observation. By giving the political leadership to the Assembly in such missions, the Agreement seeks to introduce visibility, transparency and political responsibility in the process. To step back from or undermine this practice is unacceptable to the Assembly, as is this 'hidden' attempt to rewrite the 1997 Agreement. As I read the text, the role of the Special Co-ordinator would be reduced to presenting the press statement written by the ODIHR without any real input. The Framework would also take away the possibility for the Special Co-ordinator to make use of the International Secretariat staff, and this would undermine the role of the Assembly.

The letter from the Chairman-in-Office contradicts the Ministerial Council decision from December 2006 which 'recognized that close co-operation with the OSCE Parliamentary Assembly considerably enhances the visibility of the OSCE's election observation efforts, and called on the ODIHR to continue to work in partnership with the Parliamentary Assembly on election observation missions on the basis of the 1997 Co-operation

Agreement'. It also goes against the spirit of the Assembly's Brussels Declaration from last summer, which 'urged the Parliamentary Assembly to continue to provide political leadership to the OSCE Election Observation Missions, with the technical, logistical and long-term observer support of ODIHR respecting the Co-operation Agreement and, if possible, reinforcing it'.

Appendix

Problems with the Operational Procedures Framework

Point 1 – The OSCE PA does not observe every election in the OSCE area, such as local elections, even if the ODIHR deploys short-term observers. This paragraph adds the words “after consultations and, as appropriate” and leaves out the words “a political figure” or “OSCE PA senior official.” It also adds the words “entire responsibility of the CiO.” This is a rewriting of the wording related to the appointment of the Special Co-ordinator by the CiO contained in the 1997 Co-operation Agreement. It implies that the CiO can appoint a Special Co-ordinator who is not recommended by the President of the Parliamentary Assembly and may also not be a political figure, a Parliamentarian, or OSCE PA senior official.

Point 2 - stressed that the OSCE PA and the OSCE ODIHR work on an equal basis. This goes against the 1997 Co-operation Agreement, which intended for the OSCE Parliamentary Assembly to provide political leadership to the OSCE Election Observation Missions. Also, the subsequent points in the ‘Operational Procedures Framework’ contradict this point by assigning the OSCE Parliamentary Assembly a subordinate role. Under any interpretation of normal protocol, an elected Member of Parliament is always above the level of civil servants and certainly never subordinate to institutional staff and part-time contract employees.

Points 3 and 4 – refer to the well-established methodology of the ODIHR and the need for the OSCE PA Special Co-ordinator to respect this. The ODIHR methodology has been discussed at length and on numerous occasions there have been problems – as most recently seen in Serbia – where the ODIHR tried to link the conclusions of the Post Election Statement to the political results of the elections. The Special Co-ordinator refused to accept this flawed approach and must have the right to do so. Also, while Parliamentarians are independent, the ODIHR is prone to political pressures as its budget must be approved by all participating States.

Point 5 – establishes that the Special Co-ordinator will establish contact with the OSCE ODIHR Long term mission at an early stage. The appropriate level of communications is between the ODIHR long term mission and senior staff of the OSCE PA, not the political leadership, and this has always been the case. The Assembly has tried to have appointments made early in the process, but often the Chairmanship delays the process. For the elections in Armenia, Mrs. Tinggaard went on a pre-visit before being appointed, simply because of the delay in her appointment caused by the Spanish Chairmanship. The Special Co-ordinator should decide when and if preliminary visits should take place and who should accompany them.

Point 6 – dictates the arrival time of the Special Co-ordinator, which seems a bit exaggerated, particularly bearing in mind the late arrival of the ODIHR Warsaw team. The team from Warsaw insists that no discussion of the draft can be started before they are on the ground (typically 24-36 hours before election day), which delays the process unnecessarily. As far as the debriefings taking place, this should apply only to the debriefings of Parliamentarians. The ODIHR observers are often debriefed after the Statement has been issued and the press conference has taken place. There is no need for

the Special Co-ordinator to be present after the issuance of the Statement and the press conference.

