



COMMENCEMENT OF ELECTION & REFERENDUM

OBSERVATION MISSION IN HUNGARY

1. Introduction

On March 16, 2022, an International Observation Mission, organized within the framework of Ordo Iuris Institute and Collegium Intermarium University, was formed to verify the course of the electoral process in Hungary. The duties of election observers are performed by the representatives of academic research institutes, think tanks, social organizations, lawyers and journalists from Poland, Bulgaria, Croatia, Spain and Ukraine¹.

The first observation phase, which included an analysis of the legal framework for various aspects of the electoral process and the situation of the media, has been completed. On 24th of March, arriving in Hungary International Observation Mission begins the second phase, which includes meetings with key representatives of the areas that are the subject of the report - election administration, media, campaign financing and civil society, as well as the conduct of the national referendum. In the coming days, members of our mission will have the opportunity to obtain information directly from representatives of both major political blocks and deputies of the official authorities responsible for the election process. For information on assessing the situation of the media and public debate, our observers will ask, among others, RTL Klub, M1, TV2, 444.hu, Átlátszó and representatives of several other Hungarian media outlets.

2. Declaration of Principles of the International Observation Mission 2022 in Hungarian Parliamentary Elections and Referendum

¹ Due to Russian aggression, Ukrainian members of the observation mission took part only in the preparatory phase of the mission.

Genuine democratic elections are an expression of sovereignty, which belongs to the people of a country, the free expression of whose will provide the basis for the authority and legitimacy of government. The rights of citizens to vote and to be elected at periodic, genuinely democratic elections are internationally recognized human rights².

Observation of elections plays an important role as it provides evidence of whether the electoral process has been regular or not³. The primary duty of election observers (both domestic and international) is to ascertain whether any irregularities occurred before and after election day as well as on election day itself. This is the only way to ensure that the election has been conducted in accordance with domestic legislation and international rules and standards for democratic elections, and has been organized in a democratic and transparent manner⁴.

Fundamental mission of election observers is to safeguard five internationally recognized principles underlying Europe's electoral heritage, characterized by universal, equal, free, secret and direct suffrage. However, the role of the election observers is not only to monitor compliance with those hard core, constitutional principles of electoral law, but also to consider if certain basic and necessary conditions of a democratic state based on rule of law, are met⁵.

According to the Declaration of Principles for International Election Observation as established by the United Nations on 27 October 2005⁶, international election observation must

² Declaration of Principles for International Election Observation, The United Nations Electoral Assistance Division (UNEAD), The National Democratic Institute for International Affairs (NDI), The Carter Center (TCC), endorsed by (i.a.) the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005), European Commission, Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights (OSCE/ODIHR), page 1,

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)036-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)036-e) (access: 24.03.2022).

³ European Commission for Democracy Through Law (Venice Commission), Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report. Adopted by the Venice Commission at its 51st and 52nd session (Venice, 5-6 July and 18-19 October 2002), Chapter 3.2., <https://rm.coe.int/090000168092af01> (access: 24.03.2022), paragraph 86.

⁴ European Commission for Democracy Through Law (Venice Commission), Guidelines on an Internationally Recognized Status of Election Observers, Adopted by the Council for Democratic Elections at its 31st meeting (Venice, 10 December 2009) and by the Venice Commission at its 81st plenary session (Venice, 11-12 December 2009), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)059-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)059-e) (access: 24.03.2022), paragraph 12.

⁵ Code of Good Practice in Electoral Matters. Explanatory Report, paragraph 2.

⁶ Declaration of Principles for International Election Observation...

be conducted with respect for the sovereignty and the laws of the host country, as well as national authorities, including electoral bodies. International election observation, which focuses on civil and political rights, is part of international human rights monitoring and must be conducted on the basis of the highest standards for impartiality concerning national political competitors.

Impartiality, as one of the fundamental characteristics of international electoral observation, is achieved and demonstrated by systematic, comprehensive and accurate gathering of information concerning the laws, processes and institutions related to the conduct of elections and other factors concerning the overall electoral environment. The impartial and professional analysis of such information and the drawing of conclusions about the character of electoral processes must be based on the highest standards for accuracy of information and impartiality of analysis.

