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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

18th MEETING
OF THE COUNCIL FOR DEMOCRATIC ELECTIONS
(Venice, 12 October 2006 at 9.45 a.m.)

MEETING REPORT

1. Adoption of the agenda

The Council adopted its agenda as it appears in document CDL-EL-OJ(2006)003ann.

2. Guidelines on referendums

The Council examined the draft revised guidelines on referendums ([CDL-EL\(2006\)024rev](#)), with a view to adoption. It discussed the draft amendments, in particular those made in writing by Mr Luchaire and the Secretariat. Mr Luchaire was unable to attend the meeting due to sickness. The Council retained many of the amendments. In particular, under item III.7, it advised against any quorum.

The Council adopted the draft revised guidelines on referendums ([CDL-EL\(2006\)024rev](#)), with several amendments.

The Council instructed the Secretariat to draw up a brief explanatory note to be appended to the guidelines, in co-operation with the Rapporteurs. The document will be forwarded to the Parliamentary Assembly, the Congress of Local and Regional authorities of the Council of Europe and then to the Committee of Ministers, with a view to its adoption.

3. Specific rules on the voting rights of national minorities

The Council examined the document on the issue of double voting rights for persons belonging to national minorities prepared by the office of the OSCE High Commissioner for National Minorities, as well as the comments by Ms Durrieu, rapporteur appointed by the Council ([CDL-EL\(2006\)029](#)). Ms Durrieu indicated that, according to the text presented by the Office of the High Commissioner, double voting rights should be excluded; however there are other methods which enable national minorities to be represented. Mr Drzewicki and Ms Verstichel, on behalf of the Office of the High Commissioner, proposed some modifications to the text which would explain why it is considered that such double voting rights should be admitted in certain cases.

The Council took note of the contributions from the Office of the High Commissioner and Ms Durrieu. It also took note that the Venice Commission Sub-Commission on the protection of minorities would deal with this matter at its meeting on Thursday 12 October in the afternoon.

4. Belarus

Ms Lazarova Trajkovska presented the draft joint opinion of the Venice Commission and OSCE/ODIHR on electoral legislation in Belarus (CDL-EL(2006)030). In its Resolution 1496 (2006) on “Belarus in the aftermath of the presidential election of 19 March 2006”, the Parliamentary Assembly of the Council of Europe, having condemned the undemocratic conduct of the presidential election of 19 March 2006 in Belarus invited the Venice Commission to make proposals on how to amend the Belarusian Electoral Code and address the malpractice of the administration in electoral matters. The draft opinion submitted to the Council was drawn up following this request. This text does not aspire to examine the electoral legislation (cf. [CDL-EL\(2006\)028](#)) in detail, but to underline the main problems, in particular those mentioned in the above-mentioned Resolution (role of independent

observers, composition of the electoral commissions and the practice of early voting), but also, for example electoral lists, registering candidates and appeals. Ms Lazarova underlined that the electoral process is greatly influenced by the executive and lacks transparency.

The Council adopted the draft joint opinion of the Venice Commission and OSCE/ODIHR on electoral legislation in Belarus (CDL-EL(2006)030), with a view to forwarding it to the Parliamentary Assembly.

5. Statement by the Secretariat

a. The Venice Commission took part in Parliamentary Assembly observation missions on the occasion of the parliamentary elections in “the former Yugoslav Republic of Macedonia” (5 July) and in Montenegro (10 September), as well as the general election in Bosnia and Herzegovina (1 October). In addition, the Commission took part in the observation mission of the Congress of local and regional authorities of the Council of Europe on the occasion of the local elections in Georgia (5 October).

The notes and the report prepared by the rapporteurs and the Commission Secretariat for these missions have been sent to the members of the Council for Democratic Elections.

b. In March 2006, Mr Owen Masters, Venice Commission expert participated in a working meeting with representatives from the Office of the State Administration of Croatia on the drawing up of a new law on the direct election of mayors and heads of cantons. A revised version of the law was sent to the expert in September 2006. A opinion on the revised version of the law is under preparation.

c. The Secretariat of the Commission was represented at the last ACEEEEO Annual Conference; this organisation has changed its name to “Association of European Election Officials”. The 2007 ACEEEEO Conference will be held at the seat of the Council of Europe in Strasbourg, and will be immediately followed by the 4th Conference of European Electoral Management Bodies.

d. The Constitutional Court of Armenia has requested the Venice Commission to give an *amicus curiae* opinion in the framework of a question on the constitutionality of the participation of judges in electoral commissions. Owing to the urgency of this question, a draft opinion will be sent to the Constitutional Court by the end of October. Mr Colliard rapporteur on this issue, indicated the outline of the draft opinion he is preparing. The Code of good practice in electoral matters is in principle favourable to the presence of judges in electoral commissions. However, these judges should be from a lower Court than those in charge of the litigation and, obviously, should not be the same people.

