



Strasbourg, 9 January 2012

CDL-EL-PV(2011)004*
Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

39th MEETING
OF THE COUNCIL FOR DEMOCRATIC ELECTIONS

Venice, 15 December 2011 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 the document CDL-EL-OJ(2011)004.

2. Communication by the Secretariat

The Secretariat informed the Council about the follow up to the joint opinion by the Venice Commission and the OSCE/ODIHR on the Draft Law on Election of People's Deputies of Ukraine ([CDL-AD\(2011\)037](#)) and in particular, the visit of a Venice Commission delegation to Ukraine on 31 October 2011.

Following the adoption of the joint opinion by the Venice Commission and the OSCE/ODIHR on the draft Law on the election of People's Deputies of Ukraine at the Commission's October session, the Committee on State building and local democracy of the Verkhovna Rada invited the Venice Commission to attend a hearing on the electoral reform. Representatives of the opposition had criticised the draft drawn up by the Working group created by the President and presented by the MPs from the majority and had stated that the process of its preparation was not inclusive.

The Committee on State building and local democracy recommended that the Rada set up a working group, composed of representatives of the different political parties, to be responsible for preparing the final draft law on elections of members of parliament.

In November the parliament adopted the draft law introducing the mixed system, raising the threshold to 5% and prohibiting electoral blocs. The draft had been drawn up by the working group of the Rada and took into account a number of technical recommendations of the Joint opinion of the Venice Commission and the OSCE/ODIHR. 366 MPs (out of 450), including representatives of the opposition, voted in favour of the draft.

- *Assistance to the Parliamentary Assembly election observation missions in Bulgaria (23 October 2011) and in Kyrgyzstan (30 October 2011)*

Mr Endzins informed the Council that he had participated in a PACE election observation mission in Kyrgyzstan. He reminded the participants that the law on presidential elections had been adopted in summer 2011. The late adoption of the law had created a problem for its implementation during the 30 October election. Members of the electoral administration and voters did not have enough time to study the new law. Another serious problem concerned voters' lists, which were not accurate. A number of voters were not on the lists on the voting day. Mr Endzins said that during the election day he had visited 8 precincts throughout the country and 4 in Bishkek.

Ms Martin-Rozumilowicz added that the preliminary observation report of the international observation mission indicated that although the elections took place in peaceful manner, they were overshadowed by a number of serious irregularities, notably, the inaccuracy of the voters' lists as well as procedural problems during the voting and at the moment of counting. She informed the Council that during the elections, international observers visited more than 1000 polling stations.

- *Participation in the Extraordinary meeting on the 20th anniversary of the Inter American Union of Electoral Organisations (UNIORE) (Mexico City, 10-11 November 2011)*

Ms Alanis Figueroa informed the Council that an extraordinary meeting of UNIORE had taken place in Mexico on 10-11 November 2011. The organisation celebrated its 20th anniversary.

UNIORE had been created in 1991, when several countries of the Caribbean and Central and South America decided to set up a special body of co-operation in the electoral field. Its main tasks are to promote regional co-operation and election observation. Its members are judicial and administrative bodies responsible for the electoral process. Mexico took over the presidency of UNIORE in 2011-12.

The President of the Venice Commission had addressed the participants at the UNIORE meeting and held bilateral meetings with representatives from Argentina, Bolivia, Costa Rica and Panama.

UNIORE is interested in the Venice Commission's experience in the electoral field and is willing and ready to co-operate on a number of projects. On this occasion, Mr Buquicchio thanked the Mexican authorities for the invitation to attend the meeting and for the excellent organisation of this event. He suggested that the Commission strengthen its ties with the Americas through co-operation with UNIORE.

