



Strasbourg, 22 October 2012

CDL-EL-PV(2012)003*
Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)



MEETING REPORT

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1. Adoption of the agenda

The Council adopted its agenda as it appears in the document CDL-EL-OJ(2012)003.

2. Communication by the Secretariat

The Council was informed on:

- The 21st ACEEEO Conference on “the Participation of Vulnerable Groups in Election Processes: Minorities and Persons with Disabilities” (Sarajevo, 13-15 September 2012); Mr Kask participated in the Conference and presented the principal Venice Commission documents on this issue, starting with the study from the year 2000 on “electoral law and national minorities” (CDL-INF(2000)004). The debates focused in particular on the possibility for physically disabled people to participate in elections.
- Legal assistance to the mission observing the parliamentary elections in Georgia (1 October 2012). Mr Gonzalez Oropeza indicated that, together with Mr Martin-Micallef, he travelled to Georgia at the invitation of the Parliamentary Assembly of the Council of Europe to advise the *ad hoc* delegation on the legal aspects of the vote. The Venice Commission representatives observed around a dozen polling stations where they found that the election was well organised by the electoral administration with a few minor errors in the implementation of the law. Moreover, they were able to note the large turnout of electors in the vote, considerably larger than during the previous elections in 2008. In addition, several national observers and representatives of parties also observed the vote. It should be underlined that the result was accepted by the losers, which is an exception in the region. Amongst the problems which should be noted are, funding by the head of the opposition, the use of administrative resources and demonstrations which took place on the polling day.
- Contributions prepared at the request of the Kazakh authorities on electoral disputes and on the composition of electoral Commissions;
 - Since January 2012 the Venice Commission has been co-operating with the Central Electoral Commission of Kazakhstan in the framework of a joint programme financed by the European Union on electoral legislation and practice. In May 2012 the Vice President of the Central Election Commission officially requested a comparative report on electoral disputes. The Commission asked Mr Kalchenko (Expert, Ukraine) to prepare this document. The expert sent his report in September 2012. The report is in two parts. The first part compares the different electoral dispute systems which exist in the Council of Europe member States. The second part is devoted to the electoral dispute system in Kazakhstan. The report has been sent to the Central Electoral Commission of Kazakhstan.
 - At the request of the Central Electoral Commission of Kazakhstan, the Venice Commission Secretariat has prepared, with the support of two rapporteurs, an informal comparative analysis on the selection and nomination of members of Central Electoral Commissions. This analysis based on the comments of Mr Volla (Expert, Norway) and Mr Wardle

(Expert, United Kingdom) will be sent to the Central Electoral Commission during the month of October. It is based on the situation in several countries from various regions of Europe in order to bring a comparative dimension to the issues of nomination and appointment of members of Central Electoral Commissions by politicians and political bodies.

- The informal opinion on the draft amendments to the Electoral Code and to the law on the financing of political parties of « the former Yugoslav Republic of Macedonia »; Mr Kask, who prepared the opinion, stated that it was urgent to adopt the revised law, as the elections will take place in March 2013. The draft law does not take into account the latest joint opinion by the Venice Commission and the OSCE/ODIHR ([CDL-AD\(2011\)027](#)), but it does follow a certain number of recommendations made by the OSCE/ODIHR on the occasion of the parliamentary elections in 2011. Amongst the recommendations which have been followed are the separation of the State and political parties and the improvement of rules on reporting and on auditing concerning the financing of electoral campaigns; amongst the recommendations which were not taken into account are the issue of restrictive rules on campaigns and the problems linked to out-of-country voting. Ms Schmidt stated that this document, albeit informal, had been widely distributed and well received. A draft law should soon be submitted to Parliament, and the law itself adopted before the end of the year. Ms Siljanovska-Davkova said that the opposition insists on compliance with the recommendations of the Venice Commission and the OSCE/ODIHR, but in general, the Electoral Code is a satisfactory legal framework.
- The Conference on "Political Parties in a democratic society: legal basis of organisation and activities" co-organised by the Venice Commission and the Constitutional Court of the Russian Federation (St Petersburg, 27-28 September 2012). Mr Colliard said that the theme of the Conference was the role of political parties in democracy; the Conference was to discuss the challenges and the crises in political parties in Europe, and more particularly the internal party democracy. The audience included judges and Russian legal professionals, who did not seem convinced of the role of political parties, at least at the beginning of the conference. The Secretariat informed the Council that Russia had adopted amendments following the Commission's opinion (in April 2012). These amendments partly reply to the Commission's recommendations (see document [CDL-AD\(2012\)003](#)), in particular concerning the reduction of the number of members necessary to form a political party and the number of members in the regions – around 100 requests to be registered as a party are pending. Mr Gross underlined that the delegation of the Duma to the Parliamentary Assembly of the Council of Europe is now more open to the Venice Commission; the prohibition on party alliances risks leading to a fragmentation.

