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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

SUB-COMMISSION ON LATIN AMERICA

Santiago de Chile, Chile

5 December 2015 – (16:00-18:00)

MEETING REPORT

1. Adoption of the agenda

The agenda was adopted as it appears in [CDL-LA-OJ \(2015\)001ann.](#)

2. Follow-up to earlier Venice Commission opinions and activities concerning Latin American countries

- Report on “The method of nomination of candidates within political parties” ([CDL-AD \(2015\)020](#)), adopted in June 2015.

The report paid special attention to the experience of Latin American countries, which showed that, when legislative intervention was necessary, certain conditions should be met in order to strike a balance between freedom and democracy. The adoption of legal requirements on selection of candidates by political parties must be coherent with the national electoral system; the fulfillment of the requirements imposed by law must be effectively supervised by independent bodies, such as courts or electoral commissions, ensuring effective remedies for protecting the freedom of association in political parties and political rights of individuals; the law must respect the proportionality principle, establishing means that are at the same time necessary to increase democracy and also the least burdensome to political parties’ freedom. The experience of Bolivia, Brazil, Chile, Mexico, Peru, Venezuela and many other Latin-American countries was taken into account in this study, mainly in the field of gender quotas and political parties’ lists in elections.

- Report on the exclusion of offenders from Parliament ([CDL-AD\(2015\)036](#)), adopted in October 2015.

The question whether convicted persons should be allowed to become Members of Parliament is an important issue in many countries. The report, among others, also fully integrated the Latin American experience. The report stated that there was no common standard on the cases of restrictions to the right to be elected. However, the vast majority of states limited the right of offenders to sit in Parliament, at least when convicted for very serious offences. The exclusion of serious offenders from elected bodies could happen only if (1) the majority of voters are in favor of such exclusion; (2) voters are effectively in a position to exclude these people, which implies (2a) internal democracy of political parties or open lists and (2b) that there are no obstacles to free suffrage. The Venice Commission considered that, if the exclusion of offenders from elected bodies did not happen by the simple functioning of the electoral mechanisms, legislative intervention should become necessary.

- Joint Guidelines on the use of administrative resources.

One of the most crucial, structural and recurrent challenges, identified on a regular basis in election observation mission reports, is the misuse of administrative resources (also called public resources) during electoral processes. Several generations of both incumbents and civil servants considered this practice as normal and part of an electoral process. This phenomenon was studied by the Venice Commission and the “Report on the misuse of administrative resources during electoral processes” ([CDL-AD\(2013\)033](#)) was adopted in 2013.

The joint guidelines, prepared jointly by the Venice and OSCE/ODIHR and to be discussed at a plenary session of the Commission in March 2016, will be a follow up to the Report and are a practical guide aimed at fighting misuse of

administrative resources during electoral processes, for the consideration of the states and lawmakers.

- Follow up to former opinions and work with the Bolivian authorities and on the implementation of the constitutional reforms in Bolivia.

In 2011 and 2012, the Venice Commission was invited to assist the Bolivian authorities in the implementation of the new constitution. Several meetings with the judiciary, prosecutors' office and parliament were organised and an opinion prepared and adopted on the independence of the judiciary and on the role of public prosecutors. In 2015, the Constitutional Court of Bolivia requested the Venice Commission to organise several trainings in the field of Human Rights. A new co-operation programme was presented to the European Union in order to continue co-operation. The Sub-Commission will be informed on any further developments.

- The Sub-Commission was also informed about the request by the Inter-American Court on freedom of association and judges.

Mr Roberto Caldas, Vice-President of the Inter-American Court of Human Rights and President of the Court since 1 January 2016, informed the Sub-Commission about the co-operation with the Venice Commission on the report on the freedom of expression and freedom of association of judges this year. At the request of the Inter-American Court, which had a pending case in this field in 2015 (*Lopez Lone et al. v. Honduras*), the Venice Commission prepared and adopted a comparative report, which was very useful for the Court. The judgment on the *Lopez Lone* case was rendered on 5 October 2015.