- *Participation in a Round Table on the electoral legislation of Tajikistan (Dushanbe, 22-23 November 2011)*

The Secretariat informed the Council that the Venice Commission had organised, in co-operation with the Central Electoral Commission of Tajikistan, a Round Table on reform of the electoral system in Tajikistan and international standards. The meeting focused on the electoral practice in Tajikistan and possible areas for its further reform. The participants held a fruitful exchange of views on issues such as the role of mass media in the electoral campaign, the complaints and appeals procedures and the improvement of voters' lists.

Ms Martin-Rozumilowicz informed the Council that the OSCE/ODIHR was closely following the electoral situation in Tajikistan. She was of the opinion that it would be useful to make a review of its electoral legislation and that international organisations could co-ordinate their co-operation projects with Tajikistan in the electoral field.

- *Participation in a Workshop on the latest amendments to the Electoral Code of Armenia (Yerevan, 12-13 December 2011)*

A workshop was held on 12 and 13 December 2011 in Yerevan for members and staff of the Central Election Commission and Heads of the Territorial Election Commissions. In addition representatives of the National Commission on Television and Radio attended the first day.

The purpose was to discuss and provide some guidance on the interpretation of the election law, in particular the new regulations that had been introduced earlier this year. Mr Kåre Volla, Venice Commission expert was the main resource person acting as rapporteur and introducing the subjects in five of the six sessions. The subjects concentrated on campaign regulations and the count, tabulation, re-counts, invalidation of voting and new elections in addition to e-voting and the main concerns were how to exercise a fair judgement when considering violations of the code.

The discussions were fruitful. They should lead to improvements in the organisation of elections at all levels of elections commissions, not solely relying on handling complaints mechanically but showing a willingness to use a fair judgement on each situation.

The event was organised by the CEC in co-operation with IFES, the OSCE and the Council of Europe Office in Armenia.

- *Participation in a meeting of the Political Affairs Committee of the Parliamentary Assembly (Paris, 14 December 2011) on the issue of measures to improve the democratic character of elections in the Council of Europe member states*

A number of high level reports were presented during this meeting. Mr Colliard presented the Venice Commission's experience, in particular through the Code of Good Practice in Electoral Matters and the 2006 report on Electoral law and Electoral Administration in Europe ([CDL-AD\(2006\)018](#)). Ms Martin-Rozumilowicz underlined that electoral observers can be confronted with both political (obstacles to party registration, composition of electoral commissions) and technical problems; adequate monitoring tools should be put in place to ensure a targeted and coherent follow-up, and to promote discussion in appropriate fora, in particular international organisations. Mr Kaczorowski stressed the positive character of the experience in Tunisia, where he is currently working, and which has shown that, even without a tradition of democratic elections, it is possible to organise such elections in a short time. Mr Ghevontian emphasised the importance of three elements: participation, transparency and control.

The discussions were animated showing that the subject is of interest to the Parliamentary Assembly. Ms Durrieu, Ms Pourbaix-Lundin and Mr Hancock, members of the Council for Democratic Elections also spoke. In his intervention, Mr Gardetto stressed in particular the importance in the future of questions such as voting and electronic voting, the registration and control of the identity of voters.

The Political Affairs Committee formally requested a contribution from the Council for Democratic Elections (to be adopted in March 2012) to the report on measures to improve the democratic character of elections in the Council of Europe member states (the Assembly's report should be adopted in June 2010²). Mr Colliard will prepare a contribution for the beginning of 2012.

- *Assistance to the Parliamentary Assembly election observation missions in the Russian Federation (4 December 2011)*

Ms Biglino Campos informed the Council on the mission of assistance to the Parliamentary Assembly carried out in the Russian Federation in the light of the Duma legislative elections held on 4 December 2011.

Ms Biglino Campos presented the conclusions of the Joint Statement of the international community which observed the elections: "The preparations for the 4 December State Duma elections were technically well administered across a vast territory, but the elections were marked by the convergence of the State and the governing party. Despite the lack of a level playing field during the electoral process, voters took advantage of their right to express their choice. Although seven parties ran, the prior denial of registration to certain political parties narrowed political competition. The contest was also slanted in favour of the ruling party as evidenced by the lack of independence of the election administration, the partiality of most media, and the undue interference of state authorities at different levels. This all did not provide the necessary conditions for fair electoral competition..."

