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Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

RECOMMENDATION 273 (2009)
OF THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES
OF THE COUNCIL OF EUROPE
“EQUAL ACCESS TO LOCAL AND REGIONAL ELECTIONS”

COMMENTS BY THE VENICE COMMISSION
IN VIEW OF THE REPLY OF THE COMMITTEE OF MINISTERS

Adopted by the Council for Democratic Elections
at its 33rd meeting
(Venice, 3 June 2010)
and by the Venice Commission
at its 83rd Plenary Session
(Venice, 4 June 2010)

1. This document is a response by the Venice Commission to the request made by the Committee of Ministers at its 1069th meeting (4 November 2009), concerning Recommendation 273 (2009) of the Congress of Local and Regional Authorities of the Council of Europe entitled "Equal access to local and regional elections".
2. This document was adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Commission at its 83rd plenary session (Venice, 4 June 2010).
3. The Venice Commission wishes, in this document, to draw the Committee of Ministers' attention to the documents it has drafted along the lines of the Congress recommendation, by referring to the different points made in the recommendation.
4. Points 5.b and 6: the Venice Commission has drafted several documents on women's participation in elections. Reference should first of all be made to paragraph I.2.5 of the Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev) and the Declaration on Women's Participation in Elections (CDL-AD(2006)020), which state that "Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis". The Commission also draws attention to the report on "The impact of electoral systems on women's representation in politics" (CDL-AD(2009)029).
5. Point 5.c: according to paragraph I.1.1.b.ii of the Code of Good Practice in Electoral Matters, "...it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence".
6. Point 5.d: paragraph I.3.1.b.iii of the Code of Good Practice in Electoral Matters stipulates that the public authorities have a positive obligation to make information concerning lists and candidates available in the languages of the national minorities.
7. Point 5.f: concerning forms of voting, the Commission refers to paragraph I.3.2 of the Code of Good Practice in Electoral Matters. In particular, "voters should always have the possibility of voting in a polling station" (I.3.2.ii); "postal voting should be allowed only where the postal service is safe and reliable..." (I.3.2.iii); "electronic voting should be used only if it is safe and reliable..." (I.3.2.iv); "very strict rules must apply to voting by proxy; the number of proxies a single voter may hold must be limited" (I.3.2.v).
8. Point 5.g: the Code of Good Practice in Electoral Matters (paragraph I.1.3) seeks to eliminate obstacles to the procedure for registering lists and submitting individual candidatures. The Venice Commission also underlines that the "State bodies... should not limit the right to establish political parties on a national, regional and local level"¹ and that "any requirements in relation to registration, however, must be such as are 'necessary in a democratic society' and proportionate to the objective sought"².

¹ Code of Good Practice in Electoral Matters (CDL-AD(2009)021), para. 13; see the report on the participation of political parties in elections (CDL-AD(2006)025), par. 15-16.

² Guidelines and explanatory report on legislation on political parties: some specific issues (CDL-AD(2004)007rev), in particular guidelines B and E and the explanatory report para. 9; the report on the participation of political parties in elections (CDL-AD(2006)025), paras. 15-16.

9. Point 5.g (suite): the Venice Commission has adopted guidelines on the financing of political parties (CDL-INF(2001)008), aimed at guaranteeing transparency and fairness in the financing of electoral campaigns. The Code of Good Practice in Electoral Matters also underlines the fact that equality of opportunity entails a neutral attitude by state authorities with regard to the public funding of parties and campaigns (paragraph I.2.3.a.iii)³ and the transparency of such funding (paragraph I.2.3.d).⁴

10. Point 5.h: equal access to the media and State neutrality are also a fundamental aspect of equality of opportunity and of voters' freedom to form an opinion (Code of Good Practice in Electoral Matters, I.2.3.a.ii, I.2.3.c and I.3.1.a.i). Reference is also made to a joint document with the OSCE/ODIHR in which the Venice Commission focuses on the issue of media analysis during election observation missions⁵.

