



Strasbourg, 26 January 2009

CDL-EL-PV(2008)004
Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**27th MEETING OF
THE COUNCIL FOR DEMOCRATIC ELECTIONS**

Venice, 13 December 2008 at 2 p.m.

MEETING REPORT

1. Adoption of the agenda

The Council adopted the agenda as it appears in document CDL-EL-OJ(2008)004ann.

2. 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 presented to the Council his proposals for lessons to be drawn from events which occurred before, during or after the above-mentioned elections. According to Mr Gross, the absence of criteria for election observation poses a considerable problem to short term election observation teams, who only observe on the election day. In fact, in most cases, there are hardly ever any major problems on the election day itself. The most important violations occur during the campaign, i.e. before the international observers arrive. Mr Gross informed the Council that he is currently preparing, with the Secretariat of the Parliamentary Assembly, a draft document with proposals which will enable the situation in a given country to be monitored before, during and after the election. He suggested that this document could be drawn up in consultation with ODIHR.

3. Code of good practice on referendums

The Council was informed that the adoption of the Declaration by the Committee of Ministers on the Code of good practice on referendums should shortly be adopted.

4. 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 adopted, at its last meeting, a draft code of good practice for political parties ([CDL-EL\(2008\)020rev](#)) which was submitted to the Commission’s Plenary Session for adoption. The Council is now invited to examine the draft explanatory report to this Code ([CDL-EL\(2008\)027](#)) with a view to its adoption.

Mr van den Brande reminded the members of the Council of the work which had been carried out in the framework of this activity and the fact that the Code is intended for political parties and not for governments. He considered that it is a very useful document and urged the Council to adopt it.

Mr Closa underlined the fact that the explanatory report has the same structure as the Code itself and the text was drawn up on the basis of a document examined by the Council, as well as on comments and proposals from members of the Council for Democratic Elections and the Venice Commission. One of the principal tasks while drawing up the explanatory report was a balanced presentation of the different political parties, such as socialist, conservative, liberal parties and so on. In certain cases, regional parties were also included in the study. This explanatory report is a purely descriptive document the main task of which is to highlight the Code’s provisions; it should also be pointed out that the Code of good practice for political parties is intended for the parties themselves, and not for States; it aims to define “good practices” and not legal rules. In general, its objective is to help parties render their structures and internal policies more transparent and respectful of basic European Human Rights standards. The code accentuates good practices, in particular the internal democracy of parties. Mr Close proposed to the Council the possibility of furthering this activity by starting to prepare a “vadamecum” of European political parties.

The Council instructed the Secretariat, in co-operation with the Rapporteurs, to draw up a revised version of the explanatory report, and decided to forward the Code of good practice for political parties to the Parliamentary Assembly of the Council of Europe in January. The explanatory report could be forwarded to the Parliamentary Assembly following its adoption by the Commission's Plenary Session.

5. 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.

The members of the Commission and the Council for Democratic Elections were invited to make comments, in particular on references made to legislation in their State. These comments have been taken into account.

Mr Jaklic had been requested to prepare a comparative report on this issue, which was examined by the Council at its last meeting. A slightly modified version of this report ([CDL-AD\(2008\)037](#)) had been adopted by the Commission on 12 December. This document is a first draft which needs to be completed by more detailed information.

During the ensuing discussion, the participants stressed that the question of thresholds requires a study based on different national experiences without making recommendations on a model to be followed. Each country has its own national practice which is dependent on traditions and the political, social and historical context. A more detailed study would in particular, clarify the question of the natural threshold and its real range, since averages in this sphere could lead to confusion.

6. International status of election observers

The Venice Commission Secretariat is currently preparing a consolidated version of a report on the question of the international status of election observers, based on comments by Messrs Sanchez Navarro, Musin, Masters and Pohler. This draft report, which will most likely be submitted to the Venice Commission at its March 2009 Plenary Session, will include the following items: inventory of international reference texts on this issue as well as other codes of good practice; inventory of national electoral laws and other provisions relating to the rights and duties of observers; inventory of the rights of international observers as compared to those of national observers; inventory of election observation missions; first reflections on an internationally recognised status for election observers.

