

CG/BUR (6) 117

Report of the Congress delegation on the observation of elections in Vladivostok (Russian Federation) (19 December 1999)

Report adopted by the Bureau
on 14 January 2000

Introduction

At its meeting in Nantes (France) on 25-26 October 1999, after hearing a report from the President of the Chamber of Local Authorities, Dr van Staa, on the situation of local democracy in the capital of Primorsky Kray (see CG/Bur (6) 72), the Bureau of the Congress appointed a delegation to observe the local elections in Vladivostok on 19 December 1999.

The elections to the city *duma*, the municipal council, and the local referendum on the city charter, were observed at the invitation of the human rights commissioner and with the agreement of the central electoral commission of the Russian Federation.

The delegation, which was chaired by Mr Michael O'Brien (Ireland), also comprised Mr Alexander Slafkovsky (Slovakia), Mr Risto Koivisto (Finland) and Mr Michel Lesage, consultant, and was accompanied by Mr Khochabo, member of the secretariat.

The delegation's terms of reference agreed by the Bureau were to observe the local elections in the city of Vladivostok, which were taking place at the same time as those of the members of the state *duma* and of the governor of Primorsky Kray (the local "territory"). When it left Vladivostok the following Tuesday morning, the results were not yet known. The information collected on the spot was supplemented by information supplied by the Ministry of Foreign Affairs' representative in Vladivostok, particularly concerning the results of the local elections.

The delegation wishes to thank the Ministry of Foreign Affairs' representative in Vladivostok, Mr Goryachev, and the Congress of municipalities of the Russian Federation for their help, in both the practical organisation of the visit and drawing up the programme. Once it was on the spot, despite the pre-established programme the delegation had complete freedom to change its schedule and meet persons with whom meetings had not been previously arranged but whose views were necessary for an understanding of the situation (the full programme of the visit appears in appendix 1).

During the visit, the delegation met, among others, the main candidates for the post of governor, candidates for the city *duma* and other leading figures, all of whom provided valuable insights which gave the delegation a better understanding of the changes in the political situation in Vladivostok since the Congress delegation's first visit and the issues raised in the election campaign that preceded the voting.

On election day, 19 December 1999, the observers divided into two groups, thus enabling them to visit some thirty polling stations and meet the chairs of the local election commissions visited and voters. Throughout the period of observation, the delegation also maintained contact with the electoral commissions of Primorsky Kray and of the city of Vladivostok, particularly their chairmen, whom the delegation thanks for their co-operation and receptiveness, despite their days and nights of difficult work in this election period.

At the end of the visit, the delegation held a press conference, where they announced the preliminary results of their observation of the election, without prejudice to the Bureau's conclusions. The conclusions presented to the press had previously been discussed with the chairman of the electoral commission of the territory.

1. The regional and national context of the elections

The regional and national elections highlighted the strong influence of the governor, Mr Y. Nazdratenko, in Primorsky Kray.

1.1 The election of the governor

The outgoing governor, Mr Nazdratenko, was re-elected with 70% of the votes. His opponents received the following votes: A. Kirilichev, 14.67%; I. Lukianov, 2.96%; V. Vedernikov, 2.90%. 4.39% of the electors did not vote for any candidate.

The delegation noted that in Vladivostok the only election posters visible were large ones in support of Mr Nazdratenko. Mr Kirilichev said that his posters, which were smaller, had been destroyed by supporters of the governor and complained that the other candidates had not had the same access to means of communication as Mr Nazdratenko during the election campaign. It will be for the courts to rule on this matter, if the losing candidates press their complaints, but it has to be said that there was a wide gap between Mr Nazdratenko's vote and those of his opponents, even in their home constituencies. According to the published results, in Nakhodka, Mr Kirilichev's place of origin, he only received 24% of the votes, compared with 68% for Mr Nazdratenko. In Ussuriysk, and in the district of Ussuriysk, Mr Vedernikov, who is head of the local authority, only received 7.95% of the votes, compared with 71% for Mr Nazdratenko.

