

# NATION-BUILDING

## THE ROLE OF THE INSTITUTION OF INTERNATIONAL OBSERVATION IN IMPLEMENTING INTERNATIONAL ELECTION STANDARDS IN THE KYRGYZ REPUBLIC

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### ABSTRACT

**T**his article examines the legal foundations and methodology of the activity of international observers who are following the preparations for and holding of elections. It studies the international obligations in keeping with which the election system of the Kyrgyz Republic is developing. It carries out a comparative analysis of the participation of international observers in the

Kyrgyz Republic presidential elections held in 2009 and 2011.

The article also presents a brief review of the recommendations for Kyrgyzstan to carry out its international obligations in the election system given by such organizations as the OSCE Office for Democratic Institutions and Human Rights and the CIS Observer Mission.

**KEYWORDS:** *Kyrgyzstan, institution of international observation, international observers, international election standards, election process, OSCE Office for Democratic Institutions and Human Rights (ODIHR), CIS Observer Mission, Kyrgyz Republic Central Election Commission.*

## *I n t r o d u c t i o n*

Free and honest elections are an inviolable part of a democratic state. They are an important way to legitimize state power, as well as an efficient means of screening and “cultivating” a democratic sociopolitical elite.

The quality of the election legislation, its correspondence to international standards, and experience in holding democratic elections are extremely important in successfully solving such responsible tasks.

International observation of elections is carried out in order to support a fair election process that corresponds to the generally accepted standards of civil and political human rights protection in the world community.

The task of this observation lies in the assessments and recommendations that are given at the end of the elections. They help to adhere to international obligations and ensure political stability in the country as the foundation of its further development.

International election observation expresses the interest of the international community in holding democratic elections as part of democratic development, including respect for human rights and the rule of law. International election observation, which focuses on civil and political rights, is part of international human rights monitoring and must be conducted in keeping with the highest standards of impartiality concerning national political competitors and must be free from any bilateral or multilateral considerations that could conflict with impartiality.<sup>1</sup>

Foreign (international) election observers first appeared in 1857. At that time, diplomats of France, Great Britain, Russia, Prussia, Austria-Hungary, and Turkey observed the plebiscite held in the disputed territory of Moldavia and Walachia.

This is when the institution of international observers was established. Until the mid-20th century, their activity was periodic; international observers did not become a permanent institution until after the end of World War II.

## **Institutionalization of International Organizations of International Observation**

After the end of World War II and the formation of the U.N., international observers became a permanent institution. At the end of the 1940s, U.N. experts kept tabs on how well the elections were

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<sup>1</sup> See: *Declaration of Principles for International Election Observation* of 27 October, 2005, OSCE Office of Democratic Institutions and Human Rights, available at [<http://www.osce.org/odihr/elections/104325>].

run in Western Germany and Korea. This practice became particularly widespread during the collapse of the colonial empires (1950s-1960s) and after the end of the Cold War (1990s).<sup>2</sup>

International observers were enforced institutionally in 1992; at that time, a special structure was created in the U.N. called upon to appoint them for observing elections—the Electoral Assistance Group soon transformed into the Electoral Assistance Division of the Department for Political Affairs. The Group's tasks included technical support of the activity of Deputy Secretary General for Political Affairs appointed as U.N. Coordinator for Electoral Assistance.<sup>3</sup>

Today, the main task of the Division is to examine and evaluate requests, which include the following:

- rendering electoral assistance;
- establishing and observing U.N. standards with respect to holding elections;
- carrying out missions for assessing needs;
- rendering assistance to different organizations (including organizations of the U.N. system) in planning events relating to elections;
- developing operating strategies for electoral components of international peacekeeping operations;
- assisting the organization of international election observation;
- ensuring succession in U.N. activity in the electoral sphere.

In so doing, the activity of the Electoral Assistance Division was directly related to rendering help in holding election campaigns and carried out on the basis of requests addressed to the U.N. from different states of the world. In so doing, the Electoral Assistance Division is endowed a leading role in planning, selecting mission staff, and carrying out observation. Today, the countries of the world are making active use of the possibility to obtain electoral assistance from the U.N.

In addition to the above-mentioned U.N. Division, election observation is also carried out by a multitude of different international organizations. As participants in international conventions and declarations, they support and promote the principles of free, fair, and genuine elections. The matter concerns such organizations as the European Union (EU), Organization for Security and Cooperation in Europe (OSCE), Organization of American States (OAS), Organization of African Unity (OAU), the OSCE Parliamentary Assembly (OSCE PA), the Secretariat of the Shanghai Cooperation Organization (SCO), the CIS Executive Committee, the Parliamentary Assembly of the Council of Europe (PACE), the National Democratic Institute (NDI), the International Republican Institute (IRI), the International Foundation for Electoral Systems (IFES), and others.

The activity of numerous nongovernmental organizations is also related to supporting democracy and protecting human rights.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has the most experience in international observation. What is more, this is one of the leading world institutions in human rights.

The ODIHR has a mandate for rendering assistance to the OSCE Member nations, which is aimed at ensuring “full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote the principles of democracy and . . . to build, strengthen and protect democratic institutions, as well as to promote tolerance throughout society” (Helsinki Document, 1992).

<sup>2</sup> See: [Zakon.kz: Information portal/Foreign Election Observers. Collection of Facts](http://www.zakon.kz/96573-inostranye-nabljudateli-na-vyborakh.html), available in Russian at [<http://www.zakon.kz/96573-inostranye-nabljudateli-na-vyborakh.html>], 2 November, 2007.

