



Strasbourg, 12 January 2010

CDL-EL-PV(2009)004

Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**31st MEETING
OF THE COUNCIL FOR DEMOCRATIC ELECTIONS**

Venice, 10 December 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)004ann.

2. Communication by the Secretariat

The Secretariat informed the Council on the reform of the electoral law of Armenia. In June 2009 the Secretariat had recontacted the National Assembly of Armenia with a view to enabling the implementation of the joint opinion on the Election Code of Armenia adopted by the Commission in October 2008 (CDL-AD(2008)022). In this context the Secretariat met Mr David Harutyunyan, President of the Armenian delegation to the Parliamentary Assembly of the Council of Europe and President of the Committee on Human Rights and Legal Affairs. Mr Harutyunyan also chairs the parliamentary working group on electoral reform. This working group, which consists of different Armenian political factions and non-governmental organisations, has drawn up general recommendations aimed at improving the legal electoral framework. These recommendations have been sent to the Commission for an informal opinion. The Commission has prepared jointly with OSCE/ODIHR informal recommendations which will shortly be sent to Mr Harutyunyan. During 2010 the Commission hopes to receive a request for opinion on the future draft law amending the electoral code, which will ideally be prepared on the basis of the working group's recommendations and on those prepared by the Commission and OSCE/ODIHR. The Commission Secretariat remains in close contact with the Armenian authorities.

The Secretariat then informed the Council on the follow-up to the joint opinion by the Venice Commission and OSCE/ODIHR on the law on amending some legislative acts on the election of the President of Ukraine ([CDL-AD\(2009\)040](#)). At the end of October 2009 the Constitutional Court gave a decision on the said law, declaring certain provisions criticised by the above mentioned joint opinion unconstitutional. Certain provisions of the law have therefore been cancelled. This decision resolves several problematic items which were among the Commission's recommendations, in particular geographical criteria for the nomination of members of electoral commissions, a part of the restrictions on the right to appeal and the limitations on the electoral rights of citizens living overseas. Following this decision and also taking into account the joint opinion, the President of Ukraine then introduced to Parliament in November 2009 a draft law amending the law on the presidential elections. This text included most of the Venice Commission's recommendations. The draft was adopted in the first reading. It has nevertheless not yet been finally adopted as the necessary majority was not reached.

Mr Dronov, Head of the Department for interparliamentary co-operation and election observations of the Parliamentary Assembly of the Council of Europe, informed the Council that, in view of the Presidential Elections scheduled for 17 January 2010, an enlarged pre-electoral mission of the Parliamentary Assembly had visited Ukraine on 24-26 November 2009. He announced an ad hoc mission to observe the first round of the presidential election (14-18 January 2010) in which a large delegation of members of the Parliamentary Assembly will take part. Mr Dronov underlined that this Presidential election is crucial. The Commission has been invited to take part in this mission as legal adviser.

3. International status of election observers

Following a request from the Parliamentary Assembly of the Council of Europe (May 2008), the Venice Commission adopted a report ([CDL-AD\(2009\)020rev](#)) and a summary (CDL-AD(2009)026) on the international status of election observers on the basis of comments by Messrs Masters, Musin, Pohler and Sanchez Navarro. At its October 2009 meeting the Council

examined a third document, drawn up on the basis of comments by the same rapporteurs, which contains draft guidelines and which was submitted to the international organisations concerned for consultation ([CDL-EL\(2009\)022](#)). The draft guidelines have therefore been revised ([CDL-EL\(2009\)022rev](#)), taking into account most of the proposals for amendment received from OSCE/ODIHR, the European Commission and the rapporteurs.

The Secretariat reminded that the guidelines are aimed at better protection of election observers, both international and national, in domestic legislation and invited member States' national parliaments to take into account the rights and obligations of observers in their national law, therefore ensuring harmonisation of laws on this question. Mr Mifsud Bonnici added that there is no international convention on this question and that such an instrument should be welcomed. Some amendments were suggested by the members of the Council and taken into consideration.

The Council adopted the guidelines on an international status of election observers with some amendments ([CDL-AD\(2009\)059](#)).

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\(2009\)037](#)) by the Commission, Mr Colliard prepared a second report aimed at a solid and in-depth evaluation of the prevailing situation across member States.

The Council invited Mr Colliard to finish his report before the next session of the Parliamentary Assembly of the Council of Europe (25-29 January 2010) so that the Secretariat can forward the draft report to the Assembly in time for the said session. The draft report will be discussed at the March 2010 meeting for final approval.

5. Cancellation of election results

At its last meeting the Council examined the report presented by Mr Kask ([CDL-EL\(2009\)020rev](#)) on the basis of the replies to the questionnaire on the cancellation of election results ([CDL-EL\(2007\)043rev](#); [CDL-EL\(2009\)019](#); see also [CDL-EL\(2009\)019add](#)). On the basis of comments by members of the Council and the Venice Commission, Mr Kask has drawn up a revised report ([CDL-EL\(2009\)020rev2](#)), which contains a chapter on case-law. This revised report was submitted to the Council for adoption.

The Council adopted the report on the cancellation of election results ([CDL-AD\(2009\)054](#)).

6. Evaluation of the electoral process

This item was postponed to the March 2010 meeting owing to the absence of the rapporteur (A. Gross).

