



Strasbourg, 26 April 2023

**CDL-EL-PV(2023)001\***

Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**76<sup>TH</sup> MEETING**  
**OF THE COUNCIL FOR DEMOCRATIC**  
**ELECTIONS**  
**Venice, 9 March 2023 at 10 a.m.**

**MEETING REPORT**

*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

### 1. Adoption of the agenda

The Council adopted its agenda as it appears in document [CDL-EL-OJ\(2023\)001ann.](#)

### 2. Elections to the Presidency

The revised internal rules of procedure of the Council for Democratic Elections will enter into force in October 2023, and will bring about a rotating and tripartite presidency. A president and two vice-presidents will then be elected.

It was therefore suggested to re-elect President Darmanović and Vice-President Dickson until the October meeting of the Council.

**The Council re-elected Mr Darmanović as President and Mr Dickson as Vice-President of the Council for a term expiring at the October 2023 meeting of the Council.**

### 3. Azerbaijan - Draft joint opinion of the Venice Commission and the OSCE/ODIHR on the Law on Political Parties

Ms Deskoska informed the Commission that the Secretariat of the Venice Commission had contacted the authorities of Azerbaijan in order to organise a visit and open a dialogue for the preparation of the opinion, but the latter had declined, which was regrettable. Meetings had been organised with NGOs and some political parties.

The revision of the law had not been adopted through an open, transparent, broad, inclusive and participatory process, as underlined in the Venice Commission-ODIHR Joint Guidelines on Freedom of Association. On the substance, while there were already obstacles to political competition in the previous law, this problem had become even more acute with the new law. In particular, the increase in the number of members necessary to create a political party, which would also apply to existing parties, would have a significant adverse impact. Among other problems, the Ministry of Justice would have access to the registers of political parties twice a year, while it was not an independent body as previously recommended, and it could exercise a very strict monitoring on party activities, e.g. by the control of the conformity of party behaviour with their own charter or of the obligations for political parties to inform about agreements with international partners; other rules were so prescriptive that they went against internal organisational autonomy of the parties, e.g. concerning the name of the parties. Due to the plurality electoral system applied, the percentage of seats of many parties was much lower than their percentage of votes; the draft opinion therefore advised to allocate funds on the basis of the number of votes rather than on the number of seats. The rule according to which the membership fee could amount to the highest allowed donation could lead to unfair financing due to the lack of transparency of the fees – while the law provided for donations to be transparent; the draft opinion underlined that data protection rules should be respected. The draft opinion also recommended reconsidering the provisions on the need for members of parties to be citizens; on the prohibition of multiple membership; on the exclusion of holders of religious “positions” (a vague concept); and to better ensure gender representation and inclusion of people with disabilities.

Ms Anne-Lise Chatelain, Head of the ODIHR Legislative Support Unit, underlined the severity of the limits to the registration of political parties.

Ms Martinez Ferro, as a representative of the Monitoring Committee of the Parliamentary Assembly which had asked for the opinion, recalled the context, that is the restrictive political environment where the situation of the opposition was very difficult. The Monitoring Committee

was preparing a report and would include a visit to Azerbaijan in April; the opinion would be included in the report.

Mr Stier informed the Council that he would report to the Legal Affairs Committee and inform it about the lack of co-operation of the authorities. There was a backsliding in comparison with the 1992 law. The issue of possible intervention by religious leaders should be addressed in a more precise way, in conformity with freedom of religion, even if the authorities underlined the need to set aside religious fanatics who tried to change the secular nature of the state.

Mr Vermeulen suggested several amendments, notably concerning the possibility to exclude a person deprived of legal capacity from a party, and the element of violence for the prohibition of party, which was not a necessary condition under the case-law of the ECHR. Mr Holmøyvik supported the idea to amend the opinion in this sense, but vague terms should be avoided in the law.

Ms Deskoska and Ms Chatelain replied that these comments would be taken into account in the final version of the opinion.

**The Council approved the draft Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Law on Political Parties of Azerbaijan ([CDL-AD\(2023\)007](#)).**

#### 4. Electoral Observation

Mr Garrone referred to the information document ([CDL\(2023\)019](#)) on the Venice Commission's involvement in election observation in 2022, which mentioned *inter alia* the legal assistance provided by the Venice Commission to the Parliamentary Assembly's election observation missions and the problems most often identified by election observers.

On behalf of ODIHR, Mr Akhundlu underlined the importance attached to co-operation in the field of election observation. The importance of election observation was first identified by the participating states in 1994 in Budapest when they requested ODIHR to co-ordinate it. Joint statements of international election observation missions were essential, and co-ordination with governmental and non-governmental organisations had been developed to minimise divergences; ODIHR was therefore committed to reinforce its partnership with the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, and, for local and regional elections, the Congress, while the Venice Commission provided invaluable legal support. Every year ODIHR had regular interactions with the other organisations observing elections. Shared conclusions were highlighted in numerous documents including the preliminary conclusions and the ODIHR final report.