<sup>3</sup> See: *Mezhdunarodnye izbiratelnye standarty*, Collection of Documents, Ed-in-Chief, PhD Law A.A. Veshnyakov; Sc. Ed. D.Sc. Law V.I. Lysenko, Ves mir Publishers, Moscow, 2004, 1,152 pp.

One of the areas of the ODIHR's activity is observing the OSCE's adherence to its obligations in the election sphere and rendering assistance aimed at improving the electoral processes. Quite often it is carried out jointly with the OSCE Parliamentary Assembly and other associations.

This activity is supplemented by measures carried out on the results of election observation; they are aimed at assisting the implementation of recommendations contained in the reports of the ODIHR missions. Also, election legislation is analyzed, corresponding reference guides and recommendations are published, and election observers are trained.

The office has drawn up and is introducing a comprehensive election observation method based on a long-term approach that implies an assessment of all the main components of the election process.

In 2012, the ODIHR engaged in election observation efforts in 55 of the 57 OSCE Member nations. The only OSCE Member nations still not encompassed by these efforts to date are the Holy See and Mongolia, which joined the Organization at the end of 2012.<sup>4</sup>

On the one hand, the collapse of the Soviet Union and formation of the CIS opened up new opportunities for the former Union republics, on the other, the newly independent states were faced with the task of revising the existing legislation and bringing it into harmony with the generally accepted principles and regulations of international law.

In order to reach the set goals and tasks for implementing and adhering to world election standards in the CIS expanse, the CIS Mission of Observers began carrying out international election observation. This Mission consists of representatives of the CIS Secretariat and CIS Interparliamentary Assembly, as well as parliamentary deputies of the CIS countries and other state agencies.

The CIS Interparliamentary Assembly is mainly engaged in international election observation issues within the framework of this Mission. Members of the parliaments of the Commonwealth Member nations follow the election processes in the CIS in the capacity of international observers. They also invite Member nations of other international organizations. Observers and experts analyze the election legislation, draw conclusions, point out achievements and shortcomings, etc.

One of the key subdivisions of the Interparliamentary Assembly—the International Institute for Monitoring Democratic and Parliamentary Process and Suffrage Protection in the CIS (IIMDP) of the Interparliamentary Assembly of Member Nations of the CIS (IIMDP IPA)—coordinates the election observation efforts. The decision on its establishment was made at a visiting session of the IPA CIS Council held on 10 February, 2006 in Kiev (Ukraine).

The institution's main tasks are:

- exchanging information on adherence to human rights;
- summarizing experience on developing democracy and parliamentarianism;
- carrying out election monitoring in the Commonwealth states and beyond;
- training international observers.

Between 1994 and 2013, the IPA CIS organized around 90 visits of election observer groups to the Commonwealth Member nations. In addition, nine seminars and conferences were held for international observers.<sup>5</sup>

National laws, generally accepted world principles, and international law regulations in organizing the election process and international obligations of the state in which elections are being held are the legal basis of the activity of international observers.

<sup>4</sup> See: Annual Report for 2012. OSCE Office for Democratic Institutions and Human Rights (ODIHR).

<sup>5</sup> See: The International Institute for Monitoring Democratic and Parliamentary Process and Suffrage Protection in the CIS, IPA CIS, available at [[http://iacis.ru/international\\_institute/](http://iacis.ru/international_institute/)].

One of the cornerstones of the contemporary institution of international observers is the universal Declaration of Human Rights adopted in 1948. For example, Art 21.3 of this document reads: “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”<sup>6</sup> According to the U.N., “election observation is one of the most transparent and methodical ways to promote and encourage democracy and human rights.”<sup>7</sup>

In 1990, the OSCE adopted the Copenhagen Declaration, which indicates that any elections must correspond to seven main criteria; they must be “universal, equal, fair, secret, free, transparent, and accountable.”<sup>8</sup> It should be noted that the Copenhagen Declaration was recognized as one of the basic international documents setting forth the principles for holding democratic elections in the OSCE Member nations and essentially throughout the whole world. The declaration contains not only a set of tools aimed at holding genuinely democratic elections, but also envisages a wide range of obligations for the OSCE Member nations in the context of respect for human rights.

The OSCE obligations also emphasize the importance of elections in ensuring citizen rights to participate in the administration of their country. The provisions on the role of periodic free elections to support political rights are also included in the International Pact on Civil and Political Rights and in the European Convention on the Protection of Human Rights.

The evolution of the contemporary world has led to the need to develop more detailed methodology in the election observation process. In April 1999, the *ODIHR Election Observation Handbook* was drawn up and approved. It describes the general election observation methods and offers a practical guideline for holding them.

This document also envisages enlarging the ODIHR’s sphere of activity and reorienting it toward achieving long-term election observation. The *ODIHR Election Observation Handbook* also emphasizes that the presence of observers enhances the integrity of the election process: from involving the media and registration of voters and candidates during the election campaign to the final stage of the elections, vote count, tabulation of the results, and the elected candidate taking up his post.<sup>9</sup>

The Handbook consists of 14 chapters and examines a wide range of issues relating to the activity of international observers, including:

- observer code of conduct;
- appointment of a Special OSCE Coordinator;
- activity of the Head of the Election Observer Mission from the ODIHR;
- long-term and short-term observation procedures;
- preparation and publication of preliminary and final reports with recommendations.