6. Future activities

At its next meeting, the Council should deal with, amongst others, the following points :

- draft joint opinion by the Venice Commission and OSCE/ODIHR on the electoral legislation of Armenia;

- draft joint opinion by the Venice Commission and OSCE/ODIHR on the electoral legislation of Georgia;
- draft opinion on the law on the election of mayors of Croatia.

Mr Garrone informed the Council that the Secretary General of the Council of Europe had requested the Venice Commission to prepare an expertise on the Convention on standards for democratic elections, electoral rights and freedoms in member States of the Community of Independent States.

The Council for Democratic Elections held an exchange of views on the possibility of drawing up a code of good practice in the field of political parties, which would take account of the previous work of the Venice Commission in this field. Mr van den Brande underlined that the meeting of the Forum for the Future of Democracy which will be held in Moscow will deal with the question of political parties and that the Political Affairs Committee of the Parliamentary Assembly is preparing a report on this subject.

In addition the Council envisages the preparation of a study on the invalidation of election results.

7. Co-operation with OSCE/ODIHR

No representative of OSCE/ODIHR was able to attend the meeting owing to the holding of the OSCE Conference on Human Dimension held in Warsaw.

Mr Dronov informed the Council of his participation in this Conference. Among the main elements of the debate the majority of the speakers were for developing the Copenhagen criteria and in favour of a follow-up to observation missions.

Mr van den Brande recalled the importance that the parliamentary Assembly attaches to co-operation between the OSCE and the European Union. Mr Gross stressed that the work of OSCE/ODIHR should be supported but emphasised that it is important for members of parliament to participate in observation missions.

8. Date of the next meeting

The next meetings were fixed as follows:

- Saturday, 14 December at 14h30
- Saturday, 17 March at 14h30.

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS

COMMISSION DE VENISE / VENICE COMMISSION

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

M. Dominique CHAGNOLLAUD, Membre du Tribunal Suprême, Université de droit, d'économie et de sciences sociales, Paris (excusé/apologised)

Mrs Mirjana LAZAROVA TRAJKOVSKA, Judge, Constitutional Court, Skopje (**Vice-présidente/Vice-Chair**)

Mr Ugo MIFSUD BONNICI, President Emeritus, La Valletta (excusé/apologised)

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 (excusé/apologised)

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

M. Jean-Claude COLLIARD, Membre du Conseil constitutionnel français, Paris

Mr Ángel SÁNCHEZ NAVARRO, Professor of Constitutional Law, Complutense University, Madrid (excusé/apologised)

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

Autres membres / Other Members

M. François LUCHAIRE, Ancien Magistrat du Tribunal constitutionnel d'Andorre, Paris (excusé/apologised)

Secrétariat / Secretariat

M. Gianni BUQUICCHIO

M. Thomas MARKERT

M. Pierre GARRONE

ASSEMBLEE PARLEMENTAIRE DU CONSEIL DE L'EUROPE / PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

Membres / Members

M. Luc VAN DEN BRANDE, Bruxelles, Commission de suivi (**Président/Chair**)

Mme Josette DURRIEU, Paris, Commission politique

M. Andreas GROSS, Zurich, Commission juridique

Secrétariat / Secretariat

Mr Vladimir DRONOV

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

Membres / Members

M. Ian MICALLEF, Malte, Président de la Chambre des pouvoirs locaux/President of the Chamber of Local Authorities

Mr David SHAKESPEARE, Aylesbury, Chambre des régions

Secrétariat / Secretariat

Ms Pilar MORALES (excusée/apologised)

DIRECTION GENERALE DES AFFAIRES POLITIQUES / GENERAL DIRECTORATE OF POLITICAL AFFAIRS

M. Michael REMMERT (excusé/apologised)

OBSERVATEURS / OBSERVERS

OSCE

BIDDH/ODIHR

Mr Gerald MITCHELL, Head of the Election Department, Warsaw (excusé/apologised)

Mr Nikolai VULCHANOV, Deputy Head of the Election Department, Warsaw (excusé/apologised)

HIGH COMMISSIONER FOR NATIONAL MINORITIES / HAUT-COMMISSAIRE POUR LES MINORITES NATIONALES

Mr Krzysztof DRZEWICKI, Senior Legal Adviser, The Hague

Mrs Annelies VERSTICHEL, Legal Adviser, The Hague

ASSOCIATION OF EUROPEAN ELECTION OFFICIALS (ACEEEO)

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

Mrs Kinga DOLINA, Senior Project Manager