



Strasbourg, 3 July 2008

**CDL-EL-PV(2008)002**  
Or. fr.

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

**25<sup>th</sup> MEETING OF THE  
COUNCIL FOR DEMOCRATIC ELECTIONS**

**Venice, 12 June 2008**

**MEETING REPORT**

2 p.m.

### ***Meeting of the Council for Democratic Elections***

#### **1. Adoption of the Agenda**

The Council adopted its agenda as it appears in document CDL-EL-OJ(2008)002ann.

#### **2. 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.

At its 23rd meeting in December 2007, the Council requested the rapporteurs to prepare a first draft code for the June 2008 meeting. Mr J.C. Colliard presented the draft text of the Code as it appears in document [CDL-EL\(2008\)013rev](#). He pointed out that the document submitted for discussion was a first draft which needed to be completed. The rapporteurs met in Paris in May 2008 in order to draft the version presented on the basis of the recommendations of the 21<sup>st</sup> and 23rd meetings of the Council and the Resolution of the Assembly. The draft explanatory report to the Code as it appears in document [CDL-EL\(2008\)014](#) was also presented to the Council.

The members of the Council held an exchange of views on the possible scope of the document. Mr U. Mifsud Bonnici underlined the importance of making a clear distinction between the recommendations and a set of compulsory rules. In his opinion not everything that had to do with political parties could be submitted to international regulation. Some members agreed that the code should be a set of “best practices” and should not have too many standard setting provisions.

**The Council took note of the progress of work on the code and invited its members to send their comments/contributions to the secretariat before 15 July 2008. The rapporteurs were invited to present the final draft of the code for the Council's 26<sup>th</sup> meeting in October 2008.**

#### **3. Azerbaijan**

During its 74<sup>th</sup> Plenary Session (14-15 March 2008) the Council had adopted the joint Venice Commission – OSCE/ODIHR opinion ([CDL-AD\(2008\)003](#)) on the basis of comments by Messrs Endzins, Paczolay and Pilgrim on the draft amendments to the Election Code of Azerbaijan.

Mr Paczolay presented the draft final opinion which took into account the amendments adopted by the Parliament of Azerbaijan on 2 June 2008 ([CDL-EL\(2008\)012](#)) to the Council. The Law on the amendments to the Election Code ([CDL-EL\(2008\)015](#)) introduced several amendments that integrated the recommendations of the Venice Commission and OSCE/ODIHR concerning the responsibility of the executive committees for undue interference in the electoral process, inking of voters' fingers and the new procedure for complaints and appeals. However, some of the previous recommendations were not part of the new Law, including the composition of the

electoral commissions. Mr Paczolay also mentioned some amendments on the reduction of the length of electoral campaigns and on media which had not been discussed during the meetings between the experts and the authorities.

**The Council adopted the joint opinion on amendments and changes to the electoral code of the Republic of Azerbaijan ([CDL-EL\(2008\)012](#)).**

#### **4. Bosnia and Herzegovina**

At its last meeting, the Council examined the draft joint opinion with OSCE/ODIHR on the revised electoral law of Bosnia and Herzegovina. This draft opinion did not take into account the amendments adopted by Parliament on 7 March 2008. The Council then requested the Secretariat, in co-operation with the rapporteurs, to revise the opinion taking the 7 March amendments into account and to forward it to the authorities of Bosnia and Herzegovina. This has now been done. Mr Sanchez Navarro informed the Council that the examined text was an up-dated version of the document adopted in March 2008. The changes made to the document were of a technical nature. The Council took note of the information provided by the rapporteur.

**The Council adopted the final version of the joint opinion on the revised electoral law of Bosnia and Herzegovina ([CDL-EL\(2008\)004rev](#); see also documents [CDL\(2001\)089](#) and [CDL-EL\(2008\)003](#)).**

#### **5. Ukraine**

In March 2008 the Speaker of the parliament of Ukraine asked the Venice Commission to provide an opinion on the 2 alternative drafts on national referendums in Ukraine prepared by Messrs Kliuchkovskiy and Lavrinovich. The existing law on referendums had been adopted in 1991.

Messrs Sanchez Navarro and Paczolay informed the Council on the progress of work on the opinion on the draft legislation on referendums in Ukraine (see documents [CDL-EL\(2008\)009](#) et [CDL-EL\(2008\)010](#)). The rapporteurs considered that both drafts were rather detailed however some of their provisions were confusing. They pointed out that some of the proposals expressed by the Commission in its previous opinions on referendums (opinion on the referendum in Ukraine, [CDL-INF\(2000\)014](#), and Code of good practice on referendums, [CDL-AD\(2007\)008](#)) could be useful for the drafters of the law.