Another document that regulates the procedure of international observer activity is the Recommendations for International Election Observers of the CIS. This document was adopted on 7 December, 2002 by the Interparliamentary Assembly of Member Nations of the CIS; it specifies the status

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<sup>6</sup> *The Universal Declaration of Human Rights*, Adopted by Resolution 217 A (III) of the U.N. General Assembly of 10 December, 1948.

<sup>7</sup> *Election Observation*, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), Warsaw, 2005, available at [<https://www.osce.org/odihr/elections/17165>].

<sup>8</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE of 1990.

<sup>9</sup> See: *ODIHR Election Observation Handbook*, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), Fifth Edition, Warsaw, 2005.

of international observers, establishes their powers, and defines the guarantees corresponding to the performance of their functional obligations.

On the whole, as the developers note, these recommendations are called on to help the CIS international observers to professionally assess how fully and precisely the national election legislation is being adhered to and whether the practice of scheduling, preparing for, and holding elections corresponds to the Constitution and international obligations of the state, as well as to the generally accepted principles and regulations of international law on holding democratic elections.<sup>10</sup>

So we have a whole set of methods drawn up by prestigious organizations (including the U.N., OSCE, Council of Europe, European Parliament, CIS, and others) for carrying out high-quality international election observation and protecting electoral rights and basic citizen freedoms ratified by the country holding them.

In addition to analyzing these documents, international observers should acquaint themselves with the provisions of the constitution of the state in which elections are being held that regulate elections or organize the election process, with the laws that establish the procedure for holding them, and other legislative acts.

As a rule, material and financial support of the activity of an international observer (travel expenses, accommodation expenses, communication services, and so on) is financed by the side sending him (or at his own expense).

## International Obligations of the Kyrgyz Republic in the Election System

From the time the Kyrgyz Republic (KR) acquired its independence and sovereignty, the country's authorities have been steering a course toward democratization of social life; in connection with this, the need has arisen for reforming many of its spheres.

One of the indices of democratic development is the adoption and implementation of international principles and regulations declared by such organizations as the U.N., the Council of Europe, and so on.

A necessary condition for maintaining and developing the democratic processes in the country is its participation in international and interregional organizations. In so doing, it assumes obligations for adhering to international regulations, which should be reflected and enforced in its legislation.

For example, since it declared its sovereignty, the Kyrgyz Republic has assumed international obligations relating to reorganization of the election system. This means the need for drawing up national election legislation and carrying out election campaigns that correspond to the generally accepted principles and regulations of international law.

After joining the OSCE in 1992, Kyrgyzstan pledged to adhere to the generally accepted international law principles and regulations in human rights and election law and bring them into harmony with its own legislation.

Election standards were set forth in numerous agreements that the republic signed and ratified; one of them is the International Treaty of 29 June, 1990 titled "Document of the Copenhagen Meeting

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<sup>10</sup> See: *Recommendations of the Parliamentary Assembly of CIS Member Nations for International Election Observers of the Commonwealth of Independent States*, St. Petersburg, 2002.



of the Conference on the Human Dimension of the CSCE” (hereafter referred to as the Copenhagen Document).

This document says that the participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. It also sets forth that in the OSCE participating States, elections must be free, fair, and transparent, be based on the principles of the rule of law in keeping with universal and equal suffrage by secret ballot that guarantees the right to elect and be elected.<sup>11</sup>

Throughout the CIS, election regulations and principles are also based on the Convention on Standards of Democratic Elections, Electoral Rights and Freedoms in the CIS Member Nations. It should be noted that Kyrgyzstan is one of the first CIS member nations to ratify the Convention on Standards of Democratic Elections, Electoral Rights and Freedoms.<sup>12</sup>

After signing and ratifying this mandatory Convention, Kyrgyzstan assumed obligations for bringing the election legislation into harmony with the standards contained in it, as well as for improving the election legislation, election systems, and introducing modern voting technology.

Thus the main election standards adopted in 1990 in Copenhagen at the Second Meeting of the Conference on Human Dimension and in 2002 in Chisinau at the meeting of the Council of CIS Heads of State (who signed the Convention on Standards of Democratic Elections, Electoral Rights and Freedoms in the CIS Member Nations) emphasize the central role of elections in ensuring citizen rights to participation in the administration of their country.

On the whole, as an analysis shows, the obligations to the OSCE and the CIS Convention can be expressed in the seven main words associated with democratic traditions: universal, equal, fair, secret, free, open, and responsible.<sup>13</sup>

- The principle of **universality** implies ensuring access of voters and candidates to efficient, impartial, and discrimination-free registration. Citizens who have reached the corresponding age and meet the registration conditions should have the right to participate in elections.
- The principle of **equality**, which is called upon to ensure equal representation, requires that all voices have equal weight. In other words, voters should have equal and efficient access to the polling stations.
- The principle of **fairness** is called upon to create equal conditions for all participants in the election process, but should at least ensure voters’ access to information on all the candidates and their programs.
- The principle of **secrecy** can only work if the voter is able to fill out his ballot paper and place it in the ballot box in privacy.
- The principle of **freedom** should ensure citizens the opportunity to make their choice without intimidation, as well as the certainty that their right to the freedom of self-expression, gathering and association will be adhered to throughout the entire voting process.

<sup>11</sup> See: *Existing Commitments for Democratic Elections in OSCE Participating States*, Warsaw, 2003, p. 7.