This in mind, International Observation Mission for 2022 Hungarian Parliamentary Elections and Referendum decided to adopt the following Declaration of Principles, based on the best international practices and recognized modus operandi of international observation missions:

1. **Impartiality and non-interference.** Election observers must not interfere in the electoral process and must be politically impartial⁷ with strict respect for the principle of impartiality and non-interference⁸. International election observers should never exhibit any personal bias or preference related to issues which may have political or electoral implications and should abstain from doing any political, partisan activity⁹.
2. **Accuracy and verifiability of conclusions.** Observers must base their reports and conclusions on factual and verifiable evidence, with professional accuracy and strict respect to impartiality¹⁰.
3. **Compliance with domestic law and culture.** Election observers should comply with all national laws and regulations of the host country¹¹. The status of election observer implies

⁷ Guidelines on an Internationally Recognized Status of Election Observers..., paragraph 2.3.

⁸ Guidelines on an Internationally Recognized Status of Election Observers..., paragraph 2.8.

⁹ Guidelines on an Internationally Recognized Status of Election Observers..., paragraph 2.4.

¹⁰ Guidelines on an Internationally Recognized Status of Election Observers..., paragraph 2.9.

¹¹ Guidelines on an Internationally Recognized Status of Election Observers..., paragraph 2.2.

a strict respect for the legal framework of the country holding the elections¹². Election observers must present a respectful attitude towards electoral officials, other national authorities and all other participants of the process¹³ and finally should behave at all times, including in their leisure time, in a professional and irreproachable manner¹⁴.

4. **Neutrality and professionalism in media appearances.** The findings of international election observation missions provide a factual common point of reference for all persons interested in the elections, including the political competitors¹⁵, international election observation missions are expected to issue accurate and impartial statements to the public. In mass-media appearances observers should always distinguish their individual views from observations officially supported by the International Observation Mission.
5. **Formulation of recommendations, not accusations.** Principles of impartiality, respect for the sovereignty and non-interference of international election observers should be expressed in formulation of recommendations rather than accusations concerning the pre-voting phase, the voting day phase and the post-voting phase of elections.

3. OSCE Interim Report of 21st of March and principles of non-interference, impartiality, and accuracy

The above Declaration of Principles of International Observation Mission became necessary due to the publication of the Interim Report (24 February – 15 March 2022) of OSCE Office for Democratic Institutions and Human Rights Election Observation Mission¹⁶. The publication was immediately weaponized by one side of the political struggle as evidence of international criticism of their political competitors. At the same time, serious allegations of inaccuracy, factual errors and partiality were made against the Interim Report¹⁷, which – according to the critics – failed to present balanced and constructive opinions, presenting the

¹² Guidelines on an Internationally Recognized Status of Election Observers..., paragraph 2.8.

¹³ Guidelines on an Internationally Recognized Status of Election Observers..., paragraph 2.6.

¹⁴ Guidelines on an Internationally Recognized Status of Election Observers..., paragraph 2.7.

¹⁵ Declaration of Principles for International Election Observation..., paragraph 7.

¹⁶ Interim Report - OSCE Office for Democratic Institutions and Human Rights Election Observation Mission Hungary Parliamentary Elections and Referendum, 3 April 2022, hereinafter as: OSCE Interim Report.

¹⁷ The OSCE Report is baseless, they don't even know who Hungary's president is, Miklós Szánthó, <https://abouthungary.hu/blog/the-osce-report-is-baseless-they-dont-even-know-who-hungarys-president-is> (access: 24.03.2022).

position and arguments of only one side of the polarized political debate in Hungary, without reliable and verifiable sources invoked in the Interim Report.

Upon careful examination, the OSCE Interim Report indicates many signs of violation of the principles of international observation missions discussed above. Lack of professional accuracy is revealed in observations based on non-disclosed, unverifiable sources or made in accord with the position of only one party to the dispute, without hearing the opinion of the other party. As a result, the presented claims and allegations regarding the election process are legitimately questioned, and the authority of the observation mission has been severely tarnished.

The principle of impartiality and non-interference is adopted to assure that the observers do not influence the election process and distort their results. This principle requires that personal, biased and judgmental opinions not be voiced in public in a manner, which could impact the election outcome. Moreover, this principle should compel the observers to remain especially cautious with voicing their opinions prior to the election and in particular in the last days leading to the election, when their utterances may swing the public opinion and distort the results. Because of that, extreme caution should be exercised when publishing interim reports containing unbalanced, unsubstantiated or undocumented, biased and judgmental opinions, clearly indicating the preference of the observers and/or the observatory mission as a whole.

