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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT
(COMMISSION DE VENISE)

51st MEETING / 51^e REUNION
OF THE COUNCIL FOR DEMOCRATIC ELECTIONS /
DU CONSEIL DES ELECTIONS DEMOCRATIQUES

Venice, 18 June 2015 at 9:45 a.m.
Venise, le 18 juin 2015 à 9h45

MEETING REPORT / RAPPORT DE REUNION

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1. Adoption of the agenda / Adoption de l'ordre du jour

The Council adopted its agenda as it appears in this document.

2. Report on the method of nomination of candidates within political parties / Rapport sur la méthode de désignation des candidats au sein des partis politiques

In the Council for Democratic Elections meeting of December 2012, the decision had been taken to launch a study on the method of nomination of candidates within political parties. The report focused on the internal rules of political parties for nominating candidates and the requirements needed for improving democratic decision-making and inclusiveness within each party. It assessed three different issues: the legal framework governing political parties and the different approaches as to the rules that influence the internal functioning of parties and the choice of their candidates; the legal requirements for the methods of nominating candidates within political parties, including both procedural aspects of nomination of candidates and the rights of those candidates within political parties; the different factors used for measuring internal democracy within political parties, relating in particular to gender balance, the representation of minorities, ethnic and vulnerable groups, including indigenous populations, as well as other possible factors, which may have an impact on the internal functioning of political parties.

Two main principles were central to the internal functioning of political parties. The first one was the principle of party autonomy, under which political parties were granted associational autonomy in their internal and external functioning. The second one was the principle of internal democracy, the argument being that because political parties are essential for political participation, they should respect democratic requirements within their internal organisation.

The study of this topic pointed out the trend towards regulating the functioning of political parties through legislation, although laws on political parties are often quite flexible, leaving it to the statutes or the constitutions of political parties to set out, in detail, the proceedings to follow and the bodies entitled to select candidates.

Legal measures to foster respect for democratic principles in the selection of candidates were consistent with international standards and principles stated by the Venice Commission. However, legal intervention in the selection of candidates was not always required or suitable. On the one hand, long-established democracies with deep-rooted political parties favoured associational freedom, since internal democracy was guaranteed by the political parties themselves. On the other hand, state interference in the selection of candidates in new or transitional democracies might jeopardise political pluralism. It was therefore for each country to choose between a liberal view, which favoured the freedom of political parties and the absence of legislation concerning their internal affairs (including the nomination of their candidates), and the view which sought to strengthen internal democracy in the selection of candidates through legislation. Many states had also elements of both models.

Among those countries that had regulated these issues, there were two main elements of “substantive” intra-party democracy: a growing number of countries had included gender quotas in their legislation. As to the rules on the representation of minorities, ethnic and vulnerable groups, there were reserved seats or special constituencies, resulting in “guaranteed mandates” as a way of ensuring such groups’ representation.

The Council adopted the Report on the method of nomination of candidates within political parties with the proposed amendment (CDL-AD(2015)020) .

3. Exclusion of offenders from Parliament

Following the agreement between the ruling majority and the opposition in Albania, ending the boycott of Parliament, the President of the Special Parliamentary Committee to address the issue in the Resolution for agreement between the ruling majority and the opposition in the Assembly of Albania asked for the Venice Commission's co-operation on the issue of people with criminal records, who hold a public office or seek to be elected or appointed to one. In this framework, a draft preliminary report on the exclusion of offenders from Parliament was drawn up on the basis of comments by Mr Bartole, Mr Kask and Mr Sørensen ([CDL\(2015\)029](#)). The report takes into account the situation in more than 30 States as well as contributions from members of the Commission on this issue. It is submitted to the Council for adoption.

Mr Kask stated that this report was still preliminary, in the sense that the legal analysis would still be developed in a revised version to be submitted to the Council in October. It focused on two main areas: the possibility to stand as a candidate and the possible termination of the mandate after a criminal conviction. The international standards were rather similar in both cases. The issue of ineligibility had been dealt with in a number of cases before the European Court of Human Rights; the case-law on the right to vote was in general applicable by analogy. There was a big variety of national legislation: a few countries provided for no restrictions; in a second group of countries, only some crimes or electoral offences were taken into account; in a third one any kind of imprisonment leads to ineligibility; finally, in some countries, a (parliamentary) committee or a judge could restrict the right to be elected or terminate a mandate on the basis of immoral behaviour. There were also cases of restrictions when the judgment was not yet final.