During the election day, the Venice Commission observed eight polling stations, identifying lacunae in the legislation which did not permit a transparent and clear procedure (the presence of policemen inside police stations, the lack of private voting cabins with curtains, the ballot boxes were not transparent and often poorly sealed, the precinct electoral commission was not acting together, but each of the members acted in a separate way, with no control from the other members...). It was also possible to witness minor infractions of the legislation, mainly in the counting of the votes, as well as in relation to absentee voting and mobile ballots.

Ms Martin-Rozumilowicz confirmed this assessment and added that there were also concerns regarding freedom of association relating to the registration of political parties

Mr Dronov added that the Parliamentary Assembly will make a post-electoral visit to Russia on 19-20 January 2012.

Finally, Mr Markert informed the Council that the Monitoring Committee of the Parliamentary Assembly is going to request the Venice Commission's opinion on five pieces of legislation of the Russian Federation.

3. Albania

Following a request from the Secretary General of the Council of Europe for an opinion on the modifications to be made to the electoral law and the electoral practice in Albania in the light of recent experience, the Venice Commission and the OSCE/ODIHR prepared a joint draft opinion on this issue on the basis of comments by Messrs van Dijk, Kask, Konrad Olszewski (expert, Poland) and Ms Marianna Skopa (OSCE/ODIHR expert) ([CDL\(2011\)093](#)); see also the electoral code, [CDL-REF\(2011\)038](#)). This draft opinion was submitted to the Council for adoption. In the framework of the preparation of this opinion a Venice Commission-OSCE/ODIHR delegation, which included the four rapporteurs, travelled to Albania on 24-25 October 2011. The delegation met the main political and electoral actors, in particular the Prime Minister, the President of the National Assembly, the Minister of Foreign Affairs, the heads of the Democratic Party, the Socialist Party and the Socialist Movement for Integration as well as the President and the Vice President of the Central Electoral Commission.

In its conclusions the draft opinion states that, as indicated in the previous joint opinion by the Venice Commission and the OSCE/ODIHR, the Albanian Electoral Code provides a thorough technical foundation for elections. However, recent experience in the implementation of the code has shown that a number of improvements are still required in electoral legislation and practice.

The recurring problems with the conduct of democratic elections in Albania cannot be resolved merely through changes in electoral legislation. Any meaningful improvement in the quality of the electoral process will not be achieved without a change of attitudes and practices of the main political groupings and their leaders. Nonetheless, existing weaknesses in the Code that were exposed during the recent elections in Albania need to be addressed. Key amendments could include in particular: the appointment of members of election commissions and the possibility to remove them with due motive, and more generally, their partisan nature; changes in and clarification of the vote counting procedures, especially concerning miscast ballots; the absence of specificities on local elections in the Code; provisions relating to media access and campaign financing; other gaps and ambiguities regarding the application of the electoral threshold in local elections or gender equality, rules relating appeals.

The Council adopted the opinion on modifications to be made to the electoral legislation and practice in Albania without any amendment ([CDL-AD\(2011\)042](#)).

4. Georgia

On 12 September 2011, Mr Mikheil Machvariani, First Deputy Chairman, Parliament of Georgia, requested an opinion from the Venice Commission on the draft Electoral Code of Georgia (see the revised draft code, [CDL-REF\(2011\)044rev](#)). The Venice Commission and

the OSCE/ODIHR prepared a joint draft opinion, on the basis of comments by Messrs Gonzalez Oropeza, Hamilton, Jaklic and Jessie Pilgrim (OSCE/ODIHR expert) ([CDL\(2011\)094](#)). This draft opinion was submitted to the Council for adoption. In the framework of the preparation of this opinion a Venice Commission-OSCE/ODIHR delegation travelled to Georgia on 25-26 October 2011 to meet the different parties involved in the electoral reform: Parliamentary Commission for drawing up the Code, parliamentary majority and opposition, extra-parliamentary opposition, Central Electoral Commission, the international community and the civil society. This visit took place in excellent conditions thanks to the logistical support from the Council of Europe Office in Georgia.