<sup>12</sup> See: Law of the Kyrgyz Republic of 1 August, 2003, No. 13 *On Ratification of the Convention on Standards of Democratic Elections, Electoral Rights and Freedoms in the Member Nations of the Commonwealth of Independent States* signed on 7 October, 2002 in Chisinau.

<sup>13</sup> For more details, see: *Existing Commitments for Democratic Elections in OSCE Participating States*, Warsaw, 2003; Law of the Kyrgyz Republic of 1 August, 2003, No. 13, *On Ratification of the Convention on Standards of Democratic Elections, Electoral Rights and Freedoms in the Member Nations of the Commonwealth of Independent States* signed on 7 October, 2002 in Chisinau.

- The principle of **openness** presumes holding elections in correspondence with laws based on the principles of universality and openness. The vote count should also be open and subject to confirmation, beginning at the polling station, continuing through the middle links of the election commission, and ending with election commissions at the national level; this limits the possibility of falsification of the election results.
- The principle of **responsibility** requires that all those elected, and who assume their assigned posts, recognize their responsibility to the voters.

In 1997, reformation of the voting system began in Kyrgyzstan aimed at bringing the voting procedures into harmony with international requirements and standards. Two consecutive stages can be singled out in this process that encompass 1997-2000 and 2001-2005, respectively. During this time, two State Programs for Improving the Kyrgyz Republic Election System were adopted and elaborated.

The Decree of Kyrgyz President of 8 July, 1997 On the State Program for Improving the Election System of the Kyrgyz Republic (hereafter referred to as 1997-2000 State Program) served as the legal basis for the 1997-2000 State Program.

The main tasks of this program include:

- further improvement of the Kyrgyz Republic election system, use of new approaches to organizing and holding elections and referendums, and elimination of existing shortcomings;
- use by entities of the election process of political election campaign methods carried out within a democratic framework;
- public control over the preparations for and holding of elections, timely determination of election results, tabulation of election results, and their publication.<sup>14</sup>

In order to specify and systemize electoral rights and form a democratic regulatory framework established on world and domestic experience, a draft of the KR Code of Laws on Elections and Referendums, as well as the Main Guarantees of Adult Suffrage, was drawn up within the 1997-2000 program.

A significant step on the way to ensuring adult suffrage was the adoption on 29 May, 1999 of the Code of the Kyrgyz Republic on Elections in the Kyrgyz Republic (hereafter referred to as Election Code). It enforced the principles of mandatory and regular elections, the openness and transparency of all voting operations and, primarily, the transparency of commission work at all levels, which would ensure efficient use of the mechanism of responsibility and control over elections and create a safety screen against abuse by their individual participants.<sup>15</sup>

For this reason, the Law on Presidential Elections of 31 August, 1991 and the Law on Elections of Deputies to the Zhogorku Kenesh of 12 January, 1994 that were in effect until the Elections Code was adopted ceased to be valid.

The results of the 2000 parliamentary and presidential elections provided further food for thought on the current legislation and taking measures to specify and stipulate certain provisions of the Election Code. This was reflected both in the final documents of the Central Election Commission (hereafter referred to as the CEC) and in the final report of the ODIHR. The recommendations of the OSCE/ODIHR and other international organizations were taken into account when drawing up the new State Program for Improving the Kyrgyz Republic Election System for 2001-2005 (hereafter referred to as the 2001-2005 State Program).

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<sup>14</sup> See: *State Program for Improving the Election System of the Kyrgyz Republic for 1997-2000*, Approved by Decree of the Kyrgyz Republic of 8 July, 1997 DP No. 207.

<sup>15</sup> See: *Code of the Kyrgyz Republic on Elections in the Kyrgyz Republic* of 29 May, 1999, No. 39.



This program determined the most important structural and procedural elements of the voting process and was established keeping in mind the basic vectors for organizing and holding elections and referendums given below:

- improvement and further development of the election legislation and the regulatory and legal framework of the Kyrgyz Republic election system;
- legal enlightenment of different categories of participants in the voting process;
- creation of a legal, informative-analytical, and educational infrastructure of the voting process in the Kyrgyz Republic;
- further development of the potential of the Shailoo State Automation System.<sup>16</sup>

The years 2005 and 2010 saw an overthrow of the government in Kyrgyzstan. The media named these events the Tulip and National revolutions, which also affected changes in the regulatory and legal framework of the election legislation.

The new version of the Election Code adopted in 2007 in correspondence with the KR Law No. 158 of 23 October, 2007 hardly differed from the old one. As for the 2010 events that accompanied adoption of the new Constitution and transfer to the parliamentary form of rule, they entailed changes in legislation, including election legislation.

For example, in 2011, new laws were adopted that regulated the procedure for organizing and holding elections of the president and deputies of the Zhogorku Kenesh of the Kyrgyz Republic, as well as the activity of agencies ensuring the preparations for and holding of elections and referendums in the republic.

In June 2011, the Kyrgyz parliament adopted new laws: the KR Constitutional Law on Elections of the President of the Kyrgyz Republic and Deputies of the Zhogorku Kenesh of the Kyrgyz Republic (of 30 June) and Law on Election Commissions for Holding Elections and Referendums of the Kyrgyz Republic (of 24 June).