The Council took note of the information and asked the rapporteurs to prepare an opinion for its October meeting.

The Secretariat informed the Council on the visit to Kyiv on 29 and 30 May 2008. A unified electoral code is envisaged.

#### **6. Other developments and future activities**

The Secretariat informed the Council of the following activities:

- Pre-electoral assistance and assistance to the mission to observe the elections in Georgia (April-May 2008) : in the framework of the Council of Europe actions plans to support

the presidential (5 January) and parliamentary elections (21 May), the Venice Commission has been actively supporting Georgia in the electoral field for several months.

On the occasion of the parliamentary elections on 21 May, the Commission organised the following activities:

- Assistance to the Central Electoral Commission for 6 weeks;
- Seminar on electoral disputes with Judges from the Supreme Court and Administrative Tribunals;
- Seminar with NGOs on the observation of elections;
- Legal advice to the Parliamentary Assembly during the election itself.

The only negative point to be underlined was the lack of participation of NGOs in our activities, despite invitations being sent. It should also be noted that the Venice Commission's work had good national media coverage.

- Assistance to the mission to observe the elections in Serbia: the Commission provided legal advice to the Parliamentary Assembly mission observing the parliamentary elections of 11 May 2008 in Serbia.

- Assistance to the mission to observe the elections in "the former Yugoslav Republic of Macedonia": the Commission provided legal advice to the Parliamentary Assembly mission observing the parliamentary elections of 1 June 2008 in "the former Yugoslav Republic of Macedonia".

- Meeting of experts on human rights and democracy in Moldova (May 2008): The Commission was represented at this meeting, organised by the European Commission and which was an opportunity to highlight those points of the electoral code, as revised in 2008, which are problematic in particular concerning the quorum, the prohibition of electoral blocks and incompatibilities for dual nationals. A joint opinion with OSCE/ODIHR is foreseen.

- Conference on "Electoral law and practice in Council of Europe member States" organised with the Institute for international relations in Moscow (April 2008): the proceedings of this Conference will be published in 2008.

Joint opinions with OSCE/ODIHR on the electoral legislation in Armenia and Georgia should be submitted to the Council at its next meeting. In addition, a joint opinion on the legislation on the local and presidential elections in Serbia is foreseen.

The Council took note of Mr Garrone's contribution to the commemorative volume in memory of Mr La Pergola entitled "From elections as an event to democracy as a structure – reflections on the stability of electoral law". This document first of all recalls the principles defined by the Venice Commission for the stability of electoral law and then goes on to differentiate amongst weaknesses of the electoral process, problems of a legislative nature, those which can be corrected by a legislative amendment and those resulting from a violation of the law. Once the source of the imperfection has been identified it is possible to determine whether a revision of the law is desirable, useful, useless, or even counter productive. In particular, in the case of violation of the law, a revision could lead to endangering the rule of law rather than strengthening it.

The Secretariat informed the Council on work concerning the situation of human rights and democracy in Europe. Mr Closa Montero has prepared a report on the imperative mandate. The Commission will forward the report on the compatibility of remote voting with Council of Europe standards ([CDL-AD\(2004\)012](#)) to the Parliamentary Assembly and inform it that the next European Conference of Electoral Management Bodies (Brussels, November 2008) will be

dedicated to remote voting from abroad. The rapporteurs on procedures for amending Constitutions will make proposals on follow up work during the Commission's plenary session. The question of good governance will be dealt with at a later date.

The Commission has received two requests from the Parliamentary Assembly, concerning the internationally recognised status of election observers and the impact of electoral systems on women's representation in politics.

## **7. Co-operation with OSCE/ODIHR**

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

Mr Olzewski informed the Council that a OSCE/ODIHR delegation will visit Azerbaijan during the week commencing 16 June with a view to the presidential elections in October. Joint opinions are foreseen on the electoral legislation of Armenia, Georgia, Moldova and Serbia (see item 6 above). The Speaker of the Parliament of Montenegro requested assistance from OSCE/ODIHR for the working group on the revision of the electoral code, which could lead to a joint opinion.

## **8. Date of the next meeting**

The next meeting will take place on Saturday, 18 October 2008 at 2.30.

**4 p.m.**

### ***Joint meeting of the Council for Democratic Elections and the Sub-Commission for the Protection of Minorities***

## **9. Dual voting of persons belonging to national minorities**

At its 18<sup>th</sup>, 22<sup>nd</sup> and 24<sup>th</sup> meetings (16 October 2006, 18 October 2007 and 15 March 2008), 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](#)) in co-operation with the Sub-Commission for the protection of minorities.

On the basis of the conclusions of the last meeting, the Secretariat prepared, in co-operation with the rapporteurs, a draft report which was submitted to the Council for adoption ([CDL-EL\(2008\)002rev2](#)) with a view to its presentation to the Venice Commission's plenary session in the presence of the OSCE High Commissioner for National Minorities.