3. Communication by the President of the Venice Commission

The President of the Venice Commission informed the Sub-Commission on the work of the Venice Commission with Latin American countries in 2014 - 2015 and on recent and future activities of interest for the Sub-Commission, mainly concerning:

- The meeting with a representative of the Ministry of Justice of Peru and discussion on the national programme on the implementation of human rights in Peru (Strasbourg, October 2014).
- The withdrawal of the request of an opinion by the Ministry of Justice of Peru on anti-discrimination legislation. The request, which was sent to the Commission in February 2015, was withdrawn after the bills were no longer to be discussed in the Peruvian Parliament.
- The participation of the President of the Commission as a key note speaker in an international Conference on Constitutional Courts and the rule of law in Mexico, in October 2014. The co-operation with Mexico and with the Electoral Tribunal and the impact of this fruitful co-operation on the work of both institutions was stressed in this meeting.
- The participation in the IX Inter-American meeting of Electoral Management Bodies (Peru, November 2014).
- The participation in an international conference on Human Rights and electoral standards organised by the Carter Center (Atlanta, February 2015).
- The participation of a member of the Venice Commission in a global conference on "Money and Politics", co-organised by the Federal Electoral Tribunal of Mexico and International IDEA (Mexico, 2-4 September 2015).
- The participation in the X Inter-American meeting of the Electoral Management Bodies (Brazil, November 2015).

4. Communication by the Secretariat of the Sub-Commission on Latin America

Mr Fernando Cavalcanti presented a progress report on the implementations of the decisions taken during the meeting in Ouro Preto, Brazil, in May 2014. The topic chosen for the Conference, held in Santiago on 4 and 5 December 2015, followed up on the debates held in Ouro Preto, and focused on the protection of vulnerable groups – a topic that was one of the transversal axes of work of the Sub-Commission. The format of the Conference included a presentation of the case-law of both the European and the Inter-American Courts on Human Rights and a debate on the relevant national cases and examples

The main challenge faced by the Secretariat of the Sub-Commission was the lack of reliable contacts within Latin American countries, which were not members of the Venice Commission. Participants from former meetings of the Sub-Commission on Latin America were mostly members of the judicial power, with limited possibilities of establishing links with the national governments and other institutions. This limited the possibilities of developing co-operation on additional topics with the countries of the region.

Several proposals aimed at overcoming this lack of contacts with national institutions, mainly the creation of a joint Secretariat, were discussed.

The Sub-Commission agreed to:

- **Establish a joint Secretariat of the Sub-Commission on Latin America. The Secretariat will be collegial.**
- **The joint Secretariat will be composed by a representative of each Latin American country member of the Venice Commission: Brazil, Chile, Mexico and Peru.**
- **Brazil, Chile, Mexico and Peru should send the Secretariat of the Venice Commission the names of the representatives for the Secretariat of the Sub-Commission before the end of February 2016.**
- **Instruct the joint Secretariat to develop contacts with Latin American countries, not members of the Venice Commission.**

5. Road-map for the activities with Latin America countries in 2016

Mr Buquicchio underlined that the Venice Commission has been a success in the Council of Europe and has become a very important tool in constitutional and legal reform through the sharing of experience.

Mr Buquicchio referred to three different channels of cooperation open for countries from Latin America:

- First, there was a possibility of becoming a full member of the Venice Commission. In this case a request should be sent through the Ministry of Foreign Affairs to the Secretary General of the Council of Europe. The decision belongs to the Committee of Ministers, and although, until now, this body has always accepted a new application, the procedure is formal. As a new member, the country has two main duties: to appoint a member and a substitute member and to contribute to the budget of the Venice Commission, although this contribution is one-third of the contribution of a European country. Members coming from Latin American countries have been very active in the work of the Venice Commission, participating fully and sharing their

- experiences through reports, studies and opinions, contributing to the establishment of a shared legal culture in the field of democracy, the rule of law and human rights.
- Second, judicial bodies from Latin American countries co-operate through the Venice Forum and the contributions to the CODICES database, as well as through the World Conference of Constitutional Justice, a mechanism that is very well-known in the region.
 - However, there is a third alternative: an open co-operation with as many countries as possible through the Sub-Commission on Latin America. In this third case, the country does not need to contribute to the budget of the Sub-Commission, and its only responsibility is to appoint a liaison officer/representative to follow and participate in the works of this Sub-Commission.