In short, there standards were not evident since national practice was very diverse. One of the main conclusions could be that restrictions should be limited to what is necessary (proportionality principle): they had to take account of the severity and nature of the offence, as well as of the length of the sentence; a lifetime sanction could be envisaged only in extreme cases; the presumption of innocence would go against deprivation of the right to be elected before a final sentence save for rare exceptions (such as indictment by the International Criminal Court). No legislation addressed sentences pronounced abroad as such, but if a conviction was considered binding on the basis of international treaties or recognised in conformity with national legislation, it had to be taken into account in the same way as a conviction in-country. The issue of possible retroactivity (and whether the restriction is of a criminal or an administrative nature) was pending before the European Court of Human Rights in a case concerning Italy.

Another issue was to know which kind of legislation should address the issue. Since it was constitutional *par excellence*, it was justified to address it in a constitutional provision, but the details might be found in electoral law or in criminal law. Moreover, the report considered it suitable to have general provisions but a margin of discretion could be given to the judges.

A few amendments were proposed in the discussion and would be submitted with the draft preliminary report to the plenary session of the Venice Commission for adoption. The rapporteurs would prepare a revised version of the draft for adoption at the October 2015 plenary session. This version should develop the analysis and, in particular, raise the issue of judicial independence, since much caution is necessary when providing for ineligibility in countries where the independence of the judiciary is not fully ensured.

The Council adopted the preliminary report on the exclusion of offenders from Parliament (CDL-AD(2015)019-e).

4. Guidelines on tackling the misuse of administrative resources during electoral processes / Lignes directrices sur l'abus de ressources administratives

Suite à l'adoption du rapport sur l'abus de ressources administratives pendant les processus électoraux ([CDL-AD\(2013\)033](#)) et à la 11^e conférence européenne des administrations électorales consacrée à ce thème, des lignes directrices en la matière ont été préparées sur la base des contributions de MM. Barrett, Gonzalez Oropeza, Hirschfeldt, Kalchenko et Kask ([CDL-EL\(2015\)010](#)). Elles sont soumises au Conseil en vue de leur adoption à l'une des prochaines sessions plénières.

M. Barrett présente le projet, dont l'idée générale est que les ressources publiques, qu'il s'agisse d'argent ou d'équipement publics, ne doivent pas être utilisées pendant les processus électoraux à l'avantage ou au désavantage des participants au processus électoral. Les lignes directrices visent à illustrer comment ce principe doit être mis en œuvre, à la fois en prévenant les violations et en les traitant lorsqu'elles ont lieu. Les problèmes les plus nombreux se posent dans les pays où l'indépendance de la fonction publique est limitée.

Lors de la discussion, sont soulevés notamment les points suivants : la question des entreprises en charge de contrats publics importants ; l'usage des médias (publics et privés) ; le devoir de réserve des fonctionnaires ; les inaugurations extraordinaires et les emplois publics temporaires en période électorale ; l'intervention du chef de l'Etat lors d'élections législatives ; l'utilisation des budgets locaux ; le rôle de l'audit.

En même temps, il faut éviter un excès de réglementation.

Les lignes directrices seront élaborées conjointement avec l'OSCE/BIDDH. Seront notamment cités le manuel de l'OSCE/BIDDH pour l'observation du financement des campagnes électorales et les lignes directrices conjointes de la Commission de Venise et de l'OSCE/BIDDH sur la réglementation des partis politiques (CDL-AD(2010)024).

M. Wienen informe le Conseil que le Congrès adoptera un rapport sur les normes éthiques dans les processus électoraux en 2016.

5. Droits populaires dans la province de Trente (Italie)

La présidence du Conseil des ministres italien a transmis à la Commission de Venise une demande du Conseil provincial de la province de Trente relative à une initiative populaire (ou citoyenne) provinciale sur la participation populaire, l'initiative législative populaire, les référendums et des amendements à la loi électorale provinciale. Une visite sur place a eu lieu le 27 mai 2015. Le projet d'avis ([CDL\(2015\)019](#)), élaboré sur la base des observations de M. Castellà Andreu, de Mme Kiener, de M. Maiani et de Mme Peters, est soumis au Conseil pour adoption (voir aussi les documents [CDL-REF\(2015\)016](#) et [\(2015\)017](#)).