1.2 The election of 14 members of the city *duma*

On 19 December 1999, elections were held in 14 Vladivostok constituencies where there was still a seat vacant, since in January 1999 only 8 of the 22 members of the city *duma* had been elected.

Fifty-four candidates stood for elections to the city *duma*. Most of the candidates were standing as independents and in meetings with the delegation referred to a number of shortcomings during the election campaign, such as a general shortage of information on the local elections, limited resources for candidates to conduct their campaigns, often difficult access to the media and a lack of any real discussion on the draft city charter. Certain candidates drew attention to the problem of the electoral registers.

According to the city's electoral commission, the campaign was conducted in a fairly tense atmosphere.

1.2.1 The conduct of the election

The delegation noted that the rules in force and their application by the electoral commissions and the courts did not offer candidates and voters satisfactory guarantees of equal competition.

One example of last-minute disqualification was the case of a candidate whose registration was cancelled by decision of the city electoral commission on the Saturday afternoon and reinstated by the courts on the Sunday, while the voting took place with ballot forms on which the candidate's name had been crossed out. The sole ground for such a severe sanction was the fact that a newspaper that had published the biography and photo of the candidate (with others) had not indicated its circulation figures, in contravention of section 41.2 of the federal legislation on fundamental safeguards of the voting rights and rights of participation in referendums of citizens of the Russian Federation.

At its press conference, which received wide national and regional television and newspaper coverage, the delegation laid particular stress on the anomalous nature of the late cancellations and disqualifications and explained the differences between *ex ante* and *ex post* monitoring of elections.

Another example concerned the information for voters displayed in polling stations. The delegation noted that in one polling station there was a notice with the biographies and photos of just four candidates, although the ballot papers for that constituency contained five names. The explanation, which emerged during a visit to the city electoral commission, was that the standard notice only had space for four biographies and photos and no provision had been made for cases of five or six candidates; it would then have been necessary to change either the format of the notice or the size of the biographies and photos to make them fit onto a single sheet. The solution adopted had therefore been to print a supplementary half sheet with the biographies and photos of the other candidate or candidates, which for unexplained reasons had not been posted up with the main notice in the polling station concerned.

The failure to give the electoral commission adequate monitoring resources also helps to explain why such situations arise.

1.2.2 The results: the city *duma* still incomplete

In the 14 constituencies where the election took place, only six members have been declared elected by the electoral commission, while in the first constituency the registration of the candidate German Zverev has been suspended, pending an examination of the prosecution launched by the Sovietskiy district *Prokuratura* for violation of electoral law.

There are thus only 13 elected members, whereas the quorum for meetings of the city *duma* is two-thirds, or 15 members. The city of Vladivostok therefore still lacks a municipal council and new elections will have to be held.

On 29 December 1999, the Vladivostok territorial electoral commission set 19 March as the date for electing members to fill the vacant seats on the city *duma*, but the scheduling of the presidential election for 26 March is likely to result in a further change of date.

2. The postponement of the election of a mayor

The report on the situation of local democracy in Vladivostok presented to the Bureau of the Congress in Nantes on 25-26 October referred to the difficulty of combining the simultaneous election of the head of the municipality and the members of the city *duma* with the adoption of a draft city charter by local referendum. During its visit to Vladivostok, and drawing on the case-law of the supreme court of the Russian Federation, the CLRAE delegation expressed its doubts to the authorities of the city of Vladivostok and Primorsky Krai about the legality of electing a mayor in the absence of a city charter. Nevertheless, to save time and reduce electoral expenses, the acting mayor decided to hold the mayoral elections at the same time as the referendum on the draft charter.

The elections for mayor were eventually cancelled, but only three days before voting. Moreover, the charter adopted by referendum unfortunately fails to offer the necessary safeguards for effective local self-government (see 3.2).