Following this visit, the discussions held with the representatives of the majority and the forwarding of the draft opinion to the Parliament, the Venice Commission and the OSCE/ODIHR received on 8 December some draft amendments to the draft electoral code ([CDL-REF\(2011\)044add](#)). Mr Gonzalez Oropeza, who presented the draft opinion to the Council, underlined the efforts which have been made by the Georgian Parliament to take the recommendations of the draft opinion into account in these draft amendments. Further amendments sent on 10 December were taken into consideration but were not reflected in the draft opinion due to lack of time. Mr Gonzalez Oropeza highlighted the following positive points in the draft amendments: amongst others the possibility for independent candidates to stand for election, the voting rights of prisoners who are imprisoned for minor offences, the efforts made – albeit insufficient – to reduce the length of residency requirements, all issues which meet the recommendations of the Venice Commission and the OSCE/ODIHR.

Mr Gonzalez Oropeza also detailed those questions which are pending, such as gender equality, inequality in the size of electoral districts, problems in the use of administrative resources during electoral campaign and shortcomings in the electoral appeals process.

In order to reflect the draft amendments sent on 8 December, the Secretariat submitted to the Council proposals for amending the draft opinion, as well as the opinion itself for adoption.

Ms Martin-Rozumilowicz pointed out that modifications made at the last minute to texts submitted to the Venice Commission and the OSCE/ODIHR may cause problems in the analysis of such texts and, in particular, lead to errors and inconsistencies.

The Council adopted the opinion on the draft Electoral Code of Georgia with a certain number of amendments ([CDL-AD\(2011\)043](#)).

5. Interpretative Declaration to the Code of Good Practice in Electoral Matters on the participation of people with disabilities in elections

The Council for Democratic Elections at its 34th meeting and the Venice Commission at its 84th Plenary Session (October 2010) adopted a declaration on the participation of people with disabilities in elections ([CDL-AD\(2010\)036](#)).

A revised version, which takes into account the recent work of the Committee of Experts on the participation of people with disabilities in political and public life (CAHPAH-PPL), had been discussed by the Council and the Venice Commission in June 2011 ([CDL\(2011\)041](#)).

Following the adoption of Recommendation [CM/Rec\(2011\)14](#) of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life, a

new version of the interpretative declaration had been prepared ([CDL\(2011\)041rev](#)) and was submitted to the Council for adoption.

After a presentation of the draft revised Interpretative Declaration by Mr Mifsud Bonnici, supported by Mr Colliard, Mr Hörtur Torfason and Mr Jaklic, previously consulted in this respect, the document was adopted by the Council.

The Interpretative Declaration to the Code of Good Practice in Electoral Matters on the participation of people with disabilities in elections was adopted ([CDL-AD\(2011\)045](#)).

6. Co-operation with Northern Africa

The Secretariat informed the Council on Venice Commission co-operation with Northern Africa, and in particular the legal assistance to the Parliamentary Assembly election observation missions in Tunisia (23 October 2011) and in Morocco (25 November 2011).

- Tunisia

At the request of the Parliamentary Assembly of the Council of Europe, the Venice Commission took part as a legal adviser to the Parliamentary Assembly delegation in the framework of the observation of the election of the Constituent National Assembly on 23 October 2011.

Mr Colliard and a member of the Secretariat participated in this assistance mission.