7. Other developments and future activities

The Secretariat informed the Council on the 6th Conference on European Electoral Management Bodies on "Enhancing participation in elections" which took place in The Hague

on 30 November and 1 December 2009. Around 75 participants from electoral management bodies from numerous European and non-European countries attended the Conference, in particular representatives from Mexico and Kyrgyzstan. Three workshops were organised on measures aimed at attracting voters to participate in elections, organisation of the information campaigns before the vote and the problem of criteria for disenfranchising of voters. Amongst other things the participants at the Conference concluded that the conditions for deprivation of the right to vote should be strictly in conformity with the law and based on reasonable and justified criteria. The participants also underlined that political parties and electoral administration bodies could play an important role in increasing voters' turnout during the elections. In addition, they underlined the importance of encouraging co-operation between different public bodies responsible for organising and conducting elections as well as with the civil society. In another important conclusion, the participants underlined that Electoral Management Bodies should consider how to ensure the minimum procedural guarantees for the exercise of the right to vote by special groups of voters.

The Secretariat informed that the 7th Conference will be held in London on 22-23 June 2010. The topic will be "Putting the voter first at elections". Those members who are interested in participating, and in particular presenting a report, were invited to inform the Secretariat.

The Secretariat then informed the Council of the participation in the 2nd International Seminar of the Observatory of Electoral Justice (Mexico City, 17-18 November 2009) and on the Workshop on the certification of e-voting systems (Strasbourg, 26 November 2009).

The Secretariat then 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 Constitutional amendment). The report on constitutional amendment should be adopted at the Commission's Plenary Session. The report on good governance will be dealt with at a forthcoming session.

In addition, the Secretariat informed the Council on the work of the Committee of experts on participation of people with disabilities in political and public life. The Secretariat participated in a first meeting which took place in Strasbourg on 7-9 September 2009 and will participate in the second meeting in Strasbourg on 9-11 December 2009. The Commission's participation is very much appreciated, taking into account its legal experience, in particular in the electoral field. The Commission could be invited, during the Committee's term of office, to give an opinion on a draft recommendation relative to the electoral rights of people with disabilities.

In addition, the Secretariat briefly informed the Council of the following points :

- The Commission will participate as a legal adviser in the ad hoc mission observing the elections in Ukraine (presidential election on 17 January 2010 and probably for the second round on 7 February 2010), in Bosnia and Herzegovina in October 2010 and in Azerbaijan in November 2010.

- The Secretariat has carried out research on voting from overseas with a view to a possible future study on this question.

- The Secretariat has made some contacts regarding an analysis of electoral fraud with a view to a possible future study on this question.

- Following the work carried out by the Venice Commission at the request of the Parliamentary Assembly, at its January 2010 session the Assembly will discuss increasing women's representation in politics through the electoral systems and thresholds and other features of electoral systems which have an effect on representativity of national parliaments.

- The Secretariat informed the Council that the Parliamentary Assembly will nominate a new rapporteur on the Code of Good Practice in the field of Political Parties before any discussion during the Assembly session.

Members were invited to make proposals for future activities.

8. 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 particular an opinion on the electoral code of Georgia should shortly be prepared jointly as soon as the two institutions have received the law amending the Election Code. Concerning Armenia the Commission is also expecting a draft text modifying the Election Code, on the basis of the recommendations drawn up in the joint opinion on the Election Code adopted in October 2008 (CDL-AD(2008)023). During 2010 the Commission also hopes to receive a draft law amending the electoral code of Moldova following the Secretariat's encouraging contacts with the Moldovan Parliament (and on the basis of the most recent joint opinion from October 2008 (CDL-AD(2008)022). A joint opinion on the Election Code of Montenegro would also seem to be a possibility during 2010. The different political factions in Montenegro are close to agreement to revise the electoral law; a draft text amending the law should be submitted to the Commission by the Parliament of Montenegro. Regarding Belarus, contact has been made and an opinion on the electoral law could be envisaged during 2010. Concerning Serbia, the opinion adopted in October has been sent to the Serbian authorities. The Commission will be requested to give an opinion on the law on referendums and will, in this context, co-organise a seminar on the draft law and questions concerning referendums in Strasbourg in February 2010.

The Secretariat finally informed the Council of the joint work with OSCE/ODIHR on political parties. At the invitation of OSCE/ODIHR the Venice Commission participated in a Round Table on financing political parties in Athens on 17-19 September 2009. This activity was organised in the framework of the Greek Presidency of OSCE. As a logical follow-up to this event the Commission should co-organise a meeting with the OSCE/ODIHR "Democratisation" Section on the question of political parties at the beginning of 2010, in particular on the question of prohibition of political parties and political parties and elections. The work of OSCE/ODIHR will take into account the Venice Commission's previous work. This meeting will be followed by a meeting of the working group on the guidelines.

9. Date of the next meeting

The Council decided to hold the next meeting on Thursday, 11 March 2010 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, 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 Panthéon-Sorbonne

Mr Srdjan DARMANOVIC, Professor, University of Montenegro, Podgorica

Mr Klemen JAKLIC, Professor, Constitutional Law, Ljubljana, Slovenia

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

Secrétariat / Secretariat

M. Thomas MARKERT

M. Pierre GARRONE

M. Gaël MARTIN-MICALLEF

ASSEMBLEE PARLEMENTAIRE / PARLIAMENTARY ASSEMBLY**Membres / Members**

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

Mme Josette DURRIEU, Paris, Commission politique

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

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, Chamber of Regions (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)

EUROPEAN PARLIAMENT/ PARLEMENT EUROPEEN

M. Pietro DUCCHI, Head of the Election Observation Unit (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)