



Strasbourg, 9 February 2006

**CDL-EL-PV(2005)004**  
**Or. Fr.**

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

**15<sup>th</sup> MEETING**  
**OF THE COUNCIL FOR DEMOCRATIC ELECTIONS**  
**(Venice, 15 December 2005 at 9.45 am)**

**MEETING REPORT**

## 1. Adoption of the agenda

The Council adopted the agenda on the basis of document CDL-EL-OJ(2005)004ann, with several amendments.

Given this meeting's very full agenda, the Council decided that some documents could be adopted without discussion, particularly when, in view of their urgent nature, they had already been forwarded to the authorities or body which had made the request.

## 2. Croatia

Mr Hjörtur Torfason informed the Council that Croatia had embarked on a process of electoral legislation reform, with a view to drawing up a global electoral code. However, drafting work might be postponed until after the 2007 elections; on the other hand, the draft law on the State Electoral Commission had been submitted for joint expert appraisal by the Venice Commission and the OSCE/ODIHR and the text should be adopted in February.

A round table on electoral law in Croatia had been held in Zagreb on 13 December. Representatives of the government, parliament, the State Electoral Commission, political parties, intergovernmental and non-governmental organisations and also national experts had met to discuss the setting up of a permanent State Electoral Commission and propose concrete recommendations that could be taken into account in the final version of the draft. The draft law had been presented by the Secretary of State in charge of the central state administration department, Mr Antun Palarić. The OSCE/ODIHR and the Venice Commission had also presented their views and suggestions, as had a number of the national players concerned, notably the president of the Supreme Court, Mr Branko Hrvatin, the chairman of the Parliamentary committee on constitutional affairs and political systems, Mr Dražen Bošnjaković, the non-governmental organisation GONG and representatives of the academic world.

The debate had focused on the powers and responsibilities of the State Electoral Commission, its funding, independence, impartiality and the transparency of its activities.

**The Council invited the secretariat, in agreement with the rapporteurs and the OSCE/ODIHR, to forward the draft opinion on the draft law on the State Electoral Commission to the Croat authorities before the next meeting.**

## 3. Georgia

The Georgian authorities had submitted to the Venice Commission for examination a draft revision of the Electoral Code concerning the election of the municipal council of Tbilisi ([CDL-EL\(2005\)034](#); see document [CDL-EL\(2005\)033](#)).

The draft opinion concerned solely the draft organic law "on amendments and additions to the organic law - Electoral Code of Georgia" (CDL-EL(2005)034), and not the remainder of the Electoral Code. More specifically, it focused on the new Electoral Code provisions incorporated in a new chapter, chapter XVIII. The Venice Commission's opinion had been

positive on the whole regarding these amendments, which had to be analysed in the light of a more general administrative and territorial reform. However, some weaknesses remained: as for the rest of the code, some provisions made the law more complex to read and were superfluous or redundant, and it was therefore advisable to simplify them; the new electoral system proposed needed to be clearly defined; candidacy restrictions aimed at those not resident in Tbilisi for a period of 5 years should be avoided; finally, the provisions concerning the period for announcing the final results and the system of complaints and appeals should be drafted with greater precision. Where appeals were concerned, it was above all necessary to avoid risks of conflicts of jurisdiction.

**The Council adopted the draft opinion on the draft organic law on amendments and additions to the Electoral Code of Georgia, drawn up on the basis of comments by Mrs Lazarova Trajkovska and Mr Owen (CDL-EL(2005)047), which, in view of the urgency, had already been forwarded to the Georgian authorities.**

A more general revision of the Electoral Code had begun on 15 November. A draft opinion on this revision should be submitted to the Council at its next meeting (18 March 2006).

Furthermore, a Venice Commission expert had carried out a 4-week technical and legal assistance mission with the Electoral Commission in October 2005. A repeat mission of this kind could be organised for the next local elections.

#### **4. Moldova**

The Council for Democratic Elections examined the draft joint recommendations of the Venice Commission and the OSCE/ODIHR on amendments to the Electoral Code of Moldova (CDL-EL(2005)048; see document [CDL-EL\(2005\)023](#)). A draft amendment to the draft opinion on the question of constituencies was appended to the draft opinion.

Mr Martin-Micallef informed the Council that Mr Lupu, speaker of the Moldovan Parliament, had requested the opinion of the Venice Commission on his country's electoral code at a time when the drafting of the recommendations was already at an advanced stage. These could therefore be redeployed as an opinion. In addition, the text should be slightly modified to take account of the amendments to the electoral code passed on 17 November 2005 as well as the comments of the CLRAE.