M. Kask présente le projet d'avis. Le projet d'initiative citoyenne vise à étendre très largement la démocratie directe et, en même temps, à introduire ou développer un certain nombre d'éléments de démocratie participative : les pétitions, les prytanées (groupes de citoyens tirés au sort ayant un rôle consultatif mais pouvant aussi proposer, par exemple, une motion de censure), les consultations, les débats publics. Certaines précisions pourraient encore être apportées ; le point le plus délicat concerne les prytanées, et notamment leurs buts et leurs pouvoirs – en particulier, il paraît excessif de permettre à un organe non élu de proposer une motion de censure. L'obligation du Conseil provincial de traiter les pétitions est aussi trop largement définie.

L'*initiative citoyenne* (« iniziativa popolare ») ne pouvait jusqu'ici conduire qu'à un vote de l'assemblée provinciale et non à un référendum ; le projet conduit par contre à soumettre

cette initiative à un vote populaire dans certains cas, et donc à contourner les exigences formelles (nombre de signatures) et matérielles du référendum. Ce point devrait être revu.

Le projet prévoit quatre types de *référendums* déjà existants, mais en étend largement la portée : le référendum d'initiative populaire (*referendum propositivo*), le référendum consultatif (*referendum consultivo*) ; le référendum abrogatif (*referendum abrogativo*) ; le référendum confirmatif (*referendum confermativo*), dont la portée était jusqu'ici très limitée.

Ces instruments de démocratie directe sont assez classiques ; par contre, leur extension à des actes de la compétence de l'exécutif est inhabituelle ; il en est de même de la possibilité de soumettre non pas seulement des textes entiers, mais des dispositions spécifiques à un référendum confirmatif.

Un contrôle complet de conformité au droit supérieur devrait avoir lieu aussi bien pour les initiatives citoyennes que pour les projets de référendums.

En conclusion, il serait utile d'examiner soigneusement les conséquences possibles du projet de loi pour le bon fonctionnement des institutions provinciales et pour la forme de gouvernement de la province.

Sur proposition des représentants du Congrès, un amendement mentionnant le Protocole additionnel à la Charte européenne de l'autonomie locale sur le droit de participer aux affaires des collectivités locales est apporté.

Le Conseil adopte le projet d'avis sur le projet de loi d'initiative citoyenne concernant les règles relatives à la participation publique, aux projet de loi d'initiative citoyenne, aux référendums, aux initiatives populaires et des amendements à la loi électorale provinciale de la province autonome de Trente (Italie) (CDL-AD(2015)009).
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6. L'importance des aspects techniques du droit électoral

Ms Weesing-Loeber (electoral expert, The Netherlands) presented the importance of technical aspects of the electoral legislation. An important aspect of free and fair elections is the way the rules of the electoral system are formulated, mainly concerning the electoral formulas used, the ballot structure and the size of the districts. This was covered quite extensively in the opinions of the Venice Commission. Other aspects of the electoral legislation which appeared in the opinions were the right to vote and the eligibility criteria, as well as party financing, the media landscape and the electoral disputes procedures. However, other practical elements are essential for elections, such as the voting procedures as such, the counting methods and rules concerning the tabulation of results. If any of these aspects of the elections were not respected during elections day, the legitimacy of the election process would be at stake. The Venice Commission should therefore pay attention in its opinions to all these technical aspects. This would require having the practical knowledge of specific issues and context in the field.

Ms Weesing-Loeber research shows the importance of empirical knowledge in the electoral field and the relevance of field missions and the interactions between the Venice Commission and other bodies, such as the PACE or the OSCE/ODIHR.

7. Conférences européennes des administrations électorales (point d'information)

Le secrétariat informe le Conseil de la tenue de la 12^e Conférence européenne des administrations électorales, qui a eu lieu à Bruxelles les 30 et 31 mars 2015 sur «La garantie de la neutralité, de l'impartialité et de la transparence des élections : le rôle des administrations électorales». La conférence était organisée conjointement avec le ministère de l'Intérieur de la Belgique et s'inscrivait dans le cadre de la présidence belge du Comité des Ministres du Conseil de l'Europe.

