



Strasbourg, 2 December 2008

CDL-EL-PV(2008)003rev
Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**26th MEETING OF
THE COUNCIL FOR DEMOCRATIC ELECTIONS**

Venice, 18 October 2008 at 2.30 p.m.

MEETING REPORT

1. Adoption of the agenda

The Council adopted the agenda as it appears in document CDL-EL-OJ(2008)003ann.

2. Code of good practice for political parties

Further to Parliamentary Assembly Resolution [1546\(2007\)](#) on the Code of good practice for political parties, the Council had examined, at its meeting in June 2008, a draft code of good practice for political parties ([CDL-EL\(2008\)013rev](#)) as well as its explanatory report ([CDL-EL\(2008\)014](#)). Those members of the Commission and the Council who wished to do so made written comments on this document, and a meeting was held in Paris on 24 September 2008 with the rapporteurs. A revised draft was then drawn up ([CDL-EL\(2008\)020](#)) and submitted to the Council for adoption.

The Council examined the revised draft Code of good practice for political parties, drawn up on the basis of comments by Messrs Closa Montero and Colliard and amended in accordance with the conclusions of the meeting held on 25 September 2008 ([CDL-EL\(2008\)020](#)).

Mr van den Brande stressed that the Code is not intended as a list of legal norms but guidelines for the political parties themselves.

Mr Closa Montero recalled that the code had been prepared at the request of the Parliamentary Assembly with the aim of drawing up a document indicating good practices. It contains four parts, concerning the general principles to which political parties should conform, the internal organisation of political parties, their financing and their political function. Mr Colliard once again pointed out that the Code's aim is to define what the parties themselves and not the State, should do.

Following in particular comments by Mr Timans from the European Commission modifications were made to paragraphs 16 (rule of law), 22 and 25 (national minorities), 28 (European political parties) and 45 (control mechanisms). Mr H. Torfason was opposed to retaining paragraph 28.

Mr Mifsud Bonnici considers that it would be wise to consult the political parties (or at least their federations, Socialists, Christian Democrats, Liberals, etc) before the approval of the Code of practice.

The Code of good practice for political parties will be submitted to the Venice Commission's December session for adoption, and then forwarded to the Parliamentary Assembly also for adoption.

The Council adopted the Code of good practice for political parties (CDL-EL(2008)020), with some modifications.

3. Thresholds and other features of the electoral system which bar parties from access to Parliament

Further to the conclusions of the 2007 session of the Forum for the future of Democracy, the Forum's Consultative Committee requested a more in-depth examination of the question of thresholds on parliamentary representation. Mr Jaklic had been asked to prepare a comparative report on this issue, which was submitted to the Council for adoption ([CDL-EL\(2008\)018](#)). This report concerns not only thresholds, but also other features of the electoral

system (size of constituencies, majority systems etc) which bar parties from access to Parliament.

Firstly, Mr Jaklic pointed out a number of publications on this issue which had enabled him to establish the existence of several mechanisms for calculating thresholds. With this in mind the rapporteur proposed proceeding in three stages : a comparative contextual analysis (which he presented); a detailed analysis of domestic law; the possibility of drawing up common electoral standards.

Mr Jaklic indicated that he would deal with the first of the three concepts himself, this in particular corresponds to the questions raised in his report. He specified however that the report makes no judgement and does not favour one system above another.

In addition, he underlined that he had found discrepancies between States concerning whether they use thresholds or not and other similar aspects to restrict access to Parliament. He informed that some States limit the registration of political parties in this manner; other require a minimum number of candidates, signatures or electoral guarantees.

Mr Jaklic emphasised the problems relating to thresholds from which the distribution of seats in Parliament are derived; here as well he found discrepancies between States, some apply a threshold at district level (or other type of local constituency), others at national level, and others at both levels.

The question of the electoral threshold becomes even more complex when it is applied to the first, second and third stages of allocating seats in Parliament; it is similarly complex when the threshold is applied to one party or to a coalition.

The rapporteur concluded by recalling that we are studying the idea of the electoral threshold in order to measure whether electoral systems are too exclusive and non inclusive with regard to political parties; he indicated that this is a preliminary report, which gives a list of existing thresholds. A supplementary, more normative, report should be envisaged.

The rapporteur was congratulated and requested to elaborate on the study.

The Council instructed Mr Jaklic to prepare a slightly modified report, with a view to its adoption at the next meeting.

4. International status of election observers

The Committee on Legal Affairs and Human Rights of the Parliamentary Assembly is preparing a report on "the international status of election observers". In this framework, the Committee asked the Venice Commission to reply to a certain number of questions and to establish which Council of Europe member or observer States foresee election observation in their national legislation. Messrs Valeryi Musin (substitute member, Russia), Angel Sanchez Navarro (substitute member, Spain), Owen Masters (expert, United Kingdom) and Olivier Pohler (expert, France) are acting as rapporteurs on this issue.