3. Limitation of mandates and incompatibility of political functions

Following a request from the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, Ms Siljanovska-Davkova and Ms Karakamisheva-Jovanovska prepared a report on democracy, limitation of mandates and incompatibility of political functions. This document was submitted to the Council for adoption ([CDL\(2012\)050](#)). The report deals with the limitation of consecutive terms of office and limitation of the possibility of simultaneously holding political office (cf. [CDL-REF\(2012\)026](#) and [CDL-REF\(2012\)027](#)).

Ms Siljanovska-Davkova presented her report, which starts with an examination of the theoretical questions, in particular the theory of representation, before addressing more concretely the questions raised by the Assembly. The report examines in particular the arguments for and against both the limitation of mandates and the incompatibility of political functions. It could be followed by the drawing up of recommendations.

Mr Gross very much appreciated the empirical work of Chapters IV ss, but suggested that the work of the Forum for the future of Democracy as well as the last reports of the Parliamentary Assembly concerning the state of democracy could be taken into consideration in the first chapters.

Ms Durrieu underlined that there is a difference between a scientific and a political approach, so much that she would have preferred the issue to be dealt with differently, insisting on the fact that the people retain control of the system. Basically she agreed that it is necessary to limit mandates, that incompatibilities are necessary and that there should be rotation in mandates. Ms Woldseth also stated that she had some difficulties with the conclusions.

Mr Colliard underlined the quality of the report: a report on the theory of democracy would always be incomplete and could be eternally debated. Outside the theoretical part, the issues should be examined in a practical way. The three principles, which are dealt with in the report, are concurrent offices (1) between governmental office and representative mandate – (2) between local and national mandates – (3) incompatibility of political functions.

Several members made proposals or references to national experiences. If recommendations are to be drawn up, they should concern points where differences between States can be resolved.

The Council asks Ms Siljanovska-Davkova, in co-operation with Mr Gross, to draft a revised version of the report, to be submitted to the next plenary session of the Commission.

4. Measures to improve the democratic character of elections in the member states of the Council of Europe

At its last meeting, the Council discussed the points which could be earmarked for future work, on the basis of the document prepared by the secretariat ([CDL-EL\(2012\)005](#)). Based on comments from members and the OSCE/ODIHR, the secretariat had prepared a revised document ([CDL-EL\(2012\)005rev](#)), which was presented to the Council. The aim of the discussion was to establish a list of priority items which the Venice Commission could deal with. The proposals made during the discussion at the June meeting of the Council for Democratic Elections appear in the revised memorandum. Most of the comments received from the OSCE/ODIHR also appear in this document.

At its October 2012 session, the PACE adopted the report by Mr Gardetto entitled “for more democratic elections” ([Document 13021](#)). Resolution 1897(2012) which accompanies this report has been modified, in particular on the following items:

- paragraph 5 (concerning abuses found in the electoral process)
- addition paragraph 8.1.7 (concerning minorities)
- addition paragraph 8.1.9 (concerning freedom of speech and a balanced media coverage)
- paragraph 8.1.12 (concerning the right to vote of serving prisoners)
- paragraph 8.2.3 (concerning electoral observers)
- paragraph 10.3 (concerning strengthening the visibility of international recommendations including vis-à-vis NGOs)

- paragraph 10.5 (new, concerning the Declaration of electoral principles for nonpartisan election observation and monitoring)

After the discussions the Council decided to prioritise the following items in its future work:

- the method of nominating candidates within political parties (including by primary elections);
- the question of open lists (paragraph 8.1.3 of the Assembly Resolution); this study should also include consequences for women's representation.

