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CDL-EL-PV(2010)001*

Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

32nd MEETING
OF THE COUNCIL FOR DEMOCRATIC ELECTIONS
Venice, 11 March 2010 at 10 a.m.

MEETING REPORT

**This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules laid down in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

1. Adoption of the agenda

The Council adopted the agenda as it appears in document CDL-EL-OJ(2010)001ann.

2. Election of the Chair and of the Vice-Chair

The Council elected Mr Andreas Gross as Chair and Mr Jean-Claude Colliard as Vice Chair.

3. Communication by the Secretariat

The Secretariat informed the Council on the following:

- *Bosnia and Herzegovina*

a. The Venice Commission participated in a Conference on the impact of the European Convention on Human Rights on the Electoral Code and the Constitution of Bosnia and Herzegovina, organised by the Konrad Adenauer Stiftung in Sarajevo on 28 January 2010. The discussions were mainly focussed on the consequences of the decision of the European Court of Human Rights in the case of Sejdic and Finci v Bosnia and Herzegovina.

b. The Venice Commission is actively participating in the co-operation between the Council of Europe and the authorities in the framework of the Action Plan for the legislative elections which take place in Autumn 2010. The Commission should receive a request for opinion on the amendments to the Electoral law in March. In May Venice Commission representatives are invited to participate in an activity organised by the School for Political Studies of Bosnia and Herzegovina (in co-operation with the Directorate General of Democracy and Political Affairs (DG-DAP)).

- *Georgia*

a. On 10 February 2010 the Venice Commission received a request for opinion on the amendments to the Electoral Code of Georgia. Work on a legal opinion has already started, jointly with OSCE/ODIHR. This draft opinion will be discussed with representatives of the majority and opposition at a meeting in Strasbourg on 29 April 2010, during the Parliamentary Assembly session. The draft opinion should be submitted for discussion and adoption to the Council's June 2010 meeting and thereafter to the Commission's June Plenary Session.

b. At the request of the Central Electoral Commission of Georgia (CEC) an expert should be present for two weeks to assist the CEC technically and legally for the forthcoming local elections scheduled for the end of May 2010, in particularly concerning appeals.

- *Ukraine*

a. The Commission provided legal assistance to the observation missions of the Parliamentary Assembly during both rounds of the Presidential Elections in Ukraine. Mr Dronov indicated that, among the main problems, the absence of a unified electoral code and above all the revision of the electoral law between the two rounds, which was against the recommendations of the Venice Commission and OSCE/ODIHR should be noted. This latest revision followed up on an already late revision which had previously been criticised by the Venice Commission and OSCE/ODIHR in their joint opinion adopted in December 2009 (CDL-AD(2009)040). The last minute revision was in particular aimed at enabling the

electoral commissions to work without a quorum. The Venice Commission had been closely involved in the drawing up of the preliminary observations; its contribution was appreciated by the Parliamentary Assembly.

The Venice Commission intends to continue its co-operation with the authorities on the preparation of a unified electoral code. The Working Group on the electoral code has already been in contact with the Secretariat to establish a programme of work.

b. The Venice Commission could be involved in the work of the DG-DAP concerning the reform of regional administration (in the electoral system field).

- *January 2010 Session of the Parliamentary Assembly of the Council of Europe*

At its January 2010 session, the Parliamentary Assembly dealt with several issues concerning the work of the Council for Democratic Elections and the Venice Commission.

In particular, the Assembly adopted recommendations and resolutions on electoral thresholds and the impact of electoral systems on women's representation in politics (see items 4 and 5 below).

The Parliamentary Assembly decided to continue its work on the Code of good practice in the field of political parties (see CDL-AD(2009)021). It should also deal with the status of election observers (see CDL-AD(2009)059) and the financing of electoral campaigns.

The Council would be grateful if the Parliamentary Assembly could inform on follow-up to work on these issues.

- *European Court of Human Rights Decision Grosaru v Romania*

In its decision Grosaru v Romania of 2 March 2010 (Application N° 78039/01), the European Court of Human Rights found a violation of Article 3 of the Additional Protocol owing to a lack of clarity concerning national minorities in the electoral law and to the absence of sufficient guarantees with regard to the impartiality of the bodies instructed to examination of the applicant's disputes. Even if this case specifically concerns the distribution of seats reserved for minorities in Romania, it also has a bearing on two important points: the composition of the electoral commissions and their impartiality, as well as the necessity for a judicial appeal in electoral matters. It would be appropriate to take into account this decision in the future work of the Council for Democratic Elections and the Venice Commission and to follow developments in the case-law.

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. This text (CDL-EL(2010)001) was also forwarded to the Parliamentary Assembly as a matter of urgency, owing to the fact that this issue was dealt with by the Assembly at its January 2010 session.

Mr Colliard informed that the simplest question is that of the explicit threshold, which only has any meaning for proportional systems. It remains to be seen at what level the threshold should apply: national level? Local level? What should be the percentage? The effect of the threshold depends on the level of construction of parties. The natural or implicit threshold is another question which depends on other aspects of the electoral law, essentially on the size

(number of seats) of the constituency. Other obstacles on access to parliament, such as limitations on individual candidatures, should in general be avoided.