Mr van den Brande apologised for the absence of Ms Durrieu, who had had to take part in a Middle East Forum. Mr Bartole presented the draft report and emphasised that dual voting should be considered as a temporary solution, in the context of other solutions, to ensure better integration. Mr Velaers confirmed that any derogations to the principle of equal voting rights (one person – one vote) should be rare. He suggested that dual voting be foreseen in Constitutions; following discussion, it was decided to specify that dual voting should be in accordance with the Constitution.

Mr Drzewicki, on behalf of the OSCE High Commissioner for National Minorities, confirmed that dual voting should only be resorted to when all other methods had failed.

**The Council adopted the report on dual voting of persons belonging to national minorities ([CDL-EL\(2008\)002rev2](#)), with some modifications.**

## **10. Mexico**

Messrs. Manuel Gonzalez Oropeza and Salvador Nava Gomar, Magistrates, Federal Electoral Tribunal, enumerated items in Mexican electoral law specific to indigenous peoples. The Mexican Constitution provides a certain number of rights to indigenous peoples, in particular the right to be recognised as an indigenous community, the right to identity, the right to self-government, the right to self-determination (to be decided on social, economic, political and cultural questions), the right to use their own laws and institutions in the communes, the right to be consulted and to participate in public affairs of the State, the right to a fair trial. Both the Federation and the State have their own electoral legislation. At the Federal level, the Federal Electoral Institute and the Federal Electoral Tribunal are competent in electoral disputes. In this framework, decisions have been taken, in particular in the field of fundamental rights; local traditions cannot contradict fundamental rights – in particular regarding the role of women -; emigrants have the right to participate in the life of political parties if the statutes foresee it; the right to information and the rights of minorities in trade unions are also foreseen. In conclusion, one of the recent developments in democracy in Mexico is not to oblige indigenous peoples to adopt Western culture. Amongst the other problems which still need resolving is the intervention of political parties in the election of indigenous communities.

**LISTE DES PARTICIPANTS /**  
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**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<sup>er</sup> Vice-Président/1<sup>st</sup> Vice-Chair**)

Mr Peter PACZOLAY, President of the Hungarian Constitutional Court, Budapest

Mr Hjörtur TORFASON, Former Judge of the Supreme Court of Iceland, Reykjavik (excusé/apologised)

Membres suppléants du CED / Substitute Members of the CDE

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Mr Srdjan DARMANOVIC, Professor, University of Montenegro, Podgorica

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

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M. Pierre GARRONE

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

Mr Sergio BARTOLE, Professor, University of Trieste, Trieste

Mr Pieter van DIJK, State Councillor, Council of State, The Hague (excusé/apologised)

Mr Vojin DIMITRIJEVIC, Professor of Public International Law, Union University School of Law, Belgrade

Ms Kalliopi KOUFA, Professor of International Law, Aristote University, Thessaloniki

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

Mr Jean-Claude SCHOLSEM, Professor, University of Liège, Liège (excusé/apologised)

Mr Laszlo TROCSANYI, Professor of Constitutional Law, University of Szeged, Budapest (excusé/apologised)

Mr Jan VELAERS (**President**), Professor, University of Antwerp, Antwerp

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

Mr Krzysztof DRZEWICKI, Senior Legal Adviser, The Hague

**ASSEMBLEE PARLEMENTAIRE / PARLIAMENTARY ASSEMBLY**

Membres / Members

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

Mme Josette DURRIEU, Paris, Commission politique (excusée/apologised)

M. Andreas GROSS, Zurich, Commission juridique (**2<sup>e</sup> Vice-Président/2<sup>nd</sup> Vice-Chair**) (excusé/apologised)

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M. David WILSHIRE, United Kingdom, Commission de suivi (excusé/apologised)

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Mr Vladimir DRONOV

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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 (excusé/apologised)

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Ms Antonella CAGNOLATI

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**MEXIQUE/MEXICO**

Mr Manuel GONZÁLEZ OROPEZA, Magistrate, Tribunal Electoral del Poder Judicial de la Federación, Coordinación de relaciones con organismos electorales, Mexico

Mr Salvador NAVA GOMAR, Magistrate, Tribunal Electoral del Poder Judicial de la Federación, Coordinación de relaciones con organismos electorales, Mexico

Mr Gerardo de ICAZA, Chief of International Affairs, Federal Electoral Court of Mexico

**OBSERVATEURS / OBSERVERS****OSCE****BIDDH/ODIHR**

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**ASSEMBLEE PARLEMENTAIRE OSCE / OSCE PARLIAMENTARY ASSEMBLY**

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