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Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**24th MEETING OF
THE COUNCIL FOR DEMOCRATIC ELECTIONS**

Venice, 15 March 2008 at 2.30 p.m.

MEETING REPORT

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1. Adoption of the agenda

The Council adopted its agenda as it appears in document CDL-EL-OJ(2008)001ann.

2. Study on dual voting rights for persons belonging to national minorities

Item dealt with at the joint meeting of the Council for Democratic Elections and the Sub-Commission for the Protection of Minorities

At its 18th and 22nd meetings (16 October 2006 and 18 October 2007), the Council for Democratic Elections examined the question of dual voting rights for persons belonging to national minorities, on the basis of a document prepared by the Office of the OSCE High Commissioner for National Minorities (HCNM) and comments by Ms Durrieu ([CDL-EL\(2006\)029](#) and [CDL-EL\(2007\)025](#)) and Mr Bartole ([CDL-EL\(2007\)020](#)).

On the basis of these documents and the discussion held at the Council's 22nd meeting, the Secretariat prepared a summary report ([CDL-EL\(2008\)002](#)) which is aimed at presenting not only those items on which the rapporteurs agree, but also those on which there is a diverging opinion. Following the rapporteurs' comments, a revised document, which includes written comments by members, will be sent to them so that they can point out those items with which they were wrongly indicated as being in agreement.

Mr Bartole informed the Council that he has nothing to add to his contribution. Dual voting differs from the principle of equality, but the protection of minorities can lead to certain corrections (reverse discrimination). Restrictions to basic principles should be limited as much as possible. In particular, history and the location of minorities are elements which should be taken into consideration. Dual voting could be adopted as a transitory measure if necessary.

Ms Durrieu considered that there are other, less restrictive, exceptions to the principle of equal suffrage, which also affect the equality of the electoral force. There should be no derogation from the principle "one person – one vote", but all other possible ways to ensure minority representation should be used.

A discussion followed. In particular, Mr Velaers considered that dual voting may, for a given period of time, be the only way to guarantee representation and participation of minorities in "general" politics. He would however make three conditions: that it should be foreseen in the Constitution or another text superior to ordinary law; that no other alternative enables the same result to be achieved; that the system is used on a temporary basis.

Mr Drzewicki thanked the Commission and the Council for Democratic Elections for their work. The question of dual voting is relevant in Croatia. In any case, it should only be envisaged when there is no other alternative which enables minorities to be represented.

In Mr Nick's opinion the principle of "one person, one vote" does not traditionally take into account the question of minorities, but the suppression of inequalities. Dual voting is rather a case of positive discrimination. The Croatian parliament has not to-date accepted the introduction of dual voting.

Ms Haller considered that "mono-identity" should be avoided. The latter is encouraged by dual voting.

Messrs Mifsud Bonnici and Gross stressed that the question of dual voting only concerns small minorities; the other (larger) ones being represented in one way or another.

Mr van den Brande concluded the discussion as follows. A democracy in which everyone is integrated and participates is the aim. Dual voting could be a way of preventing conflict, and could contribute to integration and participation (of minorities in the life and in political parties of the majority). It can only be foreseen in conformity with the principle of proportionality, for small minorities, in transitory situations and under certain conditions.

A new joint meeting of the Council for Democratic Elections with the Sub-Commission on the protection of minorities will take place on Thursday, 12 June at 12 noon, with a view to adopting the opinion during the Commission's plenary session in the presence of the OSCE High Commissioner for the protection of National Minorities.

The Council instructed the Secretariat to prepare, in co-operation with the rapporteurs, an opinion to be adopted at next session, on the basis of the above conclusions.

Meeting of the Council for Democratic Elections

3. Election of the president and the vice-president

The Council elected Mr van den Brande President and Messrs Mifsud Bonnici and Gross Vice-Presidents.