When analyzing the new legislation for its correspondence to international elections standards, observers from the CIS Mission noted that “the basic principles for holding elections of the President of the Kyrgyz Republic are enforced in the Constitutional Law on Elections (Art 2) and include principles of Universal, equal, and direct suffrage, as well as free, voluntary, and secret ballot.”<sup>17</sup>

For example, the principle of universal suffrage is enforced in Art 3 of the Constitutional Law on Elections. The indicated article contains a provision according to which active suffrage at presidential elections belongs to KR citizens who have reached the age of 18. In turn, passive suffrage belong to KR citizens who are not national of a foreign state, are no younger than 35 and no older than 70, have a command of the state language, and have been living in the republic for a total of no less than 15 years (Art 50 of the Constitutional Law on Elections).<sup>18</sup>

Art 4 of the Constitutional Law enforces the principle of equal suffrage. The provisions of the same law are aimed at ensuring its realization. These provisions enforce additional forms of voting, the application of which guarantees certain categories of voters equal opportunities to participate in elections of the KR president. The Constitutional Law on Elections envisages early voting (Art 32), as well as voting outside the voting premises (Art 33).<sup>19</sup>

<sup>16</sup> See: *State Program for Improving the Election System of the Kyrgyz Republic for 2001-2005*, Appendix 1 of Decree No. 177 of the Kyrgyz Republic President of 30 May, 2001.

<sup>17</sup> *Conclusion on the Correspondence of Legislation Regulating the Elections of the President of the Kyrgyz Republic to International Standards of Suffrage*, IPA CIS, IIMDP IPA CIS, St. Petersburg, October 2011.

<sup>18</sup> See: *Ibidem*.

<sup>19</sup> See: *Ibidem*.

A voter who is unable to come to the polling station he is registered at on voting day has the right to vote early on the basis of a written statement and documents envisaged by the Constitutional Law on Elections on his pending absence in the KR on voting day.

Moreover, the district election commission organizes voting outside the voting premises. This type of voting is used for citizens who are on the voter list but due to their health or disability are unable to come to the polling station, or those who are in hospital or held in detention as suspects or accused on voting day.

The principle of secret ballot also belongs to the basic principles of the system of international standards of democratic elections. It was enforced in the Constitutional Law on Elections (Art 6), which says that voting at elections in the Kyrgyz Republic is secret and excludes the possibility of any control over the expression of citizen will. Adhering to the secret ballot procedure is guaranteed by the provisions of the Constitutional Law on Elections that require polling stations to have individual cubicles.

Moreover, Art 2.1 of the Constitutional Law on Elections enforces such an important principle as the freedom of elections. Individual provisions of the law prohibit carrying out campaign agitation accompanied by a propaganda war, national, ethnic, racial, religious, or interregional hostility, gender or other social supremacy, appeals to seize power, violent change of the constitutional system, violation of the state's integrity, and use of photos or videos portraying the state and political figures of other states and other forms of abuse of media freedom prohibited by Kyrgyz laws (Art 28.2).

It is easy to see that Kyrgyz legislation reflects the basic voting standards declared in international documents.

## **Regulatory and Legal Framework and the Participation of International Observers at the Kyrgyz Presidential Elections in 2009 and 2011**

Before 1999, the election process in Kyrgyzstan was regulated by the following regulatory and legal documents:

- the Law of the Republic of Kyrgyzstan on Elections of the President of the Republic of Kyrgyzstan of 31 August, 1991, No. 566-XII (in the rendition of the KR Law of 29 September and 5 October, 1995, No. 22-I);
- the KR Law on Elections of Deputies to the Zhogorku Kenesh of the Kyrgyz Republic of 12 January, 1994, No. 1380-XII.

These documents enforced the general principles for preparing for and holding elections (including the principle of transparency), which found their reflection in the following formulations: “Elections are free and carried out by means of universal, direct, and equal suffrage by secret ballot” and “The deputies of the Zhogorku Kenesh ... are elected ... on the basis of free, universal, and equal suffrage by secret ballot during direct elections.”<sup>20</sup> However, there were no regulations in the legislation that make it possible for both local and international observers to participate in elections.

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<sup>20</sup> *Law of the Republic of Kyrgyzstan on Elections of the President of the Republic of Kyrgyzstan* of 31 August, 1991, No. 566-XII (in the rendition of the KR Law of 29 September and 5 October, 1995, No. 22-I); *Law of the Kyrgyz Republic on Elections of Deputies to the Zhogorku Kenesh of the Kyrgyz Republic* of 12 January, 1994, No. 1380-XII.

The Election Code adopted in 1999 introduced the concepts of “observer” and “international observer.” The procedures for accrediting and sending invitations to international observers, as well as their rights, obligations, and term of office are regulated by KR legislation.<sup>21</sup>

As noted above, when new Constitutional laws regulating presidential and parliamentary elections were adopted in June 2011, the legal status of several regulatory documents rose. At the same time some restrictions on the activity of international observers were removed.<sup>22</sup>

So whereas according to the Election Code of 1999, an international observer had the right to “publicly express his opinion about KR election legislation, preparations for and holding of elections, as well as hold press conferences and address media representatives only after the voting is over,” in correspondence with Art 10.3 of the new Constitutional Law on Elections of the President of the Kyrgyz Republic and Deputies of the Zhogorku Kenesh of the Kyrgyz Republic of 30 June, 2011, these restrictions were removed.

