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Or. fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

35th MEETING
OF THE COUNCIL FOR DEMOCRATIC ELECTIONS
Venice, 16 December 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 set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

1. Adoption of the agenda

The Council adopted its agenda as it appears in document [CDL-EL-OJ\(2010\)004ann.](#)

2. Communication by the Secretariat

The Secretariat informed the Council on the following items:

- *Armenia: on-going electoral reform*

The Council was informed on the latest developments concerning electoral reform in Armenia. The Venice Commission has a long experience in co-operating with the National Assembly on electoral reform. The Commission had been in contact with Mr Davit Harutyunyan, Member of Parliament, President of the Legal Affairs Committee of the National Assembly of Armenia and head of the Armenian delegation to the Parliamentary Assembly. In this framework an electoral symposium was organised on 22-23 November 2010, during which fundamental questions concerning the new draft electoral code were discussed, including the administration of elections, the financing of political parties and campaigns and the use of administrative resources, the settlement of appeals and the prevention of electoral fraud.

The new electoral code is currently being discussed within a parliamentary working group. A new draft electoral code should be sent to the Commission for opinion at the beginning of 2011. In parallel, the Commission has received a request from the Monitoring Committee of the Parliamentary Assembly for an opinion on the draft electoral code submitted by the opposition.

- *Azerbaijan: legislative elections 7 November 2010*

The Council was informed that, in the framework of its work as legal adviser to the Parliamentary Assembly, the Commission had taken part in a mission to observe the legislative elections which took place on 7 November 2010 in Azerbaijan.

- *Moldova: early legislative elections of 28 November 2010*

The Council was informed that, in the framework of the Action Plan between the Council of Europe and Moldova supporting the electoral process in that country, several training sessions for election observers and for representatives of local and territorial electoral commissions had been co-organised by the Venice Commission, bringing international expertise. In addition, following a request from the Central Electoral Commission, the Commission sent an electoral expert to assist with the preparation of the early legislative elections which took place on 28 November 2010. Finally the Venice Commission also assisted the Parliamentary Assembly as a legal adviser during the above mentioned early legislative elections.

3. Out of country voting

At the last meeting, comments prepared by the rapporteurs Ms Durrieu and Mr Trocsanyi were submitted to the Council for information (CDL-EL(2010)027 and 030).

The Secretariat prepared a draft report on the basis of these comments and the discussion which took place at the last meeting ([CDL-EL\(2010\)032](#)). In the absence of Ms Durrieu, the Council decided to postpone the matter for consideration at the March meeting, but also asked the Secretariat to further amend the draft report in the light of comments which were made there and then, taking into account the proposals for amendment submitted by the representative of the European Commission.

This revised draft report will therefore be drawn up and submitted to the Council at its March 2011 meeting.

4. Electoral fraud

Following the Council's decision to examine this issue, a draft report on management of possible electoral fraud based on the manipulation of figures, based on comments by Messrs N. Vulchanov and A. Eriksson, was submitted to the Council for adoption (CDL-EL(2010)028).

Several years ago the Council had shown an interest in examining the possibility of detecting electoral fraud by statistical means.

The preparation of this report was entrusted to specialists in numerical questions, first and foremost to Mr Nikolai Vulchanov, mathematician. A second expert, Mr Anders Eriksson was then called upon to contribute.

This report was drafted with a view to commenting specifically on aspects of an election process which involve possibilities for election fraud based on the manipulation of figures.

The report makes a distinction between inexperience and fraud, pointing out that fraud is intentional deception.

The report focuses on a number of sensitive elements concerning fraud, such as voter registration, voter turnout and potential discrepancies between the vote count and tabulation of results.

Finally, the last chapter is devoted in particular to the following three means of preventing fraud: transparency of the process; the accountability of all State representatives responsible for organising an election; and public confidence.

This implies in particular the efficient working of electoral administrations, public scrutiny of voter lists, appropriate forms for results, timely reporting of results, the presence of international observers, parallel vote tabulation.

The Council adopted the draft report on figure based management of possible electoral fraud, with some amendments ([CDL-AD\(2010\)043](#)).