7. Imperative mandate

Mr Closa Montero informed the Council on the progress of work on the study on imperative mandate. According to his research it is not currently possible to speak of imperative mandate in any democratic country. This practice existed in the Middle Ages and in the Soviet Block before the fall of the Berlin wall. It still exists in countries such as China, Cuba or North Korea. Of course, there are a number of practices in some countries which are similar to this instrument, for example, "recall" in the United States or prohibition to change party "crossing the floor". Nevertheless, Mr Closa considered that these practices should not be classed as

“imperative mandate”. He suggested that the draft report could be completed with some further examples of national practice.

This study falls in the framework of work concerning the state of human rights and democracy in Europe.

The Council took note of the progress of work on the study and invited members to send their observations/comments to the rapporteur and to the Commission Secretariat before the end of January 2009.

8. “the former Yugoslav Republic of Macedonia”

Following the request from the Monitoring Committee of the Parliamentary Assembly regarding the revised electoral code, the Secretariat will inform the Council on progress of work on this issue. The Council was informed that the draft opinion on the issue of the re-appointment of the members of the state election commission in “the former Yugoslav Republic of Macedonia”, had been adopted at the Commission’s Plenary Session on 12 December 2008 ([CDL-AD\(2008\)036](#)).

9. Ukraine

The Council was informed of a request from the President of the Ukrainian parliament for the Commission’s opinion on the draft laws on referendum in Ukraine. The individual comments by Messrs Sanchez Navarro and Paczolay ([CDL-EL\(2008\)028](#); see [CDL-EL\(2008\)009](#) and [CDL-EL\(2008\)025](#)) had been endorsed at the Commission’s Plenary Session on 12 December 2008. The individual comments will be forwarded to the Ukrainian authorities in January 2009.

10. Electoral glossary

The Secretariat informed the Council for Democratic Elections that the revised version of the Electoral Glossary ([CDL\(2008\)134](#)) submitted for adoption had been checked by the Council of Europe Terminology Department. Several modifications had been proposed.

The Council instructed the Secretariat to prepare a revised final version of the Electoral Glossary and to inform the Commission.

11. 5th European Conference of Electoral Management Bodies

The Secretariat informed the Council on the 5th European Conference of Electoral Management Bodies which took place in Brussels on 20-21 November 2008.

The topic of this meeting was distance voting. Representatives from 24 countries, as well as a certain number of representatives from international organisations participated in the Conference. The participants had the opportunity to exchange views on, amongst others, security of distance voting and the different aspects of organising voting from abroad. The next Conference of Electoral Management Bodies will be held in The Hague in October or November 2009.

12. Cancellation of election results

The Secretariat informed the Council on the Seminar on the cancellation of election results which was held in Valetta on 14-15 November 2008, in co-operation with the Constitutional Court and the Ministry of Justice and Home Affairs of Malta, as well as on the follow up work on the study on the cancellation of election results.

The Conference which took place on 14-15 November was a great success. It brought together around forty participants, including representatives of constitutional and supreme courts in charge of electoral disputes from various parts of Europe, of the European Court of Human Rights, as well as specialists of electoral law and disputes, practitioners and academicians. They examined in which cases irregularities should lead to the cancellation of election results, on the basis of the questionnaire and the practical case adopted by the Council ([CDL-EL\(2007\)043rev](#) and [CDL-UD\(2008\)001](#)).

Those Commission members from States which did not participate in the Conference are invited to reply to the questionnaire as soon as possible, with a view to submitting a comparative study on this question to the Commission at one of its forthcoming sessions.

13. 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.

A new draft report on good governance should be submitted to the Commission in March 2009 and a new draft report on procedures for amending Constitutions in June 2009.

14. Co-operation with OSCE/ODIHR

In 2009 the Venice Commission and OSCE/ODIHR should in particular work on joint opinions on Albania and "The former Yugoslav Republic of Macedonia".

15. Date of the next meeting

It is proposed to hold the next meeting on Saturday, 14 March 2009 at 2 p.m.

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 (excusé/apologised)

Mr Ugo MIFSUD BONNICI, President Emeritus, Valletta (**1^{er} Vice-Président/1st Vice-Chair**, excusé/apologised)

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

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

Secrétariat / Secretariat

M. Gianni BUQUICCHIO

M. Thomas MARKERT

M. Pierre GARRONE

M. Sergueï KOUZNETSOV

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

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

M. 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

Mr 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)

Secrétariat / Secretariat

Excusé/apologised

OBSERVATEURS / OBSERVERS

OSCE

BIDDH / ODIHR

Mr Konrad OLSZEWSKI, Deputy Head of the Election Section

PARLEMENT EUROPEEN / EUROPEAN PARLIAMENT

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