**The Council adopted the joint opinion of the Venice Commission and the OSCE/ODIHR on amendments to the Electoral Code of Moldova (CDL-EL(2005)048), together with an amendment on the question of constituencies. It authorised the secretariat, in collaboration with the OSCE/ODIHR, to adapt the opinion to take account of the legislative amendments of 17 November 2005 and the comments of the CLRAE, and to forward the revised text to the Moldovan authorities before the next meeting.**

## **5. Serbia & Montenegro**

### **- electoral law of Serbia**

Joint recommendations of the Venice Commission and the OSCE/ODIHR on Serbia's electoral law and electoral administration would be submitted to the Council at its next meeting (18 March 2006).

### **- referendum in Montenegro**

MM Tuori and Bradley presented the draft opinion ([CDL\(2005\)094](#)) drawn up at the Parliamentary Assembly's request on the compatibility of Montenegro's current legislation on the organisation of referendums with the applicable international standards, which mainly concerned the Montenegrin law on referendums of 2001 ([CDL\(2005\)076](#)). They said that, upon expiry of a three-year period falling due on 4 February 2006, the Constitutional Charter of the State Union (article 60) stipulated that the member states could initiate the procedure for withdrawal, which required a referendum complying with recognised democratic standards. An amendment to the Charter stated that international standards had to be followed and, to be in line with those standards, the member state organising a referendum had to cooperate with the European Union. The Parliamentary Assembly's request focused on three points in particular: required turnout, required majority and eligibility to vote. The question of implementing the decision taken by referendum was not examined in detail.

There were few binding international standards in this area. The rapporteurs had based themselves in particular on the Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), the Guidelines for constitutional referendums at national level (CDL-INF(2001)010), constitutional norms and the practices of other States.

Under the Montenegrin law on referendums, the result was valid if a majority of registered voters participated in the vote, while there was no special requirement for the level of support. This was not incompatible with international standards, which were not very specific. However, it would be desirable to introduce a quorum for approval by a certain percentage of the electorate, given what was at stake (the independence of Montenegro).

The current situation regarding eligibility to vote – exclusion of the Montenegrins resident in Serbia and inclusion of the Serbs resident in Montenegro – was acceptable in the light of international standards, although it seemed excessive to require two years' residence.

Moreover, the process had to follow Montenegro's constitutional rules. The draft opinion recommended that negotiations be held between the country's main political forces to give the referendum greater legitimacy.

Proposals for amendment were discussed, particularly where paragraphs 39 and 64 of the draft opinion were concerned. The revised version pointed out that a minimum turn-out in referendums on self-determination was a frequent requirement; that, in practice, referendums of this nature were approved by over half the electorate; that it was desirable to reach a consensus on the majority required to reinforce the legitimacy of the vote.

**The Council adopted the opinion on the compatibility of Montenegro's current legislation on the organisation of referendums with the applicable international standards (CDL(2005)094), with several amendments.**

## **6. "The Former Yugoslav Republic of Macedonia"**

The authorities of "the Former Yugoslav Republic of Macedonia" had requested the Venice Commission to give an opinion on the draft revision of the country's electoral legislation. A draft opinion would be submitted to the Council at its next meeting (18 March 2006).

**The Council authorised the secretariat, in agreement with the rapporteurs and the OSCE/ODIHR, to forward the draft opinion on the draft revision of electoral legislation to the Macedonian authorities before the next meeting.**

## **7. Ukraine**

The Ukrainian authorities had requested the Venice Commission to give an opinion on the Law on the election of peoples' deputies of Ukraine ([CDL-EL\(2005\)021](#)), as amended on 7 July 2005, ([CDL-EL\(2005\)054](#)), as well as on the Law on the state register of voters in Ukraine ([CDL-EL\(2005\)022](#)).

Mr Sanchez Navarro presented the draft consolidated opinions on these two laws (CDL-EL(2005)055 and CDL-EL(2005)056). He said that there were numerous cases of repetition between the existing electoral laws. In summary, the texts were more detailed than the previous versions and might pose difficulties in their application. The main problems concerned the requirement of five years' residence to be eligible, complaints and appeals (particularly the choice between an appeal to an electoral commission and an appeal to a court) and the prohibiting of foreigners and foreign media from taking part in election campaigns.

As there had been recent amendments, the Council asked the secretariat to take these into account before sending the opinion to the Ukrainian authorities.