5. Norway

Mr. Dag Henrik Sandbakken, State Secretary of the Norwegian Ministry of Local Government and Regional Development (the Ministry) requested the European Commission for Democracy through Law (Venice Commission) to examine aspects of the Norwegian election system relating to the resolution of electoral disputes. The request was more specifically to evaluate the provisions relating to the consideration of appeals and the validation of the elections as well as how they fit into Norway's international obligations. This request is part of the initiatives

taken by Norway to implement the recommendations made in the final report of the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (OSCE/ODIHR) following its evaluation of the 14 September 2009 legislative elections.

Following this request the Venice Commission and OSCE/ODIHR drafted a joint opinion in particular concerning electoral disputes. This document, drawn up on the basis of comments by Messrs Mifsud Bonnici and Paczolay, as well as Ms Morry (OSCE/ODIHR expert), was submitted to the Council for adoption (CDL-EL(2010)029; cf. CDL-EL(2010)025 and 026). Mr Mifsud Bonnici presented the opinion to the Council.

The Constitution and the Electoral law stipulate that Parliament is competent for appeals concerning the right to vote in the case of legislative elections. The electoral law stipulates that the National Electoral Commission is competent for other appeals. The law does not provide for the right of further appeal to a Court.

The draft opinion concludes that Norway has a long tradition of holding democratic elections which enjoy a high level of public confidence. The current Norwegian legislation on electoral dispute resolution is based on constitutional and legal traditions, maintaining a separation of powers to ensure the sovereignty of the parliament. However, the system of appeals in electoral matters does diverge from international commitments and standards, as well as good practice. In order to meet international standards and commitments, Norway should include the judiciary in the process of electoral dispute resolution. It should provide for final appeal on all election-related complaints to a court. Furthermore, the final validation of the election should include a possibility of appeal to a high judicial body, such as the Supreme Court. Finally, good practice suggests that establishing time limits for complaints and appeals would be beneficial.

The Council adopted the draft joint opinion on the electoral legislation of Norway, with some amendments ([CDL-AD\(2010\)046](#)).

6. Ukraine

Following a request from Mr Lytvyn, President of the Ukrainian Parliament, the Council examined the draft opinion on the draft unified electoral code of Ukraine on the basis of comments by Messrs N. Esanu and S. Darmanovic (CDL-EL(2010)033, see CDL-EL(2010)034). Mr Darmanovic presented the draft opinion to the Council.

Mr Darmanovic pointed out that several members of Parliament have worked on this draft text and several Round Tables on this issue were organised in 2008-2009. Considerable efforts have been made to improve the Electoral law of Ukraine and the result is on the whole positive.

However, a few recommendations to improve the code were made in the draft opinion. The draft in particular underlines that the code is a very long document and should be made more understandable not only for the general public but also for its interpretation by judges. The codification of all electoral provisions in a single document should be welcomed. Concerning political parties, the code requires that they should have existed for at least one year before they become eligible to take part in elections; this is not in line with European standards.

Compared to the existing laws, there are other improvements in the draft code, in particular the uniformity of procedures and the organisation of Election Commissions. The draft also gives more guarantees for the transparency of the electoral process and the rights of NGOs in the field of election observation.

Concerning the issue of appeals, the rapporteur underlined that it is crucial to define the scope of all competent bodies in order to avoid any conflict in the interpretation of the electoral code. The question of which jurisdiction is competent for appeals needs to be clarified.

In addition, Mr Darmanovic informed the Council that a working group set up at the initiative of the President of Ukraine, is currently working on the electoral legislation and he stated that the rapporteurs would like the recommendations made in the draft opinion to be taken into account as part of this work.

The Council adopted the draft opinion on the draft unified electoral code of Ukraine, with some amendments ([CDL-AD\(2010\)047](#)).

7. United Kingdom

Following a request from the United Kingdom Electoral Commission, the Council examined the draft opinion on the code of practice for electoral observers drawn up by the above mentioned Commission (CDL-EL(2010)035, see CDL-EL(2010)036) on the basis of comments by Ms Alanis Figueroa and Mr Mifsud Bonnici, who presented the opinion to the Council.

Mr Mifsud Bonnici stressed both the excellent initiative of the United Kingdom Electoral Commission in drawing up this code of practice for electoral observers, aimed at clarifying the electoral law for those who receive the code, and the quality of the guidelines it contains. He indicated in this respect that the code of practice is largely in conformity with international standards.

The code grants the same rights to both national and international observers. Among the most important recommendations, the draft opinion proposes extending the observation period, which is limited to the voting day in the code. The text could also be simplified to avoid some redundancies. It is also recommended that there should be an appeals procedure in case of removal of observers. Finally, should the President of a polling station need to limit the number of observers present for the good administration of the vote, the choice should be politically balanced.