5. Portrayal of migrants and refugees during election campaigns

At its Third Part session 2012 the Parliamentary Assembly of the Council of Europe adopted [Resolution 1889\(2012\)](#) on the portrayal of migrants and refugees during election campaigns. The Assembly has requested the Venice Commission to study this question and, if necessary, modify the Code of Good Practice in Electoral Matters in order to take this issue into account. The Council was invited to decide on the follow-up to this request on the basis of document [CDL\(2012\)063](#) drawn up by the Secretariat.

To determine the appropriateness of such a study, the secretariat prepared a note ([CDL\(2012\)063](#)) which recounts the existing work in this area, the organs of the Council of Europe working on the issue as well as international instruments in the field. In this memorandum the Secretariat suggested neither modifying the Venice Commission's Codes of Good Practice nor drawing up a study on this issue which has already been dealt with by other Institutions.

The Council agreed with this conclusion.

6. Romania

The Secretary General of the Council of Europe and the Romanian government requested an opinion from the Venice Commission on the constitutional situation in Romania.

Mr Gross stated that the Presidential Committee of the Parliamentary Assembly had talks with all responsible people and institutions in Romania mid July; it is necessary to look into the history of democracy in Romania to understand how and why it happened, and to envisage a revision of the constitution which would avoid too many contradictions which lead to such a crisis of legitimacy. The Political Affairs Committee should make a report on this issue after the elections. This report should be discussed by the Assembly before Summer 2013.

Mr Markert said that the Venice Commission should adopt its opinion in December, so as not to interfere in the electoral campaign. On this occasion he spoke only about electoral issues although other questions will be dealt with in the opinion, in particular constitutional justice. It is necessary to play according to the rules and not with the rules. Since the year 2000, for most referendums in Romania there has been a participation quorum of 50% (which is not in conformity with the Code of Good Practice on Referendums). There were some exceptions for the recall referendum and above all the rules on quorum for this type of referendum have been modified several times, including just before the 2012 referendum. This raises the question of stability in the electoral law, besides the fact that a Government emergency decree was issued. The Constitutional Court considered that a 50% quorum was necessary, which was not reached. A constitutional and legislative revision should be envisaged to avoid such problems occurring in the future.

The Venice Commission and the OSCE/ODIHR could give a joint opinion on the draft revision of the Electoral Code prepared by the Central Electoral Authority.

7. Working and Future activities

The Secretariat informed the Council on the following activities:

- Progress on the preparation of a report on the use of administrative resources during electoral campaigns (cf. document [CDL-REF\(2012\)025](#)); work on a comparative study on the use of administrative resources during electoral campaigns is on-going. The Commission Secretariat has already received two contributions and a third is pending. Those members who wish to send a note to the Secretariat to introduce pertinent elements, in particular concerning their country, are requested to do so.
- The possibility of an opinion on the revision of the Electoral Code of Albania; the Commission is not likely to receive a request in the near future.
- Possible co-operation with Armenia with a view to the preparation of the Presidential Elections in 2013; the Council of Europe has adopted an action plan to support the holding of democratic elections in Armenia; in this framework the Venice Commission provided an expertise on the electoral legislation in this country. Moreover, the Commission is ready to give technical assistance to the Central Electoral Commission of this country if required.
- The preparation of an opinion on the Electoral Law of Mexico; the IFE (Federal Electoral Institute) requested the Commission to provide an opinion on the Mexican electoral legislation. Preparation of this opinion was postponed until after the July 2012 elections. Two experts have already prepared reports on electoral campaigns and appeals. A Commission delegation will travel to Mexico on 12-13 November 2012 to meet the IFE, TRIFE (Federal Electoral Tribunal), representatives of the authorities responsible for electoral issues, academia and the main political parties.

Amongst the items to be dealt with in the opinion, should be noted:

- The (pre)electoral campaign;
- The cancellation of election results;
- Freedom of expression and its limits;
- Opinion polls;
- The representation of minorities and vulnerable groups in the Congress;
- Gender quotas;
- Electoral infractions;
- Vote buying and coercion in this matter;
- The participation and neutrality of civil servants in the campaign.

Ms Alanis and Mr Gonzalez Oropeza summarised the work of the Federal Electoral Tribunal after the July 2012 elections. The Tribunal has dealt with thousands of appeals; while there were some irregularities, they did not influence the results, and did not lead to cancellation. It should be noted that opponents used judicial procedures to challenge the results.

Mr Colliard was impressed by the quality of the electoral process in Mexico, which has greatly improved over the last few decades. The questions currently being raised in Mexico are those of an established democracy.