The Commission Secretariat first of all prepared a memorandum for the whole delegation, which highlighted the relevant legal framework for understanding the Tunisian context and the election observation. The Secretariat also prepared in both official languages a total of three observation questionnaires tailored to the Tunisian legal framework: one for the observation of procedures prior to the vote, another for the election day and the third for observation of the counting.

In addition, the representative of the Secretariat spoke at the delegation's first briefing on 20 October, presented the Venice Commission memorandum prepared for the occasion and replied to various questions concerning the legal framework. Furthermore, the Commission delegation attended a briefing on 22 October and presented the observation questionnaires, their particularities as well as the particularities of the vote for the observation day.

The Commission delegation observed 10 polling stations on election day.

Finally, the Commission delegation assisted Mr Andreas Gross, head of the delegation in preparing the Assembly's declaration which he presented at the Joint Press Conference with the OSCE Parliamentary Assembly. Mr Gross expressed his satisfaction with the work accomplished by the Venice Commission.

The Parliamentary Assembly declaration underlines that Tunisian citizens "for the first time, they have freely elected their constituent National Assembly, laying the foundations of their democracy. They have thus transformed the revolutionary dynamic into a legal and legitimate institution, thereby setting an example for the entire region". The Assembly also congratulated the High Commission for the Fulfilment of Revolutionary Goals, chaired by Mr Yadh Ben Achour, which "operated in a fully independent and neutral manner".

The Parliamentary Assembly Report concerning the observation of this election¹ is, for its legal section, based on the memorandum prepared by the Venice Commission Secretariat. It recommends furthermore that the Tunisian authorities call upon the Venice Commission's expertise regarding the preparation of future legislation (para 60 of the report).

Further elections should be organised in Tunisia in 2013 and/or 2014 (legislative and/or Presidential) once the new Constitution has been adopted and the new institutions established. Co-operation with the Parliamentary Assembly should continue within this framework.

Ms Martin-Rozumilowicz spoke on behalf of the OSCE/ODIHR pointing out the key role that election observers play in the electoral process. She reminded also that the OSCE Ministerial Council recently adopted a decision approving co-operation between the OSCE and Tunisia, which will no doubt give rise to future activities. The Council will be kept informed.

- *Morocco*

At the request of the Parliamentary Assembly of the Council of Europe, the Venice Commission took part as a legal adviser to the Parliamentary Assembly delegation in the framework of the observation of the legislative elections in Morocco on 25 November 2011.

On this occasion, Ms de Guillenchmidt represented the Venice Commission and assisted the Parliamentary Assembly. The conclusions of the mission were the following: "The legislative elections ... went off calmly, allowing the voters to choose freely among the different political parties. The delegation ... notes with satisfaction that ... the Moroccan authorities improved the electoral framework, which facilitates the organisation of free and fair elections provided this text is properly implemented. The delegation does, however, regret that the amendments to the electoral legislation were adopted late, less than one month before the launch of the official campaign, which is incompatible with the Council of Europe's recommendations on electoral practices...." The delegation of the Parliamentary Assembly also pointed out in its statement that "the current election system fails to encourage the registration of large numbers of citizens", and that "the procedure for voting by proxy, aimed at Moroccan citizens who reside abroad, does not facilitate the exercise of the constitutional right to vote". The delegation also stressed that there were "a number of alleged irregularities during the election campaign" concerning cases of vote-buying, undue use of administrative resources, and also intimidation and exertion of pressure, particularly in respect of those who had called for a boycott of the elections and recommended that the Moroccan authorities fully elucidate these allegations. Moreover, the Parliamentary Assembly delegation saluted the remarkable work of the High Authority on Audiovisual Communications, "the media coverage of the campaigns by the opposing parties [being] generally fair" and by the Moroccan National Human Rights Council.

The Parliamentary Assembly will adopt its final report on the election observation on 23 January 2012 in Strasbourg.

7. Future activities

The Secretariat informed the Council on planned future activities in particular the study on the abuse of administrative resources, which is aimed at comparing the situation of national legislation and practice in member States relative to the use of administrative resources during electoral campaigns. Work on this study will commence during January 2012.