Mr Stier underlined once again the importance of co-ordination. For example, on the occasion of the 2022 elections in Bosnia and Herzegovina, there was a very good co-operation e.g. with ODIHR but there was a divergence with the European Parliament about the role of the High Representative. Difficulties might arise for example, in Kazakhstan: there was a doubt about the possibility of ensuring co-ordination of all observers including Russian and Chinese. The role of ODIHR for ensuring co-ordination was essential.

Three members of the Venice Commission with broad experience in election observation made suggestions on co-operation: Mr Holmøyvik, Mr Vilanova and Mr Barrett.

Their main proposals to further improve co-operation were:

- To receive the draft report early enough to make comments in a thorough manner;
- To ensure a better co-ordination between the head of the PACE delegation and the rest of the delegation in order for the PACE delegation inputs to be better reflected in

the report through clear statements of the head of delegation. In view of this, PACE could revise its working methods;

- To introduce more legal aspects in the reports, in particular, references to the case-law of the European Court of Human Rights.

Moreover, Mr Vilanova stated that co-ordination should not end up in a consensual report to the detriment of quality. Observers could not guarantee the behaviour of domestic political actors who tried to use the attention of international media for internal political purposes, e.g. to discredit opponents. Election day itself was rarely problematic but problems arose before e-day (including in the legal framework) and after e-day (the necessity for the law to provide for a clear deadline to close the cycle of litigation). Mr Barrett added that it would be suitable for Venice Commission representatives to be invited regularly to the final press conference.

Mr Dickson reported on the election observation activities of the Congress. In the context of the preparations for the Council of Europe Summit in May, Mr Mori, the new Secretary General of the Congress, had been very active to make sure election observation remained high on the agenda of the Summit. A recommendation of the Congress, which should hopefully be adopted in a few days, requests to facilitate the election observations. The Monitoring Committee had approved an outline for Congress election observation reports, which made clearer reference to the Council of Europe standards in the field and in particular, to the Code of Good Practice in Electoral Matters.

During the observation of the repeat elections in Berlin, issues such as compulsory training of polling station commissioners and the need to count the ballots before opening them were raised. Mr Dickson suggested a reflection to be initiated by the Council for Democratic Elections on these practical issues to clarify procedures, thus helping to harmonise the election observation reports of the Congress and of the Parliamentary Assembly.

## **5. Conferences and seminars**

The Secretariat reminded that, on 12 December 2022, the Venice Commission had organised a post-election webinar following the parliamentary elections and the referendum held in Hungary on 3 April 2022, in co-operation with the National Election Commission and the National Election Office of Hungary. There were exchanges on the following topics: general overview of the elections, lessons learned, the National Election Office's proposed package for amending the Act on Electoral Procedure submitted to the Parliament; the ODIHR report; decision-making and overall effectiveness of the election administration; evaluation of the 2022 general elections and national referendum from a fundamental rights' perspective; IT developments in progress, plans for the future; and effective legal remedies.

Ms Martinez Ferro informed the Council about the opening of a monitoring procedure concerning Hungary, which would take account of the Venice Commission opinions requested by the Monitoring Committee, in particular on electoral legislation.

Mr Dickson noted that post-election activities are a way of reinforcing synergies between the bodies taking part in the work of the Council.

Further information was provided on

- PACE Conference on Elections in Times of Crisis – Challenges and Opportunities – in Bern on 9 and 10 May 2023

This Conference was being organised by the Parliamentary Assembly in co-operation with the Swiss Parliament in the framework of the 60<sup>th</sup> anniversary of the accession of Switzerland to the Council of Europe. The organisers noted that in the last three years, the democracies of Europe

had been hit by successive dramatic challenges to the functioning of their democratic institutions. Just as the world was emerging from the unprecedented global shocks of the Covid-19 outbreak, Europe's peace and stability were undermined by the Russian war of aggression in Ukraine and its far-reaching consequences.

One of the aims of this conference was to provide policy recommendations, including to the Council of Europe 4<sup>th</sup> Summit of Heads of State and Government on 16-17 May 2023 in Reykjavik, for developing guidelines on strengthening the resilience of democratic institutions to emergencies and their ability to deliver in uncertain times. The Venice Commission and the Congress would be represented by four participants, including its President.

Ms Martinez Ferro, on behalf of the Parliamentary Assembly as a co-organiser, stated that the three main issues which would be addressed were: the impact of and lessons learned from Covid-19; the impact of armed conflicts on electoral processes; and other challenges (such as Artificial Intelligence, cyber-attacks, foreign interference, energy crisis, ecological catastrophes) and looking to the future. The Council of Europe's leading role in electoral matters would be reminded.

Mr Akhundlu considered the conference as very forward looking; it was an opportunity to discuss issues which have a potential to affect the core activity of election observers. The ODIHR would be represented at a high level.

