



Strasbourg, 15 January 2013

**CDL-EL-PV(2012)004\***  
Or. Fr.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**43<sup>rd</sup> MEETING**  
**OF THE COUNCIL FOR DEMOCRATIC ELECTIONS**

**Venice, 15 December 2012 at 2.30 p.m.**

**MEETING REPORT**

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*\*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(2012)004 apart from item 2 which was cancelled owing to the absence of the President of the Parliamentary Assembly of the Council of Europe. Mr Sawicki, Secretary General of the Parliamentary Assembly represented the President at the meeting.

### **2. Congress: Observation of local and regional elections, latest developments and work programme 2013**

Mr Molin informed the Council on the recent and future work of the Congress of local and local and regional authorities of the Council of Europe in the electoral field, and highlighted its excellent co-operation with the Venice Commission. He presented the missions carried out during 2012 in Serbia, Armenia and Bosnia and Herzegovina, pointing out the Congress' unique role in the observation of local and regional elections.

In July 2012 the Congress had also participated in the Conference organised by the Venice Commission in co-operation with the Central Electoral Commission of Albania to celebrate 10 years of the Code of Good Practice in Electoral Matters and the construction of the European Electoral Heritage. The Congress had in addition participated in the 9<sup>th</sup> Conference of European Electoral Management Bodies, organised by the Venice Commission in Tallinn in June 2012, on the theme of innovative solutions in the electoral framework.

During 2013 the Congress will carry out several electoral observation missions, most likely in "the former Yugoslav Republic of Macedonia", Croatia and Turkey. Moreover, the Congress will continue its work on studies on several topics, such as the election of mayors, the dismissal of mayors by councils and supervision bodies and the dissolution of councils by supervision bodies or by tribunals, as well as the organisation jointly or separately of local, regional, national and European elections and their impact. There will be increased co-operation with the Commission concerning the criteria for eligibility for local and regional elections. The Commission will be invited to make comments on the report prepared by the Congress.

Following a short discussion and on the proposal of the President, the Council decided that the election observation reports of the Congress and the Assembly will be exchanged yearly, so that each may benefit from the other's conclusions in its observations.

### **3. Communication by the Secretariat**

The Secretariat informed the Council on various recent activities.

#### *Observation of the Parliamentary Elections in Georgia (1 October 2012)*

A Venice Commission delegation travelled to Georgia to assist the Parliamentary Assembly delegation with legal issues in the framework of the parliamentary elections in Georgia on 1 October 2012. The observers underlined the important steps which had been taken towards democratic elections, although some problems still need to be resolved. Concerning the electoral code, the distortion in the size of constituencies remains problematic.

*Observation of the Parliamentary Elections in Montenegro (14 October 2012)*

A member of the Secretariat travelled to Montenegro to assist the Parliamentary Assembly delegation with legal issues during the parliamentary elections in Montenegro on 14 October 2012. On this occasion the *ad hoc* Committee of the Parliamentary Assembly concluded that “the early elections (...) of 14 October 2012 took place in a peaceful and pluralistic environment with respect for fundamental rights, the citizens of Montenegro made their choice in a free way from a large number of political parties. However, the abuse of administrative resources and a lack of transparency in campaign and political party financing are a matter of concern that should be addressed by the authorities of Montenegro”.

*Observation of the Parliamentary Elections in Ukraine (28 October 2012)*

In addition the Venice Commission assisted the Parliamentary Assembly in Ukraine during the observation of the parliamentary elections of 28 October 2012. The observers noted, amongst others:

- a lack of preparation amongst the members of the Commissions (many replaced the appointed members during the setting-up of Commissions which took place two or three weeks before the vote);
- the plurality segment of the vote caused many problems linked to the delimitation of constituencies, the appointment of members of territorial commissions and the polling stations. There were many irregularities in the candidates' campaign;
- electoral disputes also raised problems.

Mr Gross, who was head of the Parliamentary Assembly delegation, added that questionable funding of parties and elections had also been an inauspicious element for the sincere character of voting, which points more to the oligarchic character of politics in Ukraine rather than to democratic progress. In addition, Mr Darmanovic, who had represented the Commission in the Parliamentary Assembly delegation, stated that, in his opinion, the electoral system chosen did not seem adapted to the Ukrainian context.

The Secretariat of the Commission also informed the Council on the following activities.