So, since 1999, international observers have been able to follow the organization and holding of parliamentary and presidential elections in Kyrgyzstan. As Ambassador of the OSCE Center in Bishkek, Sergey Kapinos, noted, “the team of OSCE observers has been engaged in monitoring the elections in Kyrgyzstan since 2000; all of that time reports have been drawn up with recommendations on how to improve the election legislation.”<sup>23</sup>

Between 2000 and 2011, both an increase in the number of international observers and the geographical scope of their participation in elections have been noted. On the day of the presidential election held on 29 October, 2000, there were around 7,384 observers from candidates, and 6,063 from nongovernmental and public associations, **268 international observers**, 226 from parties and 10 media representatives.

At a similar election in 2005, the voting was monitored by **947 international** and more than 15,000 local observers. There was also a trend toward an increase in the number of observers at subsequent presidential (2009 and 2011) and parliamentary elections in Kyrgyzstan.

Today, the activity of international observers in Kyrgyzstan is regulated by Art 10 of the KR Constitutional Law on Elections of the President of the Kyrgyz Republic and Deputies of the Zhogorku Kenesh of the Kyrgyz Republic of 2 July, 2011 and Art 8 of the KR Law on Elections of Deputies to Local Keneshes of 14 July, 2011.

For example, Art 1 of the KR Constitutional Law on Elections of the President of the Kyrgyz Republic and Deputies of the Zhogorku Kenesh of the Kyrgyz Republic gives the following definition of **international observer**: “An international observer is a person representing a foreign or international organization that acquires the right to carry out observation of the preparations for and holding of elections in the Kyrgyz Republic in correspondence with the established legislative procedure.”

In correspondence with the indicated articles of the laws, international observers are accredited by the CEC on the basis of an invitations sent by the President, Zhogorku Kenesh, Government, and CEC itself after official publication of the decision on scheduling of the elections. Proposals on sending invitations can be submitted by international and national noncommercial organizations specializing in questions of election legislation and elections, as well as in the sphere of human rights protection.

<sup>21</sup> See: Art 18 of the *Code of the Kyrgyz Republic on Elections in the Kyrgyz Republic* of 29 May, 1999, No. 39.

<sup>22</sup> See: Art 10 of the above-mentioned law.

<sup>23</sup> “The OSCE: Kyrgyzstan Needs Codes on Elections and Media Ethics,” available in Russian at [<http://www.vb.kg/253380>], 2 December, 2013.

The election legislation of Kyrgyzstan says regarding terms of office that “the term of office of an international observer begins on the day he is accredited by the CEC and ends on the day the election results are officially published.”<sup>24</sup>

The above-mentioned laws also regulate the rights and obligations of international observers. For example, when organizing and holding elections, observers from international organizations and foreign states have the right to do the following:

- (1) publicly express their opinion on the preparations for and holding of elections;
- (2) hold press conferences and address media representatives;
- (3) hold a photo session and also make video and audio recordings without violating the electorate’s secret ballot;
- (4) wear non-campaigning badges indicating status, last name, first name, and name of organization they represent;
- (5) observe the formation of elections commissions of all levels;
- (6) observe the compilation of voter lists;
- (7) observe voter accounting;
- (8) observe information support of elections.

International observers also have the right to move around freely and visit any polling stations and elections commissions.

At the same time, they do not have the right to use their status for engaging in activity unrelated to observing the preparations for and holding of elections. If an international observer violates the Constitutional Law or KR legislation, the CEC has the authority to recall his accreditation.

## **Comparative Analysis of the Participation of International Observers at the Presidential Elections of 2009 and 2011**

This article conducts an analysis of the participation of international observers at the presidential elections of 2009 and 2011. In so doing, the changes that occurred in the election legislation after the 2010 events were taken into account.

For example, in 2009, the elections were held on the basis of the Election Code, while in 2011 they were held on the basis of the new Constitution and new Constitutional Laws on Kyrgyz presidential and parliamentary elections.

The early presidential elections of 2009, at which the main candidate was current KR president Kurmanbek Bakiev, were held in a more or less stable sociopolitical situation. In 2011, it significantly changed. This was promoted by a whole series of factors. The matter primarily has to do with the change in power in April 2010, formation of a Provisional Government and new CEC, transfer

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<sup>24</sup> Art 10 of the *Constitutional Law of the Kyrgyz Republic on Elections of the President of the Kyrgyz Republic and Deputies of the Zhogorku Kenesh of the Kyrgyz Republic* of 2 July, 2011 and Art 8 of the *Law of the Kyrgyz Republic on Elections of Deputies to Local Keneshes* of 14 July, 2011.

from a four-level (precinct, district, regional, and central) to a three-level (precinct, territorial, and central) structure of elections commissions, as well as the ethnic clashes that occurred in June 2010 in the Osh and Jalal-Abad regions of Kyrgyzstan.

A study of the statistics of the presidential elections of 2009 and 2011 in the KR shows the extensive participation in them of observers from foreign countries and international organizations. For example, the CEC accredited 516 observers from 48 countries and representatives of 29 international organizations, including the OSCE/ODIHR, OSCE Parliamentary Assembly, SCO Secretariat, CIS Executive Committee, CIS Mission, Parliamentary Assembly of the Council of Europe, National Democratic Institute, International Republican Institute, International Foundation of Electoral Systems, Russian Public Institute of Electoral Law, European Network of Election Monitoring Organizations, OSCE Center, CEC of the CIS Countries, and embassies of foreign countries (accredited in the KR).<sup>25</sup>

At the end of the 2009 presidential election, the international observers made official statements on their results and held press conferences. On one of them, head of the CIS Mission, CIS Executive Secretary S. Lebedev said that the presidential election in Kyrgyzstan was open and free, and this can be considered an important factor of further democratization of society.