4. Code of good practice for political parties

On 12 March 2007 the Parliamentary Assembly of the Council of Europe adopted Resolution [1546\(2007\)](#) on the Code of good practice for political parties, which invites the Venice Commission to draw up a code of good practice for political parties taking into account the elements in the above-mentioned Resolution.

The Council dealt with this question at its 21st and 23rd meetings (June and December 2007; see in particular document CDL-EL(2007)044). At its 23rd meeting, the rapporteurs were requested to prepare a first draft code of good practice for political parties for consideration at the June 2008 meeting.

The Secretariat informed the Council on the progress of work. The rapporteurs are continuing their work on the code. They are at the moment studying the different provisions of statutes for political parties regarding:

1. election of the statutory organs of political parties
2. internal responsibility
3. procedures for preparing electoral lists and presentation of candidates.

Council members who may have information concerning the internal organisation of political parties in their country, are invited to forward this information to the secretariat.

5. Armenia

The Secretariat informed the Council of the latest developments on electoral law in Armenia, in particular on the Presidential elections which took place on 19 February 2008. An opinion on the latest amendments to the Electoral Code could be presented to the next meeting.

Two field activities were carried out by the Commission Secretariat with a view to the Presidential elections on 19 February 2008; these activities fall in the framework of the Council of Europe Action Plan for the Presidential Elections 2008.

The Commission organised a seminar on the holding and organisation of elections for staff of the Central Election Commission and NGOs involved in the electoral process on 11-13 December 2007.

In addition, on 26 January 2008, the Commission organised a seminar for judges dealing with electoral disputes, in co-operation with the American Bar Association in Armenia.

Finally, a Venice Commission expert provided legal assistance to the Parliamentary Assembly during the election observation mission on 18-20 February 2008.

A final opinion on the electoral code of Armenia as revised is being drawn up in co-operation with OSCE/ODIHR, for adoption at the Commission's June session.

Mr Gross requested that the above-mentioned opinion take account of the practical problems apparent during the last elections and which were caused by the law itself.

6. Azerbaijan

Following a request from the Azeri authorities, the Venice Commission and OSCE/ODIHR drew up a draft interim opinion on the draft amendments to the Electoral Code of Azerbaijan (draft amendments [CDL\(2008\)029](#), Election Code of Azerbaijan [CDL\(2003\)047](#)), on the basis of comments by Messrs Endzins, Paczolay and Pilgrim. This opinion was adopted by the Commission at its session on 14-15 March 2008 ([CDL\(2008\)016](#)).

In addition, the Secretariat informed the Council that a meeting had been held on 7-8 February 2008 between Venice Commission rapporteurs, OSCE/ODIHR and representatives of the authorities to discuss problems in the draft (on the basis of previous recommendations). During this meeting several points had been clarified, in particular regarding disputes, the responsibility of regional and local authorities in cases of violation of the electoral code, registration of candidates, etc. Unfortunately, there was no progress on the issue of the composition of electoral commissions. The rapporteurs hope that the Parliament will deal with this question when the draft amendments are discussed (planned for March) taking into account the Round Table on this subject held in Baku in November 2007.

7. Belgium

The Belgian authorities requested the Council of Europe to evaluate the conformity of a project on e-voting in Belgium ("BeVoting Study") with Recommendation [\(2004\)11](#) of the Committee of Ministers to member States on legal, operational and technical standards for e-voting. The draft proposes five ways in which electronic voting in Belgium could be developed. The General Directorate of Democracy and Political Affairs has prepared an expertise on this issue, which has been sent to the Belgian authorities. The Council was invited to take note of this expertise.

The Council took note of the expertise entitled "Conformity of the BeVoting study with Recommendation (2004)11 of the Committee of Ministers to member States on legal, operational and technical standards for e-voting".

8. Bosnia and Herzegovina

Following the amendments made since 2006 to the electoral law of Bosnia and Herzegovina, the Venice Commission and OSCE/ODIHR were invited to make comments on the revised law (draft amendments [CDL-EL\(2008\)003](#), Election Law of Bosnia and Herzegovina [CDL\(2001\)089](#)). A draft joint opinion by the two organisations ([CDL-EL\(2008\)004](#)), drawn up on the basis of comments by Messrs Pilgrim, Sanchez Navarro and Torfason, was submitted to the Council for adoption.