**The Council adopted the draft opinions on the Law on the state register of voters in Ukraine ([CDL-EL\(2005\)022](#)) and on the Law on the election of peoples' deputies of Ukraine ([CDL-EL\(2005\)021](#)), as amended on 7 July 2005, ([CDL-EL\(2005\)054](#)), asking the secretariat to take account of recent amendments, in agreement with the rapporteurs and the OSCE/ODIHR.**

## **8. Stability of electoral law**

The Council was invited to adopt the draft interpretive declaration on the stability of electoral law, revised on the basis of comments made by members at the last two meetings, with a

view to forwarding it to the Parliamentary Assembly ([CDL-EL\(2005\)017rev2](#)). In the absence of written comments, the text was adopted without discussion.

**The Council adopted the draft interpretive declaration on the stability of electoral law, revised on the basis of comments made by members at the last two meetings, with a view to forwarding it to the Parliamentary Assembly (CDL-EL(2005)017rev2).**

## **9. Participation of political parties in the electoral process**

Mr Vogel had prepared comments on the participation of political parties in the electoral process ([CDL-EL\(2005\)057](#); see comments by Mr Sanchez Navarro [CDL-EL\(2005\)018](#)). Owing to a lack of time, this item was postponed to the Council's next meeting. The secretariat was asked to prepare a consolidated opinion for the Council's next meeting (18 March 2006).

## **10. Women's participation in elections**

Following the adoption of the Venice Commission's comments made to the Committee of Ministers on Parliamentary Assembly Recommendation 1676 (2004) on women's participation in elections ([CDL-AD\(2005\)002](#)), the Committee of Ministers had invited the Venice Commission to consider as a first step whether the relevant provisions of the Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev) dealing with electoral equality could be strengthened or complemented to take account of some of the proposals made by the Parliamentary Assembly. It had invited the Venice Commission, in the framework of the Council for Democratic Elections, to associate the Parliamentary Assembly, the Congress of Local and Regional Authorities of the Council of Europe, the CDEG and the CDLR in this work (CM/AS(2005)Rec1676 final, point 6).

A draft declaration on women's participation in elections had subsequently been drawn up on the basis of comments by Mr Luchaire and Mrs Suchocka (CDL-EL(2005)031).

The secretariat presented the different proposals for amendments submitted by the CDEG, the CDLR and Mr Jurgens on behalf of the Parliamentary Assembly. The amendments were discussed and those adopted by the Council would be incorporated in a revised document to be prepared by the secretariat for the next meeting.

**The Council for Democratic Elections instructed the secretariat to prepare a revised version of the draft declaration on women's participation in elections drawn up on the basis of comments by Mr Luchaire and Mrs Suchocka (CDL-EL(2005)031) for the next meeting, taking account of the amendments adopted at the present meeting.**

## **11. International Election Observation**

- Revised guide and revised explanatory memorandum

Following the adoption of the joint form for election observation of the Venice Commission and the OSCE/ODIHR (CDL-AD(2005)013) an expert would be instructed to revise the guide and explanatory memorandum on international election observation. The Parliamentary Assembly and the Congress of Local and Regional Authorities would be asked for their comments at the same time.

- New York Conference (27 October 2005)

The document entitled “Declaration on the principles for international election observation and code of practice for international election observers and oath accompanying the code of practice for international election observers” had been adopted at the Conference held in New York on 27 October 2005. The Venice Commission appeared as one of the institutions which had endorsed the text alongside *inter alia* the United Nations, the OSCE and other international organisations.

- OSCE Conference (Moscow, 22-23 November 2005)

The Secretariat of the Congress of Local and Regional Authorities of the Council of Europe had participated in a meeting of experts on election observation, held in Moscow on 22-23 November 2005. There had also been representatives from the OSCE/ODIHR, the OSCE Parliamentary Assembly, the European Parliament, the European Commission, the CIS as well as a number of non-governmental organisations which acted as national observers and electoral commissions. The Congress representative had presented the methods of the Council of Europe, in particular the work of the Council for Democratic Elections (see the Code of good practice in electoral matters and the Guide for the evaluation of elections). The participants had agreed *inter alia* to exchange information on a regular basis and to ensure better coordination of international observers, with a view in particular to ensuring consistency between the conclusions of the different international observers monitoring the same election.

## **12. Future activities**

### *Albania*

MM Buquicchio and Garrone had gone to Tirana on 18 November to meet the Prime Minister and the Speaker of the Parliament and in particular to discuss possible constitutional revision aimed at reforming the electoral system by introducing proportional representation. The Venice Commission might be requested to assist with this revision as well as the revision of the electoral code.