A seminar on electoral disputes in Ukraine was organised by the Ukraine Office of the Council of Europe in Kyiv on 19 October 2012, in co-operation with the Higher Administrative Court of Ukraine. The Commission sent an expert to this seminar who made a presentation on Article 3 of Protocol N° 1 to the European Convention of Human Rights. He then moderated a working session with judges from Regional Administrative Courts.

Moreover, a Venice Commission delegation composed of Messrs Tanchev, Darmanovic and Ms Biglino, accompanied by a member of the Secretariat, travelled to Mexico in November 2012 in the framework of the preparation of the opinion on the electoral legislation of that country requested by Federal Electoral Institute of Mexico. The delegation met members of parliament and senators from the three main political parties; the Federal Electoral Institute, the Electoral Tribunal and representatives from the media and the civil society. The draft opinion will be submitted to the Commission for discussion and adoption at its March 2013 session. During the visit progress on the development of the VOTA database was also discussed, including the improvements being undertaken and the elements necessary for it to be up-dated during 2013.

In addition, the Secretariat informed the Council that the report on the limitation of mandates ([CDL-AD\(2012\)027](#)) had been adopted at the Venice Commission's 93<sup>rd</sup> Plenary Session.

The report will be sent to the Parliamentary Assembly, which will continue examination of this subject, and the Commission will have an opportunity to discuss it again at that time.

The Secretariat also indicated that the joint opinion by the Venice Commission and the OSCE/ODIHR on amendments to the law on the election of members of parliament of the Republic of Uzbekistan (see document [CDL-AD\(2012\)025](#)) had been adopted at the 93rd Plenary Session with some modifications.

Furthermore, the Secretariat stated that the members of the Commission had discussed at length the opinion on the constitutional situation in Romania, in particular modifications to the law on referendum and the quorum required which should have applied specifically to the referendum on the President, adopted a few days before the referendum. The Constitutional Court of Romania considered that a 50% quorum was necessary, which had not been achieved. This raised the question of the stability of the electoral law, without taking into account that a government emergency ordinance had been issued. The opinion points out that this is an issue which should not be resolved by the Government, but by Parliament, and highlights the manipulation of constitutional rules (see document [CDL-AD\(2012\)026](#)).

The Secretariat informed the Council that, following their request, informal comparative studies on electoral appeals and the selection and appointment of members of Electoral Commissions in Europe had been sent to the Central Electoral Commission of Kazakhstan.

In addition, a Conference on electoral lists took place in Astana, Kazakhstan on 4-6 December 2012. This event was the last seminar in the framework of the joint programme with the European Union delegation in Kazakhstan. The issues studied were: electoral lists, electoral registers and the appointment of members of commissions. The above-mentioned report on the selection and appointment of members of Electoral Commissions in Europe was presented during this event. The Central Electoral Commission informed the Venice Commission representative that it wishes to renew the co-operation programme in 2013-2014.

Mr Mifsud Bonnici stated that, he had attended at the request of the Venice Commission, a Regional seminar on the participation of people with disabilities in political and public life (Zagreb, 15-16 November 2012). On this occasion, he pointed out the content of the Interpretative Declaration of the Venice Commission on this issue, highlighting the importance of the principle of a secret ballot for all persons with disabilities, be that physical or mental.

#### **4. The use of administrative resources during electoral campaigns**

Mr Gonzalez Oropeza presented the preliminary draft report on the use of administrative resources during electoral campaigns ([CDL\(2012\)075](#)), drawn up on the basis of contributions by himself ([CDL\(2012\)076](#)) and Mr Hirschfeldt. He pointed out that this was a preliminary report.

Following a detailed presentation of the report, which concludes that the prohibition of the abuse of administrative resources was intended primarily to help ensure equality between candidates, Mr Mifsud Bonnici pointed out some areas for improvement to the report, including: put civil servants rather than elected officials at the centre of the concept of abuse of administrative resources; develop the report concerning those countries which do not have provisions to penalise the abuse of administrative resources; limit the scope of the report, in particular concerning behaviour which is not necessarily illegal but which results from a lack of ethics in the political process; if possible deal with penalties; develop the recommendations which take national specificities into account.

Several participants took the floor. The following points were discussed: the pertinence to make laws on this issue in countries which do not have such legislation; the idea to limit not the use of administrative resources but the abuse of such resources; the promises made to voters; the importance of not making civil servants alone bear the burden of such abuse; the distinction between physical resources and intangible resources (such as inaugurations, announcements of constructions etc); the issue of minimal recommendations on this issue which respect national traditions and specificities on electoral campaigns and public structures.