Messrs Olszewski and Torfason presented the opinion. Most of the amendments are of a technical nature. Amongst the positive points, it should be noted that there are some changes to the composition of the electoral administration and the provisions enabling a better participation of women (this could nonetheless be improved). There are however still a certain number of fundamental recommendations which need to be taken into consideration. These concern in particular restrictions to eligibility on an ethnic basis, unequal representation between constituencies and some problems with appeals relating in particular to the right to be heard.

It was not possible to take the amendments adopted on 7 March by the Parliament into account in the opinion. The text should therefore be completed by the rapporteurs before being sent to the authorities. The final text will be submitted to the June Plenary Session.

The Council instructed the Secretariat, in co-operation with the rapporteurs, to revise the opinion on the basis of the amendments of 7 March 2008, and to forward it to the Bosnian authorities.

9. Georgia

The Secretariat informed the Council on the latest developments on the electoral law of Georgia, in particular on the Presidential elections which took place on 5 January 2008, as well as activities planned for the legislative elections which will take place in Spring 2008.

Within the framework of the pre-term Presidential election which was held on 5 January 2008, a Venice Commission long-term expert was present at the Central Electoral Commission from 7 December 2007 to 7 January 2008 to provide assistance in the organisation of the pre-electoral period and the ballot.

In addition, the Commission organised a seminar on the holding and organisation of elections for staff of the Central Electoral Commission and NGOs involved in the electoral process on 17-18 December 2008.

Finally, Mr Endzins, Venice Commission member provided legal assistance to the Parliamentary Assembly as part of their delegation during the election observation mission on 3-5 January 2008.

With a view to the legislative elections which should take place in May 2008, the Secretariat envisages three field activities:

- a seminar on the holding and organisation of elections, primarily aimed at NGOs involved in election observation;
- a seminar for judges dealing with electoral disputes;
- presence of an expert to provide assistance to the Central Electoral Commission.

Mr Olszewski informed the Commission that the electoral code of Georgia had been considerably revised and not in a very transparent manner during the week prior to the Venice Commission's session.

A final opinion on the Electoral Code is being prepared in co-operation with OSCE/ODIHR for adoption after the elections (planned for May).

10. Ukraine

The Secretariat informed the Council on the latest developments on the electoral law of Ukraine and in particular the Conference on European standards and the development of electoral legislation in Ukraine, which took place in Kyiv on 16 January 2008. The participants in this Conference concluded that it is necessary, in particular, to modify the electoral system; to ensure better training for lower electoral commissions; to improve the system of appeals and rules concerning the media; to draw up a unified electoral code.

The Venice Commission will be involved in the opinion on the draft law on the referendum (adoption planned for June) and will participate in the work on the unified electoral code.

Mr Markert informed that one of the draft laws on referendum foresees the adoption of a new Constitution which is in violation of the current rules on constitutional revision. Amongst the questions which need to be reconsidered in the electoral law, are the electoral system and the existence of a single constituency. The Monitoring Committee of the Parliamentary Assembly recommends the creation of territorial constituencies, with open lists.

11. Future activities

The draft code of good practice for political parties will be submitted to the next meeting. In addition to the opinion on the draft law of Ukraine on the referendum, draft joint opinions on the electoral law of Armenia, Azerbaijan and Georgia could also be submitted in June or October. A joint meeting with the Sub-Commission on the protection of national minorities should enable the final opinion on dual voting to be adopted.

Mr Gross informed that the Parliamentary Assembly intends to establish, in a conceptual manner, what are free elections. The electoral process is continuous, it starts with the adoption of legislation and terminates by the counting and resolving electoral disputes. Mr Gross proposed that at its next meeting the Council should look at what can be learned from the latest elections in Armenia, Georgia and the Russian Federation, in particular concerning the state of emergency during pre and post electoral period.