### *Guidelines on referendum*

The secretariat would prepare draft guidelines on referendum in collaboration with the rapporteurs (Messrs van Dijk, Luchaire and Malinverni) for the next meeting (18 March 2006).

*Study on electoral law in Europe*

Mr Krennerich, Venice Commission expert, was preparing a summary report for a forthcoming meeting of the Council for Democratic Elections, which would take into account the Venice Commission's recent opinions in the electoral field (2004 and 2005), as well as the observation reports from the Parliamentary Assembly, the Congress of Local and Regional authorities of the Council of Europe and the OSCE. The purpose of the study was *inter alia* to bring to light any problems which might arise in several national legislations.

*Secrecy of vote during indirect elections*

The secretariat would contact Mr Chagnollaud with a view to preparing a questionnaire on secrecy of vote during indirect elections for the meeting of March 2006.

*Participation in Parliamentary Assembly observation missions*

The Council was informed of a mission to observe the parliamentary elections of 6 November 2005 in Azerbaijan.

Participation in the observation missions in Palestine (January 2006) and Ukraine (March 2006) was envisaged.

**13. Cooperation with the OSCE/ODIHR**

An exchange of views took place with the representatives of the OSCE/ODIHR on the possibilities of future cooperation. In addition to the virtually systematic cooperation in preparing joint opinions on electoral law and the running of elections, the OSCE/ODIHR envisaged organising conferences on topics such as e-voting and electoral lists.

**14. Date of the next meeting**

It was decided to hold the next meeting on Saturday 18 March 2006 at 2.30 pm.



## **LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS**

### **Commission de Venise / Venice Commission**

#### Membres / Members

Mr Kaarlo TUORI, Professor of Jurisprudence, Department of Public Law, University of Helsinki, Helsinki

M. Dominique CHAGNOLLAUD, Membre du Tribunal Suprême, Université de droit, d'économie et de sciences sociales, Paris

Mr Peter PACZOLAY, Deputy Head, Office of the President of the Republic, Budapest

Mr Hjörtur TORFASON, Former Judge of the Supreme Court of Iceland, Reykjavik,

#### **Président/Chair**

Mr Ugo MIFSUD-BONNICI, President Emeritus, La Valletta

Mrs Mirjana LAZAROVA TRAJKOVSKA, Judge, Constitutional Court, Skopje

#### Membres suppléants / Substitute Members

Ms Eliska WAGNEROVA, Vice-President, Constitutional Court of the Czech Republic, Brno  
(excusé/apologised)

M. Alain LANCELOT, FNSP, Paris

Mr Ángel SÁNCHEZ NAVARRO, Professor of Constitutional Law, Complutense University, Madrid

Mr Anthony BRADLEY, Professor, London

#### Secrétariat / Secretariat

M. Gianni BUQUICCHIO

M. Thomas MARKERT

M. Pierre GARRONE

M. Gaël MARTIN-MICALLEF

### **Assemblée parlementaire / Parliamentary Assembly**

#### Membres / Members

M. Erik JURGENS, Amsterdam, Commission juridique, **Président/Chair** (excusé/apologised)

Mme Josette DURRIEU, Paris, Commission politique

M. Luc VAN DEN BRANDE, Bruxelles, Commission de suivi

#### Membres suppléants / Substitute Members

M. Andreas GROSS, Zurich, Commission juridique

#### Secrétariat / Secretariat

M. Günter SCHIRMER

**Congrès des Pouvoirs Locaux et Régionaux du Conseil de l'Europe (CPLRE) /  
Congress of Local and Regional Authorities of the Council of Europe (CLRAE)**

Membres / Members

M. Ian MICALLEF, Malte, Chambre des pouvoirs locaux

M. David SHAKESPEARE, Aylesbury, Chambre des régions (excusé/apologised)

Secrétariat / Secretariat

(excusé/apologised)

**Observateurs / Observers**

**OSCE**

BIDDH/ODIHR

Mr Nikolai VULCHANOV, Deputy Head of the Election Section, Warsaw

Mr Konrad OLSZEWSKI, Election Adviser, Warsaw

Mr Gilles SAPHY, Election Adviser, Warsaw

**Association of Central & Eastern European Election Officials (ACEEEO)**

Mrs Marta DEZSÖ, Election Law Expert, Director of the ACEEEO Documentation Centre, Budapest (excusée/apologised)