The Secretariat informed the Council of the progress of work. A draft report should be submitted to the Council at its December meeting.

The four rapporteurs have already submitted a first draft version of their contributions and the Secretariat has started to draw up a draft consolidated report.

The report should, on the one hand, make a list of national legislations in which provisions relating to the status of election observers are integrated or not and on the other hand, international texts or other international sources which govern such status.

The report – or a later document – should then evoke the importance of aligning (in due course) the status of national and international observers, as international observers are more concerned by the problems evoked.

The Council took note of these remarks.

5. Imperative mandate

The Secretariat informed the Council on the progress of work on the study on imperative mandate, drawn up by Mr Closa Montero. A draft report should be submitted to the Council at its December meeting. This study falls in the framework of work concerning the state of human rights and democracy in Europe.

Mr Closa Montero presented the historical concept of imperative mandate and recalled that this is applicable to some States in the United States of America and, in a European context, in some States such as Serbia and Ukraine.

Rather than taking a formal approach to the concept of imperative mandate, the rapporteur suggested studying circumstances specific to States. It should be noted in this respect that according to the States, there are several different problems – from the voters' right to recall, to the right of the party leaders to recall, including the right to revoke in the case of a change of party.

The study will be submitted to the Council at its next meeting.

6. Armenia

Two draft opinions on electoral matters in Armenia were submitted to the Council. The first concerned the electoral code as modified following the latest amendments in November 2007. A joint draft opinion by the Venice Commission and OSCE/ODIHR had been prepared on the basis of comments by Mr Kåre Volla (Venice Commission expert) and Ms Karen Gainer (OSCE/ODIHR expert) ([CDL\(2008\)081](#); see also document [CDL\(2008\)083](#)). This opinion is a follow-up to the joint opinion on the amendments to the electoral code ([CDL-AD\(2007\)013](#)) and to the Presidential and Parliamentary elections of February and May 2008 respectively.

The other draft opinion is a follow-up to a request from the Human Rights Defender of Armenia and concerned the issue of the immunity of persons involved in the electoral process, in particular members of Electoral Commissions and candidates. This draft opinion ([CDL\(2008\)093](#)) was drawn up on the basis of comments by Messrs Mifsud Bonnici ([CDL\(2008\)111](#)) and Tuori ([CDL\(2008\)112](#)).

The two draft opinions concerning Armenia had been adopted at the Venice Commission's Plenary Session.

7. Georgia

A draft joint opinion by the Venice Commission and OSCE/ODIHR on the electoral code of Georgia in its version dated 21 March 2008 was submitted to the Council for adoption ([CDL-EL\(2008\)017](#); cf. [CDL-EL\(2008\)016](#)). This draft opinion, drawn up on the basis of comments

by Mr Jaklic (Commission member, Slovenia), Ms Maria Teresa Mauro (Venice Commission expert) and Ms Marla Morry (OSCE/ODIHR expert), is a follow-up to the opinion on the code as amended on 24 July 2006 ([CDL-AD\(2006\)037](#)) and to the Presidential and Parliamentary elections of January and May 2008.

Mr Jaklic, rapporteur, underlined that improvements had been made to the electoral code but that a certain number of the recommendations had not been taken into account in the final version of the code.

In addition, certain provisions of the code are not precise, in particular concerning the number of voters by polling station. Furthermore, those senior officials involved in politics had a tendency to mix up their professional and electoral duties; the administrative resources have a tendency to be used for electoral purpose; access to the media is also a problem.

Mr Jaklic stressed that it is necessary on the whole to improve the public's confidence in the text. The text's legitimacy should be based on wide confidence from the voters and the citizens. The Georgian parliament is therefore invited to modify the code taking these recommendations into consideration.

The draft opinion was adopted by the Council and will be submitted for adoption to the Commission's December Plenary Session.

8. Moldova

Following a request from the Moldovan authorities, the Venice Commission and OSCE/ODIHR prepared a draft joint opinion on the electoral code of Moldova as amended by law N° 76-XVI of 10 April 2008 ([CDL\(2008\)094](#); see also document [CDL\(2008\)082](#)). This draft is based on the comments of Messrs Srdjan Darmanovic (Commission member, Montenegro), Kåre Vollan (Venice Commission expert) and Tigran Karapetyan (OSCE/ODIHR expert).

This draft opinion was adopted at the Venice Commission's Plenary Session.

9. Mexico

Messrs Manuel Carrillo, Head of the International Relations Department, Federal Electoral Institute of Mexico (IFE), and Francisco Guerrero, Councillor at the IFE informed the Council on recent developments in electoral matters in Mexico.

Mr Manuel Carrillo recalled that general elections will take place next year on 5 July 2009. With this in mind, the preparation of the elections started on 3 October 2008. The IFE is the body competent for organising the ballots.

The organisation of the ballots has the aim of strengthening the credibility of these institutions and implementing the electoral reform adopted this year by the Congress.