The judicial cancellation of the municipal order for the election of a mayor :

In an order dated 7 November 1999, the acting mayor, Yuri Kopylov, set 19 December 1999 as the date for the election of the "head of administration of the city of Vladivostok", a term that was altered in a second order of 12 November 1999 to "head of

local self-government". These orders were challenged, initially at first instance before the court of one of the districts of Vladivostok and then on appeal before the court of Primorsky Kray, following an application submitted by the territorial electoral commission and a complaint lodged by the public prosecutor of the city of Vladivostok. Under Russian legislation, mayoral orders which affect the whole of Vladivostok can be reviewed by a mere district court of the city. The order was found to be legal on 22 November, by the Leninskiy district court, but then illegal on 17 December by the Primorsky Kray territorial court. The latter quashed the decision of the court of first instance and without referring the case back to that court set aside the orders issued by the acting mayor of Vladivostok on 7 and 12 November 1999.

Just two days before the election, the voters were therefore informed that, for legal reasons, the mayoral elections would not take place on 19 December.

3. The adoption of the charter by referendum

3.1 The procedure for drawing up and adopting the charter

The charter (containing 98 articles) was prepared and presented by an "initiative group" of thirteen persons, whose composition has not really been made public. It is only available as an appendix to the decision of the Primorsky Kray electoral commission of 27 September 1999 registering the initiative group. The draft charter was published on 30 September 1999 in the journal "Vladivostok, our city" (circulation 500 000), but it has not been properly discussed.

The charter was adopted in the referendum of 19 December 1999. Altogether, 250 441 electors, 54.17% of the 475 206 registered voters, took part, of whom 136 925, or 53.19%, voted in favour and 112 670 – 43.76% - voted against.

3.2 The charter

The directorate for local self-government affairs of the presidency of the Russian Federation issued an opinion on the draft charter (letter signed by V. Zelenkin, deputy head of the directorate). The directorate thought that a series of provisions in the draft charter failed to meet the requirements of federal legislation and could be a source of conflict, and like the Congress delegation in Vladivostok in September, advised that rather than submitting the whole of the text to referendum, the latter should be confined to certain provisions, in particular those which, under federal legislation, had to be determined by the people of the city: the establishment of local self-governing bodies (collective and individual institutions, particularly the head of the local authority), their powers, the principles governing relations between them and the rules of responsibility. Unfortunately, this advice was not followed.

In a six-page memorandum on the draft charter, the directorate for local self-government affairs highlighted its shortcomings: the unjustified reduction in the powers of the local representative body, the city *duma*, and on the other hand the unjustified extension of the powers of the city's head of administration, the absence of provisions specifying who was responsible for directing the *duma's* activities and signing its decisions, and the imprecise nature of the provisions on the responsibilities of the municipal authorities, particularly of the head of administration *vis-à-vis* the electors, and of those concerning the publication of administrative decisions.

One can only agree with the conclusions of the presidential directorate for local self-government affairs and add that taking these comments into consideration would improve the application, not only of the federal legislation on the general principles of the organisation of local self-government in the Russian Federation, but also of the European Charter of Local Self-Government, particularly articles 3.2, 6.1 and 7.1.

According to section 61 of the federal legislation on fundamental safeguards for the voting rights and rights of participation in referendums of citizens of the Russian Federation, decisions adopted in local referendums can only be modified by another local referendum held no less than two years after their adoption, unless they are declared invalid by the courts.

When they are finally elected therefore, the members of the new municipal *duma* must ensure that the charter is applied in such a way as to promote local democracy and take the necessary steps to correct the identified shortcomings.

4. The future mayoral election

On 29 December 1999, the acting mayor of Vladivostok, Yuri Koplyov, set 19 March 2000 as the date for the election of the city's head of administration, but as with the election of members of the city *duma*, this date is likely to be altered to coincide with the presidential election.

5. Conclusions

In the light of the above comments, the delegation submits the following conclusions:

5.1 Elections to the city *duma*.

With regard to the results of the elections to the city *duma*, the CLRAE delegation noted with regret that it has once more been impossible to elect a sufficient number of members of the municipal council, thus depriving the city of a viable and operational representative body. The delegation recalls that according to article 3.2 – "concept of local self-government" – of the Charter of Local Self-Government, local self-government is a right that "*shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive*

organs responsible to them." The existence of a local representative body is therefore essential for the democratic balance and stability of local institutions.