- International Conference on Cybersecurity and Elections in Madrid from 10 to 12 May 2023.

This event was part of a series of activities of the Venice Commission in the field of new technologies and elections, which had already led to a report and guidelines, while artificial intelligence and electoral integrity, respectively security and elections had been the subject of two European conferences of electoral management bodies in the last five years.

The Conference would be organised around two topics: electoral processes, democracy and rights; disinformation, technology and media; while the main subtopics would be: the hybrid threat and its link to national security through democratic institutions and processes; the global electoral justice network; disinformation campaigns and their risks for democracy: creating a framework for their regulation? media: information, opinion and disinformation; guarantees of information rights in electoral periods. The Venice Commission would be represented by six members and experts.

Future conference to be organised by the Council

Ms Granata-Menghini proposed, with a view to ensuring more visibility of the Council, that it organise and host a conference. A possible topic would be stability of electoral law, the most quoted principle of the Code of Good Practice in Electoral Matters, while there were a lot of exceptions and qualifications to the one-year stability rule (e.g. on technologies).

This proposal was supported by several participants, who confirmed that exceptions to stability were amongst the issues which could be addressed: Examples included the COVID-19 crisis, as well as abusive referrals to stability by authorities which aim at not implementing recommendations of international organisations

More details would be discussed at the next meeting.

**6. Date of the next meeting**

The Council fixed the date of its next meeting for Thursday, 8 June 2023 from 10.00 am to 12 noon.

**LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS**

**76<sup>th</sup> meeting / 76<sup>e</sup> réunion  
CDE 9 March / CED 9 mars 2023**

**VENICE COMMISSION / COMMISSION DE VENISE**

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

Mr Richard BARRETT  
Mr Srdjan DARMANOVIĆ (President/Président) (apologised/excused)  
Mr Ben VERMEULEN  
Mr Pere VILANOVA TRIAS

*Substitute Members of the CDE / Membres suppléants du CED*

Mr Eirik HOLMØYVIK  
Mr Oliver KASK (apologised/excused)  
Ms Janine OTÁLORA MALASSIS  
Ms Katharina PABEL (apologised/excused)

*Other members of the Venice Commission / Autres membres de la Commission de Venise*

Ms Renata DESKOSKA

*Secretariat / Secrétariat*

Ms Simona GRANATA-MENGHINI  
Mr Schnutz DÜRR  
Mr Pierre GARRONE  
Mr Vahe DEMIRTSHYAN  
Mr Domenico VALLARIO

**PARLIAMENTARY ASSEMBLY / ASSEMBLEE PARLEMENTAIRE**

*Members / Membres*

Mr Michael Georg LINK, Committee on Political Affairs and Democracy (apologised/excused)  
Mr Davor Ivo STIER, Committee on Legal Affairs and Human Rights)  
Ms María Valentina MARTINEZ FERRO, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe

*Substitute members / Membres suppléants*

Mr Aleksander POČIEJ, Committee on Political Affairs and Democracy (apologised/excused)  
Ms Khatia DEKANOIDZE, Committee on Legal Affairs and Human Rights (apologised/excused)  
Ms Laura CASTEL, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe

*Secretariat / Secrétariat*

Ms Sylvie AFFHOLDER  
Ms Agnieszka NACHILO

**CONGRESS OF LOCAL AND REGIONAL AUTHORITIES (CLRAE) / CONGRÈS DES POUVOIRS LOCAUX ET RÉGIONAUX (CPLRE)****Members / Membres**

Mr Stewart DICKSON, Chamber of Regions/Chambre des régions (Vice-President/Vice-président)

Ms Gunn Marit HELGESEN, Chamber of Regions/Chambre des régions

**Substitute members / Membres suppléants**

Ms Randi MONDORF, Chamber of Regions/Chambre des régions (apologised/excused)

Mr Vladimir PREBILIC, Chamber of Local Authorities/Chambre des pouvoirs locaux (apologised/excused)

**Secretariat / Secrétariat**

Ms Stéphanie POIREL

**DIRECTORATE GENERAL OF DEMOCRACY / DIRECTION GENERALE DE LA DEMOCRATIE (DGII) (excused/apologised)****OBSERVERS / OBSERVATEURS****ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE) / ORGANISATION POUR LA SECURITE ET LA COOPERATION EN EUROPE**

*Office for Democratic Institutions and Human Rights (ODIHR) / Bureau des institutions démocratiques et des droits de l'Homme (BIDDH)*

Mr Ulvi AKHUNDLU, Deputy Head, Election Department

Ms Anne-Lise CHATELAIN, Legal Officer

**EUROPEAN UNION / UNION EUROPEENNE (apologised/excused)**

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

*European Parliament / Parlement européen*

**INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE (INTERNATIONAL IDEA) (apologised/excused)****INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS (IFES)**

(apologised/excused)