The first sentence of the Executive Summary clearly indicates the preferences of the OSCE Observatory Mission referring to the subject of the referendum as the “so-called ‘child protection’ law” instead of presenting the full title of the act (“The Law on Stricter Measures against Pedophile Offenders and Amending Certain Laws to Protect Children of 15 June 2021”, the full title is only mentioned in a footnote). This statement is tantamount to saying that the law is only called this way, when in reality it aims at something else. This is a clear encouragement to vote against a proposition depicted as misleading and false. There are a number of such judgmental opinions, including the opinion about the “absence of a genuine consultative process”, an opinion that “government information mirrors messages from the ruling party”, that “women are generally under-represented in political and public life in Hungary”. Finally, the presentation of the dispute between the Government of Hungary and the EU on the non-disbursement of EU funds in response to alleged infringements of the rule of law by Hungary, clearly displays the personal view of the observer who wrote it or the observation team as such.

Additionally, there is a visible tendency in the report to quote unsubstantiated opinions of “interlocutors”, which are invariably critical of the government, without providing the counterbalancing opinion of the opponents, or a clarification why this may be the case. For instance, the report mentions that “most previous ODIHR recommendations remain largely unaddressed” without mentioning why, how many of them, etc. It does mention the areas which they refer to, including “the misuse of administrative resources”, “blurring of state and political party roles and campaign finance transparency” without providing details, which may make them look more serious than they actually are. One such case may be the criticism of the Hungarian Parliament that it did not redraw the electoral district borders, the establishment of which was made into a “cardinal law” requiring a 2/3 majority in the Parliament to be changed. Evidently this is in an effort to avoid electoral district border manipulation (Gerrymandering). Yet this is raised as a failure of the Hungarian government to implement ODIHR recommendations without giving their rationale.

Positive statements regarding the governmental side quoting a consensus of “interlocutors” are frequently accompanied by qualifying opinions of “some interlocutors”, “parties’ opinions”. For example, “while most interlocutors expressed confidence in the accuracy of the voter register, some raised concerns...” or indicate to a possible wrongdoing on one side only e.g. “spending by third parties... is not regulated. ... a number of ... interlocutors expressed concerns that this lack of regulation facilitates the governments considerable spending on the referendum campaign”.

When both sides of the political spectrum are perceived by the observers to be lacking in some respect, a negative illustration mostly concerns the government side, while the positive the opposition side. For example, campaign “has been characterized by mutual accusations between the ruling party and the main opposition bloc” but there “have been multiple formal complaints about the official functions of the government being mixed with campaign activities”, as if the opposition did not hold any local and national offices.

Negative unsubstantiated opinions of the anonymous “interlocutors” were invoked at least 8 times in the document, while positive opinions are hardly present. In the report, the authors repeatedly present theses by supporting them with the opinions of interviewees. However, they do not indicate who exactly these interlocutors are or their partisanship. Neither when referring to the opinion of opposition political parties, nor non-governmental organizations, they do not

indicate the names of these entities¹⁸. Indicating the name of the entity which provided the opinion would make the report more transparent and credible. In this respect, the report raises doubts as to the verifiability of the theses presented by its authors.

¹⁸ *While political parties and other stakeholders generally agree that such a measure may alleviate a prevalent problem of 'fake' parties running only to misuse public campaign funds, some informed the ODIHR EOM that they consider the change to be politically motivated and could potentially foster polarization and be detrimental to political pluralism (OSCE Interim Report, p. 5) ... While ODIHR EOM interlocutors met so far have confidence in the technical capacity of the election administration, opposition parties raised concerns over the dominance of the ruling majority appointees in the election administration, especially at the higher levels (OSCE Interim Report, p. 7) ... Some ODIHR EOM interlocutors raised concerns about staffing, training, and the capacity of lower-level commissions to handle efficiently the simultaneous holding of the parliamentary elections and the referendum (OSCE Interim Report, p. 7) ... Some ODIHR EOM interlocutors raised concerns about limited safeguards with regard to postal voting and the accuracy of the voter register for those eligible to cast a postal ballot (OSCE Interim Report, p. 8) ... Most ODIHR EOM interlocutors expressed confidence in the accuracy of the voter register, however, several interlocutors raised concerns that the new definition of residency may result in tactical migration of voters to closely contested constituencies closer to election day, or illegal bussing of voters on election day (OSCE Interim Report, p. 8) ... A number of ODIHR EOM interlocutors expressed concerns about the misuse of personal data of voters in support of candidates and forged signatures. Numerous complaints about such cases were adjudicated by the RECs and the NEC (OSCE Interim Report, p. 9) ... Opposition parties have expressed concern to the ODIHR EOM about a significant disparity in the allocation of billboard space for campaign posters (OSCE Interim Report, p. 10) ... Several opposition parties raised concerns about this issue with the ODIHR EOM and three related complaints have been lodged (OSCE Interim Report, p. 10) ... Several ODIHR EOM interlocutors expressed concerns over potential pressure on voters, the misuse of state resources, and potential vote-buying (OSCE Interim Report, p. 10) ... A number of ODIHR EOM interlocutors expressed concerns that this lack of regulation facilitates the government's considerable spending on the referendum campaign (OSCE Interim Report, p. 12) ... ODIHR EOM interlocutors have raised concerns about limited access to information, surveillance, and persistent negative campaigns targeting independent and opposition journalists and representatives of civil society (OSCE Interim Report, p. 12) ... Many ODIHR EOM interlocutors raised concerns about what they view as a systemic political bias and a virtual absence of opposition politicians in the programmes of the public broadcaster (OSCE Interim Report, p. 12) ... Several interlocutors raised concerns with the ODIHR EOM about potential abuses concerning the Roma community, including vote-buying and pressure over the potential withdrawal of benefits under a government employment scheme (OSCE Interim Report, p. 13) ... The CEO of DMSZ and MTVA indicates that the ODIHR EOM assessed the situation of the Hungarian public media without asking*

