



Strasbourg, 1 July 2009

CDL-EL-PV(2009)002
Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**29th MEETING
OF THE COUNCIL FOR DEMOCRATIC ELECTIONS**

Venice, 11 June 2009 at 10 a.m.

MEETING REPORT

1. Adoption of the agenda

The Council adopted the agenda as it appears in document CDL-EL-OJ(2009)002ann.

2. Imperative mandate

At its last meeting the Council adopted the draft report on the imperative mandate ([CDL\(2009\)057](#)). Mr Harutunian, Armenian member of the Venice Commission had proposed several modifications to the adopted text.

Before submitting it to the Plenary Session, the Council decided to re-examine the text on the basis of the amendments proposed by Mr Harutunian. After an exchange of views between the members, the Council decided to make the following modifications:

- a) Paragraph 13, line 1 replace “Outside Europe” by “In international practice”.
- b) Paragraph 17 – add the following footnote “However there are some examples of constitutions addressing this problem. Point C of Article 160 of the Constitution of Portugal provides that a MP loses his/her mandate if he/she becomes a member of another political party which has not nominated him/her at the elections”.
- c) Add the following two paragraphs:

“17bis. It is true that in proportional representation systems whereby a Member of Parliament is bound to maintain party allegiance, even when his or her conscience and judgment as a people’s representative would urge him/her to act otherwise, could be found in some electoral systems. In effect in these systems a MP is a representative of a party and not of the electors, as the electors had no choice between party candidates. In this sense, this type of electoral system, which denies choice, could result in a rubber stamp Parliament, with a considerably diminished control of the executive by the MPs of the Parties in Government, as much as of those in opposition.

17ter. Whilst the Venice Commission does not express a preference for any particular type of electoral system, proportional representation systems with party lists, offering no possibility of choice between candidates by the electors, should be subject to a more thorough scrutiny.”

The Council adopted the draft report on the imperative mandate with the above-mentioned modifications ([CDL-AD\(2009\)027](#)).

3. International status of election observers

At its last meeting the Secretariat informed the Council that, following a request from the Parliamentary Assembly of the Council of Europe, two documents had been drawn up on this question, on the basis of individual comments by Messrs Sanchez Navarro, Musin, Masters and Pohler. A first document which contains an inventory of the situation in domestic and international law in Europe had been adopted by the Commission at its March Plenary Session (cf. [CDL-AD\(2009\)020rev](#)). The second document first summarised the recommendations emanating from election observation missions, subsequently drawing up guidelines on an internationally recognised status of election observers. This document has now been split into two parts.

The draft summary of recommendations on an internationally recognised status of election observers ([CDL\(2009\)058](#)) was submitted for adoption. OSCE/ODIHR had already made

recommendations concerning the draft guidelines. These will be submitted to interested international organisations for consultation and should be dealt with by the Council at its October meeting.

Mr Olszewski drew the attention of the members of the Council to the fact that some States, for example the United Kingdom, have changed their legislation and now allow the participation of observers. He also suggested some modifications to paragraphs 13 and 20 which could be drawn up in a less ambiguous manner.

Following a proposal from Mr Torfason to specify the accreditation procedure, paragraph 7 was reformulated.

The Council adopted the draft summary of recommendations emanating from elections observation missions, with the above-mentioned modifications ([CDL-AD\(2009\)026](#)).

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

Following the adoption of the report on thresholds and other features of the electoral system which bar parties from access to Parliament ([CDL-AD\(2008\)037](#)) by the Commission at its last session, Mr Colliard agreed to prepare the second part of the report, aimed at a solid and in-depth evaluation of the prevailing situation across member States.

Mr Colliard will submit a draft report to the Council at its October meeting.

5. Media analysis during election observation missions

The Council for Democratic Elections and the Venice Commission had already adopted guidelines on media analysis during election observation missions ([CDL-AD\(2005\)032](#)), in co-operation with the Directorate General of Human Rights of the Council of Europe, OSCE/ODIHR and the European Commission.

The Council was invited to examine with a view to adoption a summary of this document ([CDL-EL\(2009\)009](#)).

Mr Olszewski informed the Council that the document under examination is a shorter version of the previous texts. This text is aimed at a wider public and not only at specialists in the subject.

The Secretariat informed the Council that some amendments had been made to the document following proposals from Mr Masters.

The Council adopted the guidelines on media analysis during election observation missions, with some amendments ([CDL-AD\(2009\)031](#)).