Moreover, following the recent Parliamentary Assembly mission observing the elections to the Duma in the Russian Federation (4 December 2011) the PACE Monitoring Committee

¹ Parliamentary Assembly Document 12795.

intends to submit several Russian laws to the Venice Commission for expertise, in particular the electoral law and the law on political parties.

In addition, at its meeting in Paris on 15 December 2011, the Political Affairs Committee requested the Venice Commission's opinion on the issue of measures to improve the democratic character of elections in the Council of Europe member states. The same Committee also requested a study on the limitation of the length of terms of office and the problem of plurality of elective office.

Finally, the Secretariat informed that the Congress of Local and Regional Authorities of the Council of Europe had requested a study on limitations on the right to be elected, understood broadly, in particular the question of deposits or the number of signatures required.

8. Co-operation with OSCE/ODIHR

An exchange of views was held with the representatives of the OSCE/ODIHR on the possibilities of future co-operation. Ms Martin-Rozumilowicz made two comments. First of all she raised the problem of draft texts which are submitted by the national authorities late or even at the last minute for expertise. This complicates the work of the Venice Commission and the OSCE/ODIHR when preparing quality draft joint opinions in a reasonable timeframe. She indicated that it is necessary to have a concerted approach on this issue in order to allow sufficient time for each organisation to make its contributions. Ms Martin-Rozumilowicz also stressed the importance of information on the activities planned by each organisation to avoid a duplication of activities in the field. In conclusion, she welcomed the fruitful co-operation between the Venice Commission and the OSCE/ODIHR.

9. Date of the next meeting

The Council decided to hold its next meeting on Thursday 15 March at 10 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, 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, Ambassador of Montenegro to the United States of America

Mr Klemen JAKLIC, Professor of Constitutional Law, Ljubljana (excusé/apologised)

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

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

Autres membres ayant participé à la réunion / Other members participated at the meeting

Mr Manuel GONZALEZ OROPEZA, Magistrate, Federal Electoral Tribunal, Mexico

Ms Paloma BIGLINO CAMPOS, Full Professor of Constitutional Law, Valladolid University, Madrid

Mr Aivars ENDZINS, Head of the Department of Public Law, Turība School of Business Administration, Riga

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

Secrétariat / Secretariat

M. Thomas MARKERT

Mme Simona GRANATA-MENGHINI

M. Pierre GARRONE

M. Serguei KOUZNETSOV

M. Gaël MARTIN-MICALLEF

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

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

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

Mme Karin S. WOLDSETH, Oslo, Commission de suivi (excusée/apologised)

Membres suppléants / Substitute Members

M. Michael HANCOCK, Londres, Commission politique (excusé/apologised)

Mme Marietta de POURBAIX-LUNDIN, Stockholm, Commission juridique (excusée/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

Mr Lars O. MOLIN, Chambre des pouvoirs locaux/Chamber of Local Authorities (excusé/apologised)

Mrs Gudrun MOSLER-TÖRNSTRÖM, Chambre des régions/Chamber of Regions (excusée/apologised)

Membres suppléants / Substitute Members

Mr Nigel MERMAGEN, Chambre des pouvoirs locaux/Chamber of Local Authorities (excusé/apologised)

Ms Valentina ROSSI, Chambre des régions/Chamber of Regions (excusée/apologised)

Secrétariat / Secretariat

Ms Renate ZIKMUND (excusée/apologised)

OBSERVATEURS / OBSERVERS

OSCE

BIDDH/ODIHR

Ms Beata MARTIN-ROZUMILOWICZ, Head of the Election Department, Warsaw

Ms Nicola SCHMIDT, Deputy Head of the Election Department, Warsaw

UNION EUROPEENNE / EUROPEAN UNION

COMITE DES REGIONS / COMMITTEE OF THE REGIONS

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