Plus de 160 participants étaient présents, représentant 60 pays et plusieurs institutions internationales. Étaient notamment représentés le Parlement européen et le Service européen pour l'action extérieure, ainsi que l'OSCE/BIDDH, l'Organisation des États américains, l'Association des administrateurs d'élections européens (ACEEEO) et International IDEA.

La 13^e Conférence européenne des administrations électorales se tiendra les 14 et 15 avril 2016 à Bucarest, en Roumanie, et sera organisée en coopération avec l'Autorité permanente électorale de Roumanie.

8. Coopération avec *International IDEA*

Mr Solijonov introduced the electoral programme of *International IDEA*, which had as its main mandate to support the democratic development of the world. Concerning the electoral development programme, several areas have been established through the years as traditional areas of expertise for IDEA: electoral system design, electoral management design, direct democracy, voting from abroad, electoral justice, electoral legal frameworks, voter turnout, as well as increased knowledge-based tools on elections and conflict.

IDEA was also developing some emerging areas of expertise on electoral technology, media and elections, and works on cross cutting issues, such as money and politics. In this field, a conference will be organised in September in Mexico and the Venice Commission was invited. Another aspect of further collaboration between IDEA and the Venice Commission concerned the databases. A memorandum of understanding concerning the VOTA database would be prepared to strengthen further the cooperation in this field.

The Council decided to grant IDEA the status of observer and to invite them to future meetings of the Council.

9. Information sur les activités de la Commission en matière électorale

- Communication du Secrétariat

Mr Chahbazian informed the Council on the conference on *The principle of the right to free elections: the challenge of implementing the law and the respect of Council of Europe standards*, co-organised with the Parliamentary Assembly of the Council of Europe, which had taken place in Paris on 4-5 June 2015.

The conference was attended by around 80 participants, including MPs from all Eastern Partnership countries (Armenia, Azerbaijan, Georgia, Moldova, Ukraine and Belarus), civil society and representatives from the Council of Europe and the French National Assembly. The conference dealt with several topics, including the following: the Council of Europe standards in the field of elections; the ways to improve legal frameworks and overcome difficulties in their application by the relevant authorities; the use and abuse of administrative

resources in election campaigns; the inaccuracies in voter lists and difficulties related to the vote of citizens residing abroad and the functioning of electoral administration and the challenge of neutrality and impartiality. There had been very rich debates and a publication would follow. Taking into account the success of the conference, the PACE would surely ask for the cooperation of the Venice Commission in future similar activities.

Depuis la réunion du Conseil de mars 2015, les activités suivantes ont eu lieu dans le domaine électoral :

- La conférence post-électorale en Moldova (Chisinau, 23-24 mars 2015)
- La deuxième conférence internationale organisée par l'Autorité permanente électorale de Roumanie, sur « Intégrité électorale et coopération régionale » (Bucarest, 25-26 février 2015)
- La table ronde sur les règles de procédure de la Commission électorale centrale de l'Albanie (Tirana, 1^{er} avril 2015)
- La réunion sur le financement des campagnes électorales : un défi pour les processus électoraux dans les pays du Sud de la Méditerranée (Tunis, 27-28 avril 2015)
- La réunion avec le groupe parlementaire en matière d'élections locales de la *Verkhovna Rada* (Kiev, 21 avril 2015)
- La réunion avec le groupe d'experts et la société civile travaillant sur le projet de loi électorale locale (Kiev, 29 avril 2015)
- Le 10^e séminaire international sur les questions électorales (Montego Bay, Jamaïque, 26-27 mai 2015)
- Les sessions de formation sur la résolution des litiges électoraux pour les délégués des partis (Chişinău, 26-29 mai 2015)
- L'assistance juridique à la mission d'observation de l'Assemblée parlementaire à l'occasion des élections législatives en Turquie (7 juin 2015)
- La réunion de lancement d'une organisation d'administrations électorales arabophones (Beyrouth, 8-9 juin 2015)

Les activités suivantes sont d'ores et déjà prévues :

- La 24^e conférence de l'Association des administrateurs européens d'élections (ACEEEO) (Chisinau, 9-11 septembre 2015)
- La 2^e Assemblée générale de l'Association mondiale des administrations électorales (Punta Cana, République dominicaine, 17-22 août 2015)
- La conférence européenne sur la codification du droit électoral, organisée par l'Autorité permanente électorale de Roumanie, qui se tiendra les 19-20 octobre 2015 à Bucarest

Le Secrétariat présentera ces activités plus en détail à la demande des membres.