11. Point 5.i: in the course of 2010 the Venice Commission should prepare a draft interpretative declaration on disabled persons' participation of in elections, together with the European Co-ordination Forum for the Council of Europe Disability Action Plan 2006-2015 (CAHPAH).

³ See also paragraph I.3.1.a.iv on neutrality as an element of voters' freedom to form an opinion.

⁴ See also the explanatory report, para. 107 ss.

⁵ Guidelines on Media Analysis during Election Observation Missions, CDL-AD(2009)031.

APPENDIX**17th PLENARY SESSION**
Strasbourg, 13-15 October 2009**Equal access to local and regional elections****Recommendation 273 (2009)⁶**

The Congress,

1. Having regard to Article 2, paragraph 1.b., of Statutory Resolution (2000)¹ relating to the Congress of Local and Regional Authorities of Europe, which stipulates that one of the objectives of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”, and to Article 2-3 of Statutory Resolution (2007)⁶ of the Committee of Ministers;
2. Recalling that the fundamental principles of democratic participation of everyone in decision-making have been enshrined by the Council of Europe in a number of legal and political instruments, which form a common set of standards on democracy for Europe as a whole;
3. Considering the European Charter on Local Self-Government, particularly its Preamble and Article 3 which states that local councils or assemblies shall be composed “of members freely elected by secret ballot on the basis of direct, equal, universal suffrage (...)”;
4. Referring to its Explanatory Memorandum on equal access to local and regional elections;
5. *Recommends that the Committee of Ministers urge the governments of member states:*
 - a. to invite the Congress of Local and Regional Authorities to monitor local and regional elections in their countries to ensure that the requirements for equal access to local and regional elections, are met ;
 - b. to achieve equal representation of each sex, to establish an electoral system at local and regional level ensuring that men and women alternate on lists (with a minimum of 1 to 3), with financial penalties in the event of non-compliance, and to enable the under-represented sex to attain positions of responsibility within the executive bodies of municipalities and regions;
 - c. to grant the right to vote and stand in local elections to all residents legally residing for at least three years on their territory, irrespective of their origin ;

⁶ Debated and adopted by the Congress on 15 October 2009, 3d sitting (see document [CG\(17\)12](#), explanatory memorandum, presented by J. Wielen, The Netherlands (L, EPP/CD) on behalf of C. Bijl, The Netherlands (L, SOC), rapporteur).

- d. to invite local and regional authorities to ensure the availability of electoral material in a regional or minority language and to give the right to candidates from minority groups to use their mother tongue in the pre-electoral campaign in order to guarantee equal access to local and regional elections to members of a minority group;
- e. to assist local and regional authorities in implementing, and taking part in, awareness-raising campaigns especially addressed to young people, and in supporting local initiatives for local youth councils, in order to promote their participation in the decision making process at local level;
- f. to stimulate the creation of secure alternative forms of access to the polls such as postal, proxy voting or secure e-voting systems;
- g. to review their domestic legislation in order to ensure that no provisions remain in place which would impede the registration of political parties and candidates, and to guarantee transparency and fairness in the financing of electoral campaigns at local and regional levels;
- h. to guarantee, by appropriate domestic regulations, fair and balanced media coverage (TV, radio and newspapers) of all candidates in local and regional electoral campaigns, notably under the supervision of local or regional independent authorities;
- i. to ensure special assistance by the local and regional authorities be provided to voters with physical and sensory impairments, those with mobility problems, learning disabilities or dyslexia. Alternative measures, and specific arrangements in polling stations should be provided on election day to enable them to exercise their right to vote;

6. *Requests that the Committee of Ministers call on all member states to give appropriate follow-up to its Recommendation (2003)3 on balanced participation of women and men in political and public decision making, as well as the Parliamentary Assembly Recommendation 1674 (2004) on women's participation in elections, in which states have been asked to take special measures to stimulate and support women's will to participate in political and public life, by introducing parity measures (such as, for example the implementation of quotas) in order to bring a change in attitudes and to stimulate and support women's willingness to participate in political and public life.*