Amongst its other tasks IFE ensures that the results are sent to the media in good time, ensures the quality of the "electoral service" to a growing number of electors, i.e. 78 million electors today. Thus, 30,000 people will be trained as supervisors for the polling stations. Several million documents will be distributed.

Mr Manuel Carrillo invited the members of the Council to be present during the elections.

Mr Francisco Guerrero then took the floor in the name of IFE and informed the Council that the Institution has 7 main tasks:

1. to strengthen the confidence and the credibility of IFE to the citizens;
2. to ensure the timely implementation of new legal attributions transferred to IFE;
3. to promote the participation of citizens jointly with the parties;
4. to ensure fairness and civism during campaigns, in particular through equal access for political parties to radio and television;
5. to organise the 2008-2009 federal electoral process in an efficient and effective manner within the established deadlines in particular by strengthening and rendering transparent the management and the allocation of financial and human resources;
6. to contribute to the organisation of the local elections which will take place at the same time;
7. to announce the election results within the established deadlines and manage the flow of relevant information.

10. Lessons to be drawn from recent elections

Following his participation in election observation missions in Armenia, Georgia, “the former Yugoslav Republic of Macedonia”, the Russian Federation and Serbia Mr Gross was invited to make proposals for lessons which could be drawn from events which occurred before, during or after the above-mentioned elections.

Owing to lack of time this item was postponed to the Council's next meeting.

11. Other developments and future activities

The Secretariat informed the Council on work concerning the state of human rights and democracy in Europe (follow-up to Parliamentary Assembly Recommendation [1791\(2007\)](#)) on the issues of good governance and procedures for amending Constitutions. The questions of thresholds and other features of the electoral system which bar parties from access to Parliament as well as of imperative mandate were dealt with under items 3 and 5 above.

The Commission had examined a draft report on good governance. This item will be re-discussed at its next Plenary Session, on the basis of written comments by members. There was also discussion on the draft report on procedures for amending the Constitution in particular on the question of flexibility or rigidity. This issue will also be re-discussed at the next session.

Mr Garrone informed the Council that it is very probable that an opinion will be prepared on the draft amendments to the electoral code of Albania. He also informed that a UniDem Seminar will take place in Malta on 14-15 November on the theme of the cancellation of election results; furthermore, the 5th Conference of European Electoral Management Bodies will take place in Brussels on 20-21 November on the theme of distance voting.

12. Co-operation with OSCE/ODIHR

A brief exchange of views took place with the representative of OSCE/ODIHR on the possibilities of future co-operation, confirming the excellent co-operation between the two institutions on opinions in the electoral field.

13. Date of the next meeting

It is proposed to hold the next meeting on Saturday, 13 December 2008 at 2 p.m., provided that the room is available.

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, Andorre, Université de droit, d'économie et de sciences sociales, Paris

Mr Ugo MIFSUD BONNICI, President Emeritus, 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

Mr Srdjan DARMANOVIC, Professor, University of Montenegro, Podgorica

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

Mr Oliver KASK, Judge at the Court of Appeal, Tallinn

Secrétariat / Secretariat

M. Gianni BUQUICCHIO

M. Thomas MARKERT

M. Pierre GARRONE

M. Gaël MARTIN-MICALLEF

AUTRES MEMBRES DE LA COMMISSION / OTHER MEMBERS OF THE COMMISSION

Mr Carlos CLOSA MONTERO, Professor, Scientific investigator, Instituto de Políticas Públicas (IPP), Centro de Ciencias Humanas y Sociales (CCHS), Consejo Superior de Investigaciones Científicas (CSIC), Madrid

Mme Lydie ERR, Chambre des députés, Luxembourg

Mr Klemen JAKLIC, Professor, Constitutional Law, Ljubljana

Ms Gordana SILJANOVSKA-DAVKOVA, Professor of law, University "Ss Cyril and Methodius", Skopje

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**)

Secrétariat / Secretariat

Excusé/apologised

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

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

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

Secrétariat / Secretariat

Excusé/apologised

OBSERVATEURS / OBSERVERS

OSCE

BIDDH/ODIHR

Mr Konrad OLSZEWSKI, Deputy Head of the Election Section

FEDERAL ELECTORAL COURT OF MEXICO / TRIBUNAL FEDERAL ELECTORAL

Mrs Maria del Carmen ALANIS FIGUEROA, Chief Magistrate (excusée/apologised)

Mr Salvador NAVA, Magistrate (excusé/apologised)

FEDERAL ELECTORAL INSTITUTE OF MEXICO / INSTITUT FEDERAL ELECTORAL (IFE)

Mr Francisco GUERRERO, Councillor

Mr Manuel CARRILLO, Head of International Relations Department

PARLEMENT EUROPEEN / EUROPEAN PARLIAMENT

Mrs Dominique DELLICOUR, Head of Unit (excusée/apologised)