The Sub-Commission on Latin America could become a very useful tool of regional co-operation if it received support of the Latin American governments. The Venice Commission could contribute further to the development of democracy in the region through debate and exchange of relevant experiences and expertise.

Therefore, the roadmap included three essential items:

Item 1. Possible topics and **venue** for the next regional conference.

Ms Alanis Figueroa reminded the participants of the work developed in the Study on the implementation of Human Rights treaties, adopted in Rome at the 100th session of the Venice Commission, and proposed to follow this up, choosing for the next conference the topic: “The future of international human rights protection bodies and mechanisms: implementation of case-law and further challenges”. This was supported by Mr Roberto Caldas, who also proposed to establish some co-operation agreements with relevant institutes dealing with this topic in the region, mainly with the Institute of MERCOSUR and the Inter-American Commission on Human Rights. Mr Castellà also suggested an agreement with some academic institutions, such as the Centro de Estudios Políticos y Constitucionales, which could complement the practical views of some international bodies.

Ambassador Maria Antonia Navarro, from Honduras, supported this proposal and also suggested to prepare an information note on the work of the Venice Commission and the Sub-Commission for Latin American countries. She expressed Honduras’ interest in participating in the work of the Venice Commission.

Mr Gonzalez Oropeza, Mr Romero and Ms Alanis Figueroa proposed that, a selection of the most important recent studies and opinions of the Commission should be translated into Spanish.

Concerning the venue, Ms Calle Correa, President of the Constitutional Court of Colombia, proposed that, as part of an effort to promote co-operation between the Venice Commission and Latin American countries which are not members of the Commission, Colombia could be a possible place for the venue of the conference in 2016. Colombia had followed actively and with high interest the work of the Venice Commission.

The Sub-Commission agreed on the following:

- **To choose as the topic of the next conference in Latin America “The future of international human rights protection bodies and mechanisms: implementation of case-law and further challenges”.**
- **The conference will be followed by the meeting of the Sub-Commission on Latin America.**

- **The conference and the meeting will take place by the end of 2016.**
- **The possible venue could be Colombia and, as an alternative, Peru.**
- **The Secretariat of the Venice Commission will prepare an explanatory note on the Commission and the Sub-Commission in Spanish for all Latin American countries.**
- **The Secretariat of the Venice Commission will take the necessary steps to conclude agreements with relevant institutes in Latin America working on the implementation of international case-law on Human Rights, as well as with academic institutions.**
- **Brazil, Chile, Mexico, Peru and Spain will translate into Spanish the main recent documents adopted by the Venice Commission relevant for the region.**

Item 2. Road-map for future activities of the Sub-Commission:

The creation of a specific forum of judges and national authorities, as well as international experts on the use of comparative law and examples concerning the implementation and the impact of decisions of international bodies in the field of human rights, was proposed. This idea was supported by Mr Roberto Caldas, who stressed the importance of the topic for the region.

It was also considered that the Sub-Commission could create a working group which could follow the main constitutional developments in Latin America, and could then present them for discussion at the Plenary.

The Sub-Commission therefore agreed to:

- **Establish a working group of the Sub-Commission on Latin America, which could follow the international Human Rights case-law, as well as key constitutional challenges and reforms in the countries of the region.**
- **The working group will report on these issues to the Plenary of the Venice Commission in 2016.**

Item 3. Nomination of representatives from Latin American States, which are not members of the Venice Commission.

The Sub-Commission invited all Latin American countries to nominate representatives to participate in the works of the Sub-Commission.