6. “The former Yugoslav Republic of Macedonia”

Following the amendments adopted on 29 October 2008 (see revised electoral Code [CDL\(2009\)006](#)), a joint opinion by the Venice Commission and OSCE/ODIHR on the electoral law of “the former Yugoslav Republic of Macedonia” was drawn up on the basis of comments by Mr Kask, Ms Mauro and Mr Vollan (experts, Venice Commission) as well as Mr Ullom

(expert, OSCE/ODIHR). This opinion was submitted to the Council for adoption ([CDL-EL\(2009\)007](#)).

Mr Olszewski presented the opinion and informed the Council that some modifications had been made to paragraphs 7, 8, 9, 16, 36 and 53.

The Council adopted the draft joint opinion by the Venice Commission and OSCE/ODIHR on the electoral law of “the former Yugoslav Republic of Macedonia”, including the amendments from OSCE/ODIHR and some modifications proposed by the members ([CDL-AD\(2009\)032](#)).

7. Ukraine

Further to the opinion on the draft law on election to the Verkhovna Rada of Ukraine adopted at the last session ([CDL-AD\(2009\)019](#); cf. [CDL\(2009\)016](#)), the Ukrainian Parliament requested an opinion on a further draft revision of this law (draft law N° 3366 of 13 November 2008, ([CDL\(2009\)084](#))).

The Council was invited to adopt the draft joint opinion with OSCE/ODIHR on this draft law ([CDL-EL\(2009\)008](#)), prepared on the basis of comments by Mr Closa Montero and Mr Pilgrim (expert, OSCE/ODIHR).

Following discussion on the opinion and a request from OSCE/ODIHR, the Council decided to complete the opinion with references to previous recommendations on individual candidates and with a paragraph concerning the problem raised by preferential treatment being given to the top 5 candidates on a list.

The Council adopted the draft joint opinion by the Venice Commission and OSCE/ODIHR on the draft law 3366 of Ukraine with some modifications ([CDL-AD\(2009\)028](#)).

8. 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 progress of work on the different is as follows :

1. Report on constitutional amendments : a second report will be discussed at the Sub-Commission on Democratic Institutions on 11 June.
2. Report on the role of the opposition : the report will be discussed at the Sub-Commission on Democratic Institutions on 11 June.
3. Report on good governance : postponed until Autumn.

The questions of the imperative mandate as well as thresholds and other features of the electoral system which bar parties from access to Parliament were dealt with under items 2 and 4 above.

The Secretariat informed the Council on:

- participation in Parliamentary Assembly election observation missions in “the former Yugoslav Republic of Macedonia” (March 2009) and Moldova (April 2009) as well as assistance to the Central Election Commission of Moldova;
- the Conference on supervising electoral processes, co-organised by the Venice Commission and the Centre for Political and Constitutional Studies, which took place in Madrid on 24-25 April 2009 (see document [CDL-UD\(2009\)003syn](#)); the considerable participation of Latin-American electoral Administrations was pointed out;
- preparation of the Forum for the future of democracy, scheduled to take place in Kyiv on 21-23 October 2009, on the theme “electoral systems”;
- preparation of the 6th European Conference of Electoral Management Bodies (The Hague, 30 November-1 December 2009).

The study on the cancellation of election results should be presented to the October meeting, on the basis of a report by Mr Kask.

The Council decided to launch a study on detecting certain anomalies in the electoral process on the basis of mathematical models.

Mr Gross informed the Council that he is preparing, with Mr Dronov, a report on the evaluation of the quality of elections. This text should be presented to the Council at its October 2009 meeting.

10. Date of the next meeting

The next meeting will take place on Thursday, 8 October 2009 at 10 a.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, 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, President of the Constitutional Court, Budapest

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, Président de l'Université Paris 1 Pantéon-Sorbonne.

Mr Srdjan DARMANOVIC, Professor, University of Montenegro, Podgorica

Mr Klemen JAKLIC, Professor, Constitutional Law, Ljubljana, Slovenia (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. Serguei KOUZNETSOV

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^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**

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)

Membre suppléant / Substitute Member

M. Jean-Claude FRECON, Pouilly-les-Fleurs, France, Chambre des pouvoirs locaux (excusé/apologised)

Secrétariat / Secretariat

(excusé/apologised)

OBSERVATEURS / OBSERVERS

OSCE

BIDDH/ODIHR

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

EUROPEAN COMMISSION / COMMISSION EUROPEENNE

Mme Véronique ARNAULT, Directrice des Relations multilatérales et Droits de l'Homme
(excusée/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)