The Secretariat informed the Council of the schedule of work on the situation of human rights and democracy in Europe. The question of procedures for amendment of Constitutions had already been submitted to the Sub-Commission on Democratic Institutions at its meeting on 13 March and will be presented to the Commission in June. The other questions (imperative mandate, remote voting and good governance) will be dealt with at future meetings in 2008.

12. Co-operation with OSCE/ODIHR

An exchange of views took place with the representatives of OSCE/ODIHR on the possibilities of future co-operation.

In addition to the opinions already mentioned in the previous item, joint opinions should be prepared on the laws on presidential and local elections in Serbia. In Albania draft constitutional amendments have been sent to the Parliament and should be followed by amendments to the electoral code, which could lead to a joint opinion.

13. Date of the next meeting

The next meeting will take place on Thursday, 12 June 2008 from 10 a.m. to 12 noon. A joint meeting with the Sub-commission on the protection of national minorities will take place at 12 noon.

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS**COMMISSION DE VENISE / VENICE COMMISSION****Membres du CED / Members of the CDE**

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

Mr Ugo MIFSUD BONNICI, President Emeritus, La Valletta (**1^{er} vice-président/1st vice-chair**)

Mr Peter PACZOLAY, Deputy Head, Office of the President of the Republic, Budapest (excusé/apologised)

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

Membres suppléants du CED / Substitute Members of the CDE

M. Jean-Claude COLLIARD, Membre du Conseil constitutionnel français, Paris (excusé/apologised)

Mr Srdjan DARMANOVIC, Professor, University of Montenegro, Podgorica

Mr Oliver KASK, Judge at the Court of Appeal, Tallinn (excusé/apologised)

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

Secrétariat / Secretariat

M. Gianni BUQUICCHIO

M. Thomas MARKERT

Mme Simona GRANATA-MENGHINI

M. Pierre GARRONE

Membres de la Sous-commission sur la protection des minorités /**Members of the Sub-commission of the protection of the minorities**

Mr Sergio BARTOLE, Professor, University of Trieste, Trieste

Mrs Gret HALLER, Senior lecturer, Johann Wolfgang Goethe University, Frankfurt am Main

Mr Stanko NICK, Former Ambassador of the Republic of Croatia to Hungary, Zagreb

Mr Jan VELAERS, Professor, University of Antwerp, Antwerp

High Commissioner for national minorities /**Haut-Commissaire pour les minorités nationales**

Mr Krzysztof DRZEWICKI, Senior Legal Adviser, The Hague

Mrs Annelies VERSTICHEL, Legal Adviser, The Hague (excusée/apologised)

ASSEMBLEE PARLEMENTAIRE / PARLIAMENTARY ASSEMBLY**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 (**2^e vice-président/2nd vice-chair**)

**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 (excusé/apologised)

Mr Keith WHITMORE, Manchester, Chambre des régions (excusé/apologised)

M. Christopher NEWBURY, Westbury - Wiltshire, Membre de la Commission institutionnelle

Secrétariat / Secretariat

Mr Fredrik HOLM

**DIRECTION GENERALE DES AFFAIRES POLITIQUES / GENERAL DIRECTORATE OF
POLITICAL AFFAIRS**

M. Michael REMMERT (excusé/apologised)

OBSERVATEURS / OBSERVERS

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Mr Konrad OLSZEWSKI, Deputy Head of the Election Department, Warsaw

Mr Jonathan STONESTREET, Election Advisor, Warsaw

ASSEMBLEE PARLEMENTAIRE DE L'OSCE / OSCE PARLIAMENTARY ASSEMBLY

Mr Andreas NOTHELLE, Ambassador, Vienna (excusé/apologised)

**ASSOCIATION DES ADMINISTRATEURS D'ELECTIONS D'EUROPE / ASSOCIATION
OF EUROPEAN ELECTION OFFICIALS (ACEEEO)**

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