Following a full discussion, the Council mandated the rapporteurs, including Mr Kask who had joined them, to review the report taking into account the comments and suggestions made and to submit it to the Council and to the Commission at the June 2013 session.

## **5. Future activities**

A meeting with the Committee on general legislation of the National Constituent Assembly of Tunisia on electoral systems would take place in Strasbourg on 18 December 2012. On this occasion, Messrs. Colliard, Grotz, Gumi and Vulchanov would present reports.

During 2013 the Council and the Commission will be invited to decide on the criteria for eligibility for local and regional elections (see item 3 above).

At its last meeting the Council for Democratic Elections decided to deal with the following issues:

- the method of nominating candidates within political parties (including by primary elections); the rapporteurs will be Ms Alanis, Mr Craig and Ms Durrieu;
- the question of open lists; this study should also deal with women's representation. The rapporteurs will be Messrs Gross and Mifsud Bonnici.

In the framework of the Eastern Partnership Programme the Venice Commission will organise two activities during 2013: on the one hand in Georgia (probably before April 2013) on the theme of transparency and measures to prevent the abuse of administrative resources during electoral campaigns; and on the other hand in Strasbourg (in Spring or Summer 2013) on the theme of election observation.

The European Conference of Electoral Management Bodies is scheduled to take place in Moldova in Spring 2013.

Finally, in view of the Presidential elections in Armenia in February 2013, the Venice Commission could, if possible, organise an activity with magistrates on dealing with electoral appeals. In addition, the Commission will take part, as a legal adviser, in the Parliamentary Assembly mission to observe the elections.

The Commission has received a request from the Monitoring Committee of the Parliamentary Assembly for an opinion on the new referendum law of Ukraine. The opinion should be ready for the March 2013 session.

## **6. Co-operation with the OSCE/ODIHR**

Ms Schmidt spoke on behalf of the OSCE/ODIHR. She informed the Council that the reports on the elections in Romania, Belarus, Georgia, Ukraine, Lithuania, the United States and Armenia had been published. In addition, she indicated that two opinions will be prepared jointly

in 2013, one concerning the legislation on elections and political parties of Moldova and the other on the electoral legislation of “the former Yugoslav Republic of Macedonia”.

Mr Gross underlined the very good co-operation with the OSCE/ODIHR, in particular during the recent election observation missions in Ukraine, Georgia and Montenegro. He underlined that it is important that international election observation missions be composed of both parliamentary bodies and the OSCE/ODIHR. He suggested in this respect that the Council send a letter to the various institutions of the OSCE supporting this recognised practice which is appreciated by international election observation missions.

The Council for Democratic Elections asked its President to send such a letter to the Director of the OSCE/ODIHR.

## **7. Date of the next meeting**

The next meeting of the Council will take place on Thursday 7 March 2013 at 10 a.m.

**LISTES 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**) (excusé/apologised)  
Mr Oliver KASK (excusé/apologised)  
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 (excusée/apologised)  
Mr Paul CRAIG  
Mr Srdjan DARMANOVIC

Autre membre ayant participé à la réunion / Other member participated at the meeting

Mr Manuel GONZALEZ OROPEZA

Secrétariat / Secretariat

M. Thomas MARKERT  
Mme Simona GRANATA-MENGHINI  
M. Pierre GARRONE (excusé/apologised)  
M. Gaël MARTIN-MICALLEF  
Ms Amaya UBEDA DE TORRES

**ASSEMBLEE PARLEMENTAIRE / PARLIAMENTARY ASSEMBLY**

Membres / Members

Mme Josette DURRIEU, Commission des questions politiques et de la démocratie/Committee on Political Affairs and Democracy  
M. Andreas GROSS, Commission des questions juridiques et des droits de l'homme/Committee on Legal Affairs and Human Rights (**Président/Chair**)  
Ms Karin S. WOLDSETH, Commission de suivi/Monitoring Committee (excusée/apologised)

Membre suppléant / Substitute Member

Ms Marietta de POURBAIX-LUNDIN, Commission de suivi/Monitoring Committee (excusée/apologised)

Secrétariat / Secretariat

Mr Wojciech SAWICKI, Secrétaire Général de l'Assemblée parlementaire/Secretary General of the Parliamentary Assembly

**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

Ms 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

**OBSERVATEURS / OBSERVERS**

**OSCE - BIDDH/ODIHR**

Ms Nicola SCHMIDT

Mr Alexander SHLYK

**UNION EUROPEENNE / EUROPEAN UNION**