According to the Mission, the presidential candidates were provided with equal conditions for campaigning, which is an important element ensuring the democratic nature of the elections. In so doing, the media gave balanced and objective coverage of their activity.

In its final statement, the CIS Observer Mission noted that the presidential elections held on 23 July, 2009 in KR were open and free and met the regulations of the country's election legislation. The Mission also stated that they were held in keeping with the constitutional rights and freedoms of citizens and were an important factor in further democratization of the country's social life.

Representatives of the SCO observer mission also assessed the elections. Its official statement noted that conditions were created everywhere for free expression of the will of citizens, while the elections themselves were honest and transparent.

The assessment of the elections by the OSCE ODIHR Mission differed slightly from the one made by the CIS Observer Mission. The OSCE ODIHR Mission admitted that several of the elements of the election process were positive, meaning the active participation of civil society in the election, the transparency and accountability of the funding campaign, offering candidates free air time, and so on.

However, the OSCE ODIHR observers noted that during the campaign several violations were allowed consisting, for example, of significant prejudice of the state media supporting the current president (while coverage of his rivals in the electronic media was incomplete and biased).

The OSCE ODIHR Mission also stated that despite several insignificant efforts to clarify the voter lists, their quality and authenticity continued to be a reason for concern. Moreover, the Mission negatively assessed the amendment to the KR Election Code envisaging elimination of marking voters' fingers, which was an important protection measure against repeat voting.

The Mission recorded ballot-box stuffing, domination of the ruling party over the election administration, and instances of use of the administrative resource and repeat voting.

One of the key elements in the statement of the OSCE ODIHR Mission was confirming the need to revise the KR Election Code and bring it into harmony with OSCE obligations.

The final report of the OSCE ODIHR Mission noted that the presidential election held on 23 July, 2009 in Kyrgyzstan did not comply with the key obligations within the framework of the OSCE for holding democratic elections, particularly with respect to the obligation to guarantee equal suffrage.<sup>26</sup>

<sup>25</sup> See: "Press Center," available at [www.shailoo.gov.kg].

<sup>26</sup> *The Kyrgyz Republic. Presidential Elections of 23 July, 2009*, Final Report of the OSCE ODIHR Mission on Election Observation.

At the 2011 presidential election, the KR CEC accredited 792 observers from 47 international organizations representing 57 countries of the world and more than 100 representatives of foreign media for carrying out monitoring of the election process.<sup>27</sup>

This election campaign was to have shown the extent to which the principles of international law and democratic values were adhered to and how successful peaceful transfer of power would be. Moreover, the international observers were to make an assessment of the KR's new election legislation.

Summing up the election results, international observers noted that including the representatives of political parties and local self-government bodies in the election commissions, as well as the presence of a large number of observers at the polling stations significantly promoted the transparency and openness of the voting process.

According to the CIS Mission of Observers, Kyrgyzstan passed the test for adhering to international election standards. An analysis of the country's election legislation carried out by the Mission's experts showed that it meets the provisions of the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in CIS Member Nations signed by Kyrgyzstan.

They also noted that the basic principles for holding elections have been enforced in the Constitutional Law and include universal, equal, and direct suffrage, as well as free, voluntary, and secret ballot.

The CIS Observer Mission admitted that in the last two years, KR election legislation has been supplemented with provisions aimed at further improvement and democratization of the election system.<sup>28</sup>

The assessments of the OSCE ODIHR mission were more cautious. Its final report noted that the elections were held peacefully, but the shortcomings identified underscored the need to raise the honesty of the election process in order to strengthen democratic practice in keeping with international obligations.

The elections were held within the framework of the new legislative framework, during the elaboration of which many recommendations of the former OSCE ODIHR Mission of Election Observers were taken into account. Nevertheless, as ODIHR observers note, "...the legislative framework still does not correspond to some of the obligations to the OSCE."<sup>29</sup>

Despite the fact that the statements of international observers made on the results of election monitoring are of a recommendatory nature, they are nevertheless extremely important for improving the country's election system.

The compilers of the new legislation took into consideration the recommendation concerning improvement of the voters lists (additional voters lists were cancelled and voting is now carried out only according to the main lists). Changes such as voting outside the polling station one day before the election and the possibility of voting according to voting address (that is, at an address that is not the voter's permanent residence, where he expresses the desire to vote no later than 10 days before the election), which ensures the principle of equality.

The OSCE ODIHR Mission also mentioned several additional changes that were taken into account in the new KR election legislation. For example, the decision to create a united voter registra-

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<sup>27</sup> See: "Information on Accreditation of International Observers," available in Russian at [[http://shailoo.gov.kg/index.php?module=content&page=Informaciya\\_ob\\_akkreditacii\\_mejdunarodnyh\\_nablyudateley\\_Informaciya\\_ob\\_akkreditacii\\_mejdunarodnyh\\_nablyudateley&pagelang=ru](http://shailoo.gov.kg/index.php?module=content&page=Informaciya_ob_akkreditacii_mejdunarodnyh_nablyudateley_Informaciya_ob_akkreditacii_mejdunarodnyh_nablyudateley&pagelang=ru)].

<sup>28</sup> See: *Statement of the CIS Observer Mission on the results of observing the preparations for and holding of the Kyrgyz Republic presidential election*, available in Russian at [<http://www.cis.minsk.by/news.php?id=402>].