- Coopération avec l'OSCE/BIDDH

An exchange of views took place with the representatives of the OSCE/ODIHR on the possibilities of future co-operation.

Ms Martin-Rozumilowicz informed the Council on the activities of the OSCE/ODIHR in the electoral field: a limited mission observing the elections in Turkey; the observation of local elections in Moldova with the Congress and the future observation of the local elections in Albania. There would also be elections in autumn in Belarus, Azerbaijan and Kirgizstan, as well as in Spain, Switzerland, Poland and Portugal.

Ms Martin-Rozumilowicz also informed about the cooperation with the Venice Commission in the assistance which would be given to the CEC of Bulgaria, and on the conference which would be held on 20 July 2015 in Vienna and where the Venice Commission was invited to present the draft guidelines on the use of administrative resources.

10. Date of next meeting / Date de la prochaine réunion

The Council fixed its next meeting for **Thursday 22 October 2015 at 9:45 a.m.**

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

VENICE COMMISSION / COMMISSION DE VENISE

Members of the Council for Democratic Elections (CDE) / Membres du Conseil des Elections démocratiques (CED)

Ms Maria del Carmen ALANIS FIGUEROA

Mr Srdjan DARMANOVIC

Mr Aivars ENDZINS

Mr Oliver KASK (**Vice-Chair/Vice-Président**)

Substitute Members of the CDE / Membres suppléants du CED

Mr Richard BARRETT (excusé/apologised)

Ms Paloma BIGLINO CAMPOS (excusée/apologised)

Mr Paul CRAIG

Mr Ben VERMEULEN

Other members who participated at the meeting / Autres membres ayant participé à la réunion

Mr Gianni BUQUICCHIO (President/Président)

Mr GONZALEZ OROPEZA

Mr HIRSCHFELDT

Experts

M. KALCHENKO

Secretariat / Secrétariat

M. Thomas MARKERT

M. Pierre GARRONE

Ms Amaya UBEDA DE TORRES

Simona GRANATA-MENGHINI

PARLIAMENTARY ASSEMBLY / ASSEMBLEE PARLEMENTAIRE

Members / Membres

Mme Josette DURRIEU, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie

Mr Michael McNAMARA, Committee on Legal Affairs and Human Rights/Commission des questions juridiques et des droits de l'homme

Mr Jordi XUCLÀ, Monitoring Committee/ Commission de suivi (excusé/apologised)

Membres suppléants / Substitute Members

Ms Tinatin KHIDASHELI, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie (excusé/apologised)

Mr José Maria BENEYTO, Committee on Legal Affairs and Human Rights/Commission des questions juridiques et des droits de l'homme (excusé/apologised)

Mr Tiny KOX, Monitoring Committee/ Commission de suivi (excusé/apologised)

Secretariat / Secrétariat

Mr Chemavon CHAHBAZIAN

Ms Caroline RAVAUD

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF THE COUNCIL OF EUROPE (CLRAE) / CONGRES DES POUVOIRS LOCAUX ET REGIONAUX DU CONSEIL DE L'EUROPE (CPLRE)

Members / Membres

Mr Stewart DICKSON, Chamber of Regions/Chambre des régions (excusé/apologised)

Mr Jos WIENEN, Chamber of Local Authorities/Chambre des pouvoirs locaux
(Chair/Président)

Secretariat / Secrétariat

Ms Stephanie POIREL

OBSERVERS / OBSERVATEURS

OSCE

ODIHR / BIDDH

Ms Beata MARTIN-ROZUMILOWICZ

EUROPEAN UNION / UNION EUROPEENNE

European External Action Service (EEAS) / Service européen pour l'action extérieure (SEAE)

(excusé/apologised)

IDEA

Mr Abdurasid SOLIJIONOV

OTHER

Ms Leontine WEESING-LOEBER

Mr Alberto GUEVARA CASTRO