The Council adopted the draft opinion on the United Kingdom code of practice for electoral observers ([CDL-AD\(2010\)045](#)).

8. Other developments and future activities

The Council was informed that it may shortly be called on:

- an opinion on the reform of the electoral law of Armenia (see item 2 of this report);
- a study on the abuse of administrative resources: this is a general problem in Europe;
- a report on the electoral rights of people with disabilities; work on this issue, requested by the Parliamentary Assembly will start in January 2011;

- an opinion on the new draft electoral code of “the former Yugoslav Republic of Macedonia”: work on this opinion will start in the first months of 2011 jointly with OSCE/ODIHR;
- an opinion on the future new draft electoral code of Georgia: a request for opinion on the new draft electoral code of Georgia should be sent to the Commission during 2011 once the working group on electoral reform has completed its work;
- an opinion on the unified electoral code of Bulgaria: a request was received from the Congress of Local and Regional Authorities of the Council of Europe concerning a draft electoral code as adopted in its first reading by the National Assembly of Bulgaria. Bearing in mind that this draft will very shortly be adopted in its second reading, it was agreed to provide an opinion on the adopted electoral code.

9. Co-operation with OSCE/ODIHR

An exchange of views took place with the representatives from OSCE/ODIHR on the possibilities of future co-operation. The representatives stated that ODIHR had received a request for an opinion on the new draft electoral code of “the former Yugoslav Republic of Macedonia” and proposed to prepare an opinion jointly with the Venice Commission. They also stressed that a request is expected from the Parliament of Georgia for an opinion on the future new draft electoral code of Georgia (see item 8 above).

10. Date of the next meeting

The Council decided to hold its next meeting on Thursday, 24 March 2011 at 10.00 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) (excusé/apologised)

Mr Ugo MIFSUD BONNICI, President Emeritus, La Valletta

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

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

Ms Maria del Carmen ALANIS FIGUEROA, Chief Magistrate, Federal Electoral Tribunal,
Mexico

Secrétariat / Secretariat

M. Thomas MARKERT

M. Pierre GARRONE

M. Gaël MARTIN-MICALLEF

ASSEMBLÉE PARLEMENTAIRE / PARLIAMENTARY ASSEMBLY

Membres / Members

Mme Josette DURRIEU, Paris, Commission politique (excusée/apologised)

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

Membres suppléants / Substitute Members

Mme Marietta de POURBAIX-LUNDIN, Stockholm, Commission juridique

Secrétariat / Secretariat

Mr Vladimir DRONOV

CONGRÈS DES POUVOIRS LOCAUX ET RÉGIONAUX DU CONSEIL DE L'EUROPE (CPLRE) / CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF THE COUNCIL OF EUROPE (CLRAE)

Membres / Members

Mr Lars O. MOLIN, Président de la Commission de suivi, Örebro, Congrès des pouvoirs
locaux et régionaux (excusé/apologised)

Mr Keith WHITMORE, Manchester, Président du Congrès des pouvoirs locaux et régionaux
(excusé/apologised)

Membres suppléants / Substitute Members

M. Jean-Claude FRECON, Pouilly-les-Fleurs, France, Président de la Chambre des pouvoirs
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Secrétariat/Secretariat

Ms Antonella CAGNOLATI

OBSERVATEURS / OBSERVERS

OSCE

BIDDH/ODIHR

Mr Nicolas KACZOROWSKI, Head of the Election Department, Warsaw

Mr Drew HYSLOP, Election Adviser, Election Department, Warsaw

UNION EUROPEENNE / EUROPEAN UNION

(excusé/apologised)

PARLEMENT EUROPEEN / EUROPEAN PARLIAMENT

(excusé/apologised)

COMITE DES REGIONS / COMMITTEE OF THE REGIONS

M. Luc VAN DEN BRANDE, Président du CIVEX, Bruxelles (excusé/apologised)

ASSOCIATION DES ADMINISTRATEURS D'ELECTIONS EUROPEENS / ASSOCIATION OF EUROPEAN ELECTION OFFICIALS (ACEEEO)

Mrs Marta DEZSÖ, Election Law Expert, Director of the ACEEEO Documentation Centre, Budapest (excusée/apologised)