<sup>29</sup> *Final Report of the Election Observation Mission of the OSCE ODIHR, Presidential Election of 30 October, 2011*, Warsaw, 10 January, 2012.



tion system under the aegis of the CEC was positively assessed. By way of positive changes, the Mission pointed out the adoption of amendments to the legislation cancelling the possibility of citizens being entered on the voters' lists on voting day. Moreover, voters have the right to vote at their actual address of residence, and not at their permanent registration address. According to experts, these changes made it possible to ensure that more migrant voters could participate in the voting than at previous elections.

The OSCE ODIHR Mission thought the publication by the CEC of the preliminary election results on its website (the night after the election) as they came in from the polling stations to be a very positive step.

The Mission gave several priority recommendations in its final assessments aimed at improving the election process in the KR within the framework of realizing international voting standards.

- The CEC should draw up comprehensive regulations on the voter registration system;
- The CEC should carry out an analysis of and clarify the last renewal of voter lists;
- The CEC should raise the quality of training of members of the voting commissions;
- The CEC should make changes to the voting legislation relating to ensuring equal coverage of candidates in news and information programs (as well as independent editorial coverage of campaign undertakings);
- The CEC should formalize the procedures for making appeals at all levels of election commissions and draw up standard complaint forms;
- The CEC should examine the possibility of removing restrictions of candidates' rights (remove the maximum age limit, restriction on the requirement of residence in the country for the last 15 years, and not permitting people with criminal records depending on the gravity of the crime committed) in order to achieve greater correspondence to obligations within the OSCE.
- Election legislation should envisage unhindered observation of the entire election process in keeping with the obligations within the OSCE, while the rights of observers should not be restricted by CES decisions or administrative barriers. In particular, the CEC's decision on not accrediting international observers until 30 days before the elections should be cancelled and carried out on a declarative basis.

The CIS Observer Mission also gave some recommendations regarding further improvement of the KR election legislation:

- Clearer articulation of the procedure for forming territorial and precinct commissions and the number of their members;
- Determination of the maximum number of voters in a precinct and increasing the number of members of precinct voting commissions;
- Clarification of the personal identification documents a citizen must present to receive a ballot paper due to the imprecise formulation of terms in the legislation;
- Re-examination of the provision of the Constitutional Law regulating voting outside the voting premises (allowing such voting on election day);
- Improvement of the procedure for forming voter lists in order to ensure they are complete and authentic. In no event permit instances of unjustified exclusion of voters from lists.<sup>30</sup>

<sup>30</sup> See: *Statement of the CIS Observer Mission on the results of observation of the preparations for and holding of Kyrgyz Republic presidential elections.*

On the whole, the OSCE ODIHR noted that the KR regulatory and legal framework does not fully correspond to all the obligations to the OSCE in terms of freedom of expression, transparency of the funding campaign, restriction of the rights of candidates, and the large number of reasons for annulling their registration, including after the elections.<sup>31</sup>

The statements of international observers show both the positive and negative results of reforming the KR election system, which must undergo a certain amount of further improvement. The recommendations offered on the results of election observation are actively promoting the formation of new regulations and principles of international law in the state's national legislation.

## *Conclusion*

Reform of the election system that began in 1997 and prompted the adoption of two state programs has laid the foundation for forming a legal, information-analytical, and educational infrastructure of the voting process in KR. On the whole, it has promoted an improvement of the election system, as well as the use of new approaches to organizing and holding elections and referendums in Kyrgyzstan.

Election legislation drawn up in compliance with international standards, the recommendations of international observer missions, and the adopted obligations has improved each time.

When the Election Code was adopted in 1999, such concepts as “observer” and “international observer” were introduced into the voting process. The Election Code regulates the procedures for accreditation and sending invitations, as well as questions relating to activity, terms in office, status, rights, and obligations of international observers.

In addition to this, in June 2011, new Constitutional laws regulating presidential and parliamentary elections came into effect. They raised the status of regulatory and legal documents and removed certain restrictions on the activity of international observers.

Thus, the process of state-building and Kyrgyzstan's integration into the world community has been accompanied by laying the foundation of electoral law. In so doing, the general democratic voting standards declared by international legal documents have been comprehensively taken into account and obligations adopted for their realization.

When examining the dynamics of change in the participation of international observers at the elections in the republic between 2000 and 2011, an increase in their numbers and geographical representation can be noted.

When analyzing the statements of international observers on the results of two presidential election campaigns in KR (2009 and 2011), it can be noted that in some cases they are dramatically different. On the whole, the significant assistance rendered by the institution of international observation must be noted, the activity of which is having a great impact on improving the election system in light of implementing international standards and principles.

The member nations of international organizations asked to adhere to one of the fundamental principles of the Copenhagen Agreement that calls for fair treatment and drawing up of observation methodology and methods.

It stands to reason that a unified methodology and method of professional activity of international observers demands comprehensive discussion and adoption by all participants in the election process. The regulations and principles for organizing and carrying out international observation should be identical for all independent organizations engaged in monitoring the election process.

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<sup>31</sup> See: *Final Report of the OSCE ODIHR Election Observation Mission*, Presidential Elections of 30 October, 2011, Warsaw, 10 January, 2012.

In light of the above, we think it necessary to open joint international observer training centers. Their activity should be based on methodological principles that should be the same for all international election observers.

When talking about international observation, it is also important to note that the current differences in approaches and principles for assessing election campaigns can be overcome by regular theoretical discussions.

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