5.2 City charter

The CLRAE delegation found that there had been no real discussion of the draft charter during the period preceding the election, despite its importance for the life of the city. Moreover, the authors of the document were unknown and never had the opportunity to present their proposals in public, which alters the rules of debate about public projects.

The observers once more draw attention to the absence, in the adopted charter, of provisions specifying the authority with powers to direct the *duma's* activities and sign its decisions, the imprecise nature of the provisions on the responsibilities of the municipal authorities, particularly of the head of administration *vis-à-vis* the electors and the municipal council, and of those concerning the publication of administrative decisions, all of which are likely to upset the democratic balance in the functioning of local institutions.

5.3 Election campaign

In the light of discussions held before election day with the candidates standing for the city *duma* and the post of governor, the delegation wishes to stress the significant role of the media in election campaigns and thus the importance of securing equal access to them for all candidates.

In certain cases, the observers considered that penalties imposed by the city electoral commission on candidates to the city *duma* were disproportionate, especially as in the end the courts found that the faults could not be attributed to the candidates themselves.

Late cancellations of elections or disqualifications of candidates are abnormal procedures. *Ex ante* and *ex post* monitoring of elections within a reasonable timeframe permits more stable election campaigns.

Programme of the CLRAE delegation's visit to Vladivostok (16-21 December 1999)

Thursday, 16 December

Morning Accreditation with the central electoral commission of the Russian Federation

6.40 pm Depart from Moscow, Aeroflot flight SU 725, Moscow-Vladivostok

Friday, 17 December

10.10 am Arrive in Vladivostok

10.30-10.50 am Press statement (VIP lounge, Vladivostok airport)

4-4.50 pm Meeting with Mr Nazdratenko, outgoing governor of Primorsky Kray (the "territory"), candidate for the post of governor

5-5.50 pm Meeting with Mr Kuzov, representative of the Russian Federation presidency in Primorsky Kray

6-6.50 pm Meeting with Mr Dudnik, president of the Primorsky Kray *duma*

Saturday, 18 December

9-10 am Meeting with Mr Vedernikov, candidate for governor of Primorsky Kray

10-10.50 am Meeting with Mr Zhekov, vice-president of the Primorsky Kray *duma*

11-11.50 am Meeting with Mr Gnezdilov, chairman of the Primorsky Kray local authorities association, head of the municipality of Nakhodka

12-12.50 pm Meeting with Mr Kopylov, acting head of administration of the city of Vladivostok

2.30-3 pm Meeting with Mr Riajev, president of the Primorsky Kray court

3-3.50 pm Meeting with Mr Chichaev, chairman of the electoral commission of the city of Vladivostok

4-4.50 pm Meeting with Mr Soloviev, member of the Primorsky Kray *duma*, representative of the Congress of municipalities of the Russian Federation in Vladivostok

5-5.50 pm Meetings with candidates to the city *duma*

6-7 pm Meeting with Mr Kniazev, chairman of the Primorsky Kray electoral commission

7.15-8.30 pm Meeting with Mr Cherepkov, former mayor of Vladivostok

Sunday, 19 December

7.45 am–11 pm Observation of local elections in Vladivostok

Monday, 20 December

11.30 am – 12 noon Meeting with Mr Kirilichev, candidate for governor

12-1 pm Meeting with Mr Chichaev, chairman of the Vladivostok electoral commission

2-3 pm Meeting with Mr Kniazev, chairman of the Primorsky Kray electoral commission

3-4 pm Press conference

7-9 pm Dinner hosted by the representative of the Russian Federation presidency in Primorsky Kray and the Ministry of Foreign Affairs representative in Vladivostok

Tuesday, 21 December

10-11 am Meeting with Mr Kuzov, representative of the Russian Federation presidency in Primorsky Kray

12.40 pm Depart (Aeroflot flight 726 Vladivostok – Moscow)