The Commission could develop this question, but care should be taken if acceptable thresholds are to be limited.

The Council adopted the report on thresholds and other features of the electoral system which bar parties from access to Parliament (2nd part) (CDL-AD(2010)007).

At its January 2010 session, the Parliamentary Assembly adopted a Resolution and a Recommendation on “Thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member states” (Resolution 1705(2010) and Recommendation 1898(2010)). It should be noted that these texts deal with a number of general questions concerning electoral law rather than just the question of electoral thresholds and similar instruments.

The Committee of Ministers sent this recommendation to the Venice Commission for information and comment. The draft reply (CDL-EL(2010)005) was submitted to the Council for adoption.

Mr Colliard proposed two amendments aimed at recalling that not only explicit thresholds, but also implicit thresholds exist and that it is difficult to set up a uniform standard, but that the Commission is ready to elaborate on this matter.

The Council adopted the comments in view of the reply by the Committee of Ministers to Parliamentary Assembly Recommendation 1898(2010) on Thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member states (CDL(2010)030) with two amendments.

5. Women’s participation in elections

At the request of the Committee on equal opportunities for women and men of the Parliamentary Assembly the Council for Democratic Elections and the Venice Commission adopted a report on the impact of electoral systems on women’s representation in politics (CDL-AD(2009)029). This document has been sent to the Parliamentary Assembly.

At its January 2010 session, the Parliamentary Assembly adopted a Resolution and a Recommendation on “Increasing women’s representation in politics through the electoral system” (Resolution 1706(2010) and Recommendation 1899(2010)).

The Committee of Ministers sent this recommendation to the Venice Commission for information and comment. The draft reply (CDL-EL(2010)006) was submitted to the Council for adoption. The reply underlines in particular that the aim of women’s representation may be in conflict with other aims of the electoral system.

The Council adopted the comments in view of the reply by the Committee of Ministers to Parliamentary Assembly Recommendation 1899(2010) on “Increasing women’s representation in politics through the electoral system”(CDL(2010)031).

6. Armenia

The Working Group on Electoral Reform, composed of the different Armenian political factions and non-Governmental Organisations, has prepared general recommendations aimed at improving the legal electoral framework. These recommendations (CDL-EL(2010)002) were submitted to the Commission for informal opinion ; the Commission prepared, with OSCE/ODIHR, joint informal comments which were sent to the National Assembly of Armenia on 13 January 2010 (CDL-EL(2010)003). During this year the Commission hopes to receive a request for opinion on the future draft law amending the electoral code, which will preferably be drawn up on the basis of the Working Group's recommendations as well as the above-mentioned informal recommendations.

On 14 January 2010 the Venice Commission and OSCE/ODIHR provided an informal opinion on the proposals for modification to the Electoral Code, prepared by an inter-parliamentary Working group on the revision of the Electoral Code. The opinion is of an informal nature as the proposals are not yet at the stage of a draft law aimed at modifying the text.

This informal opinion was sent to the requesting authority, i.e. the National Assembly of Armenia.

The Venice Commission hopes to receive shortly an official request together with the draft law modifying the Electoral Code.

In addition, should the Central Electoral commission of Armenia (CEC) request it, the Venice Commission could give technical and legal assistance to the CEC.

The Council took note of the informal comments on the recommendations of the Working Group of the National Assembly of Armenia for reform of the Electoral Code of Armenia (CDL-EL(2010)003).

7. Serbia

Further to a request from the Serbian Minister of Public Administration and Local Self-Government, the Council is invited to comment on the draft opinion (CDL-EL(2010)007) on the draft law on referendum of Serbia (CDL-EL(2010)004) drawn up on the basis of comments by Messrs Bartole and Sanchez Navarro.

A meeting on this issue was held in Belgrade on 8 March 2010, which enabled a certain number of points to be clarified. Representatives of the Commission responsible for the revision of the law, the Ministry of Public Administration and Local Self-Government and interested International Organisations in particular attended this meeting. The Serbian authorities showed willingness and availability to re-examine the text taking into account the Venice Commission's recommendations.

In general, the text is in conformity with the principles of European electoral heritage. However, the structure in particular should be re-examined, as there is a lack of clarity on a certain number of points. Thresholds (with a view to their elimination), appeals which should fully guarantee the protection of the citizens' rights, the definition of the composition of the referendum Commissions and the polling stations as well as the definition of the effects of "advisory" referendum are the most important points which could be re-examined.

The Council adopted the draft opinion (CDL-AD-2010)006) on the draft law on referendum of Serbia (CDL-EL(2010)004) with some amendments.