Point 7 – states that the Special Co-ordinator cannot delegate her/his functions. In practical terms this means that the International Secretariat cannot help the Special Co-ordinator in drafting even the technical aspects of the Statement. Insisting that a Parliamentarian engage in every minute detail of writing the Statement is demeaning and is, of course, unacceptable. This is a direct contradiction of the Co-operation Agreement, which says that the Special Co-ordinator “may designate a Co-Chair or Co-Chairs of the observation mission, as appropriate.” The Special Co-ordinator may also – as is the established precedent – designate and deploy the Assembly’s experts to work with other Parliamentary experts as well as ODIHR staff.

Point 8 – dictates that the Special Co-ordinator should attend the briefings and debriefings. Since the Special Co-ordinator chairs these meetings, this is really redundant. In addition, in recent missions, the ODIHR debriefing of their ordinary Short Term Observers have been planned so late (and well after the presentation of the Post-Election Statement) that it would be difficult for any Member of Parliament to stay for this, and of little or no purpose. The Special Co-ordinator always attends the briefings and debriefings of the Parliamentarians on the day after the election but is not required to attend the briefings and debriefings of the ODIHR observers, although the Special Co-ordinator has done so when time permitted or has designated other Parliamentarians and/or experts to attend on his/her behalf.

Points 9, 10, 11 – gives the ODIHR the full responsibility for writing the statement giving the Special Co-ordinator a subordinate role in that his/her role is reduced to commenting on the ODIHR draft. Normally, the Special Co-ordinator has his/her own paragraphs on the political conclusions of the statement. This combined with Point 7 makes it very difficult for the Special Co-ordinator to provide political leadership to the mission. This is a departure from past practices and contradicts the role of the Special Co-ordinator as described in the 1997 Co-operation Agreement. The Special Co-ordinator cannot be constrained by the ODIHR staff from issuing the Preliminary Statement, which is the prime and exclusive right of the Special Co-ordinator. Neither the ODIHR staff nor anyone else has a veto over the ultimate judgment and assessment of the Special Co-ordinator. There is nothing in the Co-operation Agreement that gives the ODIHR the right to present a first draft of the Statement of Preliminary Findings and Conclusions. Since it is the responsibility of the Special Co-ordinator to deliver the Statement, it should be up to the Special Co-ordinator how and when the first draft will be produced and who will be responsible for such a draft. In addition, it should be up to the Special Co-ordinator to determine which meetings he/she should attend and to which meetings he/she wishes to send experts, staff or other Parliamentarians. This is the Special Co-ordinator’s decision, not the ODIHR’s.

Points 12, 13 – establishes that the Special Co-ordinator takes leadership of the press conference. However, in contradiction with the 1997 Co-operation Agreement, it is also established that the OSCE ODIHR ‘Head of Mission’ will provide the concluding remarks. The 1997 Co-operation Agreement does not mention that the OSCE ODIHR will speak at the press conference – it leaves this question open for the Special Co-ordinator to decide. The Co-operation Agreement does not refer to the “Statement of Preliminary Findings and

Conclusions”, only the Preliminary Post-Election Statement, which is the responsibility of the Special Coordinator. Experience has shown that the Parliamentarians, not only the OSCE Parliamentarians, have frequently disagreed with the Preliminary Findings and Conclusions of the ODIHR. The Special Co-ordinator has responsibility for delivering the Preliminary Post-Election Statement and has the exclusive right to determine which other “appropriate officers” will participate in that press conference according to the 1997 Co-operation Agreement.

Point 14 – states that no statements shall be made to the press prior to the press conference. This has been a contentious issue. The ODIHR claims that the Parliamentarians are unpredictable and are only interested in visibility. However, on several occasions, the ODIHR On Site Co-ordinator has given away the main conclusions of the statement on the eve of the elections, and prior to the press conference. In addition, the OSCE Parliamentary Assembly has not adopted the ODIHR Code of Conduct for Observers. The Head of the OSCE PA Delegation, in consultation with their parliamentary colleagues, should determine how to deal with the press, based on their extensive experience in this area.

Point 15 – states that the 1997 Co-operation Agreement will be fully respected. However, the main part of the ‘Operational Procedures Framework’ undermines or contradicts the 1997 Agreement

Point 16 – states that the result of an election shall not condition the contents of the Post Election Statement. The Assembly agrees fully with this. A situation similar to the one in Serbia, where the ODIHR did not wish to call the elections free and fair due to the political results of the election, is completely unacceptable