In summary, abovementioned techniques amount to violation of fundamental principle of **accuracy and verifiability of conclusions as well as impartiality and non-interference, finally they lead to a breach of neutrality and may be perceived as intentional interference in the elections by OSCE Elections Observation Mission.**

It should be noted that the information contained in the report was widely disseminated in the press, with numerous headlines repeatedly indicating that, according to the report, only one, currently ruling party is favored in the election process¹⁹. In many cases, the media focused on repeating the main theses of the report, without attempting to verify the data presented in the report.

According to international standards, international observers cannot interfere in the election process, express any bias or preference in relation to national authorities, parties, candidates, or with reference to any issues of contention in the election process²⁰. They mustn't obstruct the conduct of the election process, in any of its elements²¹. The main duty of every international observation mission is to follow the election process in a very independent way, in accordance with standards of international expert bodies specializing in the matter.

4. Summary

According to the international standards and principles, the findings of international election observation missions must provide a factual common point of reference for all persons interested in the elections, including the political competitors²². International election observation missions are expected to issue accurate and impartial statements to the public²³. Venice Commission Guidelines on an Internationally recognized status of Election Observers

the leaders of the public media about it (<https://mediaklikk.hu/cikk/2022/03/23/elore-megirt-itelettel-probalja-politikai-szinterre-rangatni-a-fuggetlen-kozmediat-az-ebesz#>).

¹⁹ „According to the OSCE report, the campaign is heading for Fidesz”, <https://index.hu/belfold/2022/03/23/az-ebesz-jelentes-szerint-a-fidesz-fele-lejt-a-palya-a-kampanyban/>, „OSCE report: everything strongly favors Fidesz in the elections”, <https://www.szeretlekmagyarorszag.hu/hirek/ebesz-jelentes-minden-erosen-a-fidesznek-kedvez-a-valasztasokon/>

„The track is down on Fidesz, and public funds can be spent on the campaign.”

<https://magyararancs.hu/valasztas2022/tobb-problemat-is-talalt-a-kampanyban-az-ebesz-megfigyelok-idokozi-jelentes-247196>

²⁰ Handbook for European Union Election Observation (...), p. 10.

²¹ Guidelines on an internationally status of election observers, (...), p. 7.

²² Declaration of Principles for International Election Observation..., paragraph 7.

²³ Declaration of Principles for International Election Observation..., paragraph 7.

goes even further, suggesting that election observers as individuals must avoid any comments in mass-media and should decline requests for interviews²⁴.

Together with the unquestioned principle of respect for the sovereignty and non-interference (and impartiality) of the observatory missions, this leads to **guidelines of neutrality, professionalism, accuracy of fact-based and verifiable conclusions presented to the public (via statements or mass-media appearances), that should never give priority to activism, partisanship, politically- or ideologically- oriented bias.**

The International Observation Mission expresses hope that competition for excellence in following the best practices, international standards and principles of impartial, democratic and respectful elections observation will support the Hungarian people in the genuine act of democratic elections that are an expression of their sovereignty, which belongs to the people of the country, the free expression of whose will provides the basis for the authority and legitimacy of government²⁵.

Adherence to the above principles by all participants in the observation missions is a prerequisite for a fair and impartial assessment of the electoral process and, consequently, for a fair and reliable final report. We must remember that the function of an election observer is above all a great responsibility - it strengthens democratic institutions, builds public confidence in electoral processes and helps to stop electoral irregularities.

²⁴ Guidelines on an Internationally Recognized Status of Election Observers..., paragraph 2.5.

²⁵ Declaration of Principles for International Election Observation..., page 1.