8. Other developments and future activities

The Secretariat informed the Council on:

- progress of work on out of country voting; the Secretariat has collected documents on this question and prepared comparative tables; the Commission will take part in a Conference on this theme organised by the United Nations Division for Electoral Assistance and the Romanian National Electoral Authority in Bucharest on 19-20 April 2010; the seminar which will take place in Skopje on 17-18 March will largely be devoted to this subject;
- co-operation with OSCE/ODIHR in the framework of two meetings relating to electoral disputes and political parties;
 - a. The Venice Commission participated in a meeting on OSCE Recommendations on electoral disputes organised by OSCE/ODIHR in Warsaw on 15-16 February 2010; work on these recommendations will continue in 2010;
 - b. The Venice Commission participated in a meeting on OSCE Recommendations in the field of political parties organised by OSCE/ODIHR in Warsaw on 17-19 February 2010. The text should be finalised before June 2010. The Commission may be invited to comment on these recommendations by June or October 2010.
- the adoption by the Venice Commission of the report on Constitutional amendment (CDL-AD(2010)001) (following Recommendation 1791(2007) of the Parliamentary Assembly);
- forthcoming activities in:

a. Azerbaijan

On 10 March 2010 the Committee of Ministers of the Council of Europe adopted an action plan supporting the 2010 legislative elections in Azerbaijan; this action plan foresees in particular that the Venice Commission should work on the electoral code, on training for electoral actors and on the legislation on political parties; specific activities will be organised depending partly on the approach of the Azeri authorities, in particular concerning the revision of the electoral code.

b. Moldova

- The Venice Commission and OSCE/ODIHR have just received a request for an opinion on the draft text amending the electoral code
- Moreover, the Commission will participate in a Conference on electoral lists organised by the Central Electoral Commission which will take place in Chisinau on 21 April, as well as in a workshop on the same theme organised by the Association of European Electoral Administrations (ACEEEO) (22 April).

Mr Markert informed the Council of the constitutional developments connected to blocking the process for election of the President of Moldova, and in particular the authorities' proposal to modify the Constitution by referendum, which is not in conformity with the

Constitution. In addition, the authorities wish to modify the Electoral Code to abolish the threshold of the majority of those registered.

c. “the former Yugoslav Republic of Macedonia”

- During the next few weeks or months the Venice Commission should receive a request for opinion on the draft law amending the Electoral Code.
- The Commission will participate in a workshop organised by the working group for electoral reform in Skopje on 17-18 March, which will be largely devoted to the question of out of country voting

In addition the Commission should receive a request for opinion on the code of practice for electoral observers of the United Kingdom.

The Parliamentary Assembly plans to observe the 2010 elections in Azerbaijan, Bosnia and Herzegovina and Palestine, and to invite the Venice Commission as a legal adviser on these occasions.

9. Co-operation with OSCE/ODIHR

An exchange of views took place with the representatives of OSCE/ODIHR on the possibilities of future co-operation. As a general rule future opinions in the electoral field should be drawn up jointly by the two organisations.

Mr Olszewski informed that, in its report on the 14 September 2009 election in Norway, OSCE/ODIHR pointed out a certain number of points where the legislation could be modified. A visit to the country took place in January 2010, involving several Ministers, in particular the Minister for Local Administration. A public debate is planned, as well as a meeting in Warsaw.

Concerning Belarus, the Electoral Code was amended following the OSCE/ODIHR visit in 2009, without OSCE/ODIHR being given the possibility to comment. Further to a letter from OSCE/ODIHR the authorities agreed to an opinion from OSCE/ODIHR without mentioning the Venice Commission. Mr Garrone indicated that the Council should wait to see whether the Parliamentary Assembly of the Council of Europe intends to ask the Venice Commission for an opinion.

10. Date of the next meeting

It was decided to hold the next meeting on Thursday, 3 June 2010 at 9.30 a.m.

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS**COMMISSION DE VENISE / VENICE COMMISSION****Membres du Conseil des Elections Démocratiques (CED) / Members of the Council for Democratic Elections (CDE)**

M. Jean-Claude COLLIARD, Président de l'Université Paris 1 - Panthéon-Sorbonne, Paris
(Vice-Président/Vice Chair)

Mr Ugo MIFSUD BONNICI, President Emeritus, Valletta

Mr Peter PACZOLAY, President of the Constitutional Court, Budapest (excusé/apologised)

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

Membres suppléants du CED / Substitute Members of the CDE

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)

Autres participants / Other participants

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

Mr Nicolae ESANU, Former Deputy Minister of Justice, Ministry of Justice, Chisinau

Secrétariat / Secretariat

M. Thomas MARKERT

M. Pierre GARRONE

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Mme Josette DURRIEU, Paris, Commission politique

M. Andreas GROSS, Zurich, Commission juridique **(Président/Chair)** (excusé/apologised)

Secrétariat / Secretariat

Mr Vladimir DRONOV

**CONGRES DES POUVOIRS LOCAUX ET REGIONAUX DU CONSEIL DE L'EUROPE /
CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF THE COUNCIL OF
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M. Ian MICALLEF, Malte, Président de la Chambre des pouvoirs locaux/President of the
Chamber of Local Authorities (excusé/apologised)

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Excusé/apologised

OBSERVATEURS / OBSERVERS

OSCE

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

UNION EUROPEENNE / EUROPEAN UNION

PARLEMENT EUROPEEN / EUROPEAN PARLIAMENT

Mme Emilia GALLEGO PERONA, Administrateur, Unité Observation des élections, Direction générale des politiques externes, Luxembourg

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