- Assistance to the mission observing the parliamentary elections of 14 October 2012 in Montenegro; at the invitation of the Parliamentary Assembly of the Council of Europe a member of the Commission Secretariat travelled to Montenegro on 11-15 October to assist, as a legal adviser, the *ad hoc* delegation of the Assembly observing the early legislative elections which took place on 14 October 2012.
- Co-operation with Ukraine in the framework of the Parliamentary Elections of 28 October 2012; a Commission expert will take part in the Seminar on European standards organised by the Supreme Administrative Court of Ukraine on 19 November 2012 in Kyiv. The Commission will participate as a legal adviser to the observation mission of the Parliamentary Assembly of the Council of Europe.
- Co-operation with the Organization of American States (OAS); the Venice Commission has been contacted by the Technical Electoral Co-operation Department of the OAS. Amongst other things, the OAS invited the Commission to regularly exchange information on the activities of the two organisations. The Commission was invited to participate in a joint group on electoral case-law. The Secretariats of the two organisations will then decide on fields of possible co-operation in 2013.
- Draft opinion on the Electoral law of Uzbekistan; at the request of the Uzbek authorities the Venice Commission will prepare, jointly with the OSCE/ODIHR, a draft opinion for the next session.
- Mr Garrone said that he had participated in the 5th International Conference on electronic voting (EVOTE2012), which was preceded by the 4th meeting of the Council of Europe aimed at examining evolutions in the field of electronic voting, as well as a workshop organised by IFES concerning the development of a manual on electronic voting (Bregenz, 11-14 July 2012).
- Ms Schmidt informed the Council that the OSCE/ODIHR is preparing a manual on the observation of new voting technologies, which has been submitted to a certain number of specialists for comment. In particular, this document has been sent to Mr Garrone and can be given to any interested member of the Council. The deadline for comments is 9 November 2012.

8. Co-operation with the OSCE/ODIHR

An exchange of views took place with representatives of the OSCE/ODIHR on the possibilities of future co-operation. See also item 7 above (co-operation with Albania and Uzbekistan, manual on new voting technologies).

Ms Schmidt pointed out the OSCE/ODIHR's co-operation with the Parliamentary Assembly on the observation of the elections in Georgia, Montenegro and Ukraine. The OSCE/ODIHR also observed the elections in Belarus and the Netherlands and is preparing to observe the elections in the United States and Lithuania. Other activities include observation of the elections in Romania, a visit to San Marino, a limited mission to Liechtenstein as well as observation of the elections in Armenia in 2013.

9. Date of the next meeting

It was decided to hold the next meeting of the Council for Democratic Elections on Saturday, 15 December 2012 at 2.30 p.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 (**Vice-Président/Vice-Chair**)

Mr Oliver KASK

Mr Ugo MIFSUD BONNICI

Mr Peter PACZOLAY (*excusé/apologised*)

Membres suppléants du CED / Substitute Members of the CDE

Ms Maria del Carmen ALANIS FIGUEROA

Ms Paloma BIGLINO CAMPOS

Mr Paul CRAIG (*excusé/apologised*)

Mr Srdjan DARMANOVIC

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

M. Gianni BUQUICCHIO (**Président/Chair**)

M. Manuel GONZALEZ OROPEZA

Ms Gordana SILJANOVSKA-DAVKOVA

Secrétariat / Secretariat

M. Thomas MARKERT

Mme Simona GRANATA-MENGHINI

M. Pierre GARRONE

ASSEMBLEE PARLEMENTAIRE / PARLIAMENTARY ASSEMBLY

Membres / Members

Mme Josette DURRIEU, Commission politique/Political Committee

M. Andreas GROSS, Commission juridique/Legal Committee (**Président/Chair**)

Ms Karin S. WOLDSETH, Commission de suivi/Monitoring Committee

Membre suppléant / Substitute Member

Ms Marietta de POURBAIX-LUNDIN, Commission de suivi/Monitoring Committee
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M. Vladimir DRONOV

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(CPLRE) / CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF THE COUNCIL
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Ms Gudrun MOSLER-TÖRNSTRÖM, Chambre des régions (*excusée/apologised*)

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Mr Nigel MERMAGEN, Chambre des pouvoirs locaux (*excusé/apologised*)

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Ms Nicola SCHMIDT

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M. Luc VAN DEN BRANDE (*excusé/apologised*)