



Strasbourg, 26 November 2015

**CDL-EL-PV(2015)005\***  
Or. Engl./Fr.

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

**52<sup>nd</sup> MEETING**  
**OF THE COUNCIL FOR DEMOCRATIC ELECTIONS /**  
**Venice, 22 October 2015 at 10:00 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 this document.

## **2. Exclusion of offenders from Parliament**

Following the agreement between the ruling majority and the opposition in Albania, ending the boycott of Parliament, a request was made for the Venice Commission's co-operation on the issue of people with criminal records, who hold a public office or seek to be elected or appointed to one. This led the Venice Commission to adopt an interim report on the exclusion of offenders from Parliament at its the June session ([CDL-AD\(2015\)019](#)). On this occasion, the Council decided that a revised report be prepared for the October 2015 session in which the analytical part would be developed. A new draft report ([CDL\(2015\)048](#)) has therefore been prepared on the basis of comments by Mr Bartole, Mr Kask and Mr Sørensen, as well as Ms Anna Gamper, expert of the Congress of Local and Regional Authorities of the Council of Europe, who has added specific information on the situation in regional parliaments.

Mr Kask introduced the draft report. The analytical part of the report had been developed. Ineligibility of offenders was admissible in order to ensure respect for the Rule of Law. If the simple functioning of the electoral mechanisms enabled the exclusion of offenders, restrictions were not absolutely necessary. They could therefore be avoided only if (1) the majority of voters were in favour of the exclusion of offenders; (2) voters were effectively in a position to exclude these people, which implied (2a) internal democracy of political parties or open lists and (2b) that there were no obstacles to free suffrage. Restrictions – which could be included in constitutional or legislative provisions - had to comply with the proportionality principle: this implied taking into account such elements as the nature of the offence, its severity and/or the length of the sentence. Lifetime restrictions were admissible only for extremely serious offences. Sentences for crimes committed abroad had in principle to lead to the same consequences on the right to stand for elections as sentences pronounced in-country if they complied with the rules on fair trial. The loss of a mandate following a conviction was acceptable from the point of view of the voter in particular if the conviction had taken place after the elections.

The part on Italy was revised following a recent decision of the Constitutional Court, and a number of other amendments were introduced, in particular on the basis of Mr Vermeulen's comments.

**The Council adopted the Report on exclusion of offenders from Parliament ([CDL-AD\(2015\)036](#)).**

## **3. Guidelines on combatting the misuse of administrative resources during electoral processes**

Further to the adoption of a report on the misuse of administrative resources during electoral processes in December 2013 ([CDL-AD\(2013\)033](#)) and the 11th European Conference of Electoral Management Bodies on this theme, guidelines on this issue had been prepared by Mr Barrett, Mr Gonzalez Oropeza, Mr Hirschfeldt, Mr Kalchenko and Mr Kask ([CDL-EL\(2015\)010](#)). Following the discussions at the Council's June meeting, the rapporteurs had prepared a revised draft ([CDL\(2015\)038](#)) jointly with the OSCE/ODIHR taking into account the informal comments of the Secretariat of the Group of States against corruption (GRECO) of the Council of Europe.

Mr Wienen provided background information on the draft guidelines and Mr Kalchenko developed the structure and summarised the substance of the text. A discussion ensued in particular on making a distinction in the guidelines between the rights and duties of civil servants on the one hand and of elected officials on the other.

Taking into account the late arrival of the written comments and their detailed nature and following the discussion at the meeting of the Council for Democratic Elections, it was decided to postpone adoption of the draft guidelines to a future Council meeting and thus to the future session of the Venice Commission.

#### **4. Lessons to be learnt from 25 years of international election observation**

Mr Gross presented an outline of the report which he is preparing for the Council for Democratic Elections and the Venice Commission on Lessons to be learnt from 25 years of international election observation, and which will be submitted for adoption at a forthcoming meeting. He stated his intention to produce a report in three parts, the first on the background to international election observation, the second focusing on the history of 25 years of election observation and the third on lessons to be learnt from these 25 years of election observation.

Several members made suggestions, in particular to mention the Declaration of principles for international election observation, endorsed *inter alia* by the Parliamentary Assembly and the Venice Commission, amongst the international instruments which exist in the field of election observation. It was also underlined that the electoral process is not limited to the election day itself but covers the whole electoral cycle. Reference was also made to the election observation forms and their use during the 25 years of election observation, as well as to new voting technologies. Mr Gross stated that he would take these comments into account when drawing up the report.

#### **5. Ukraine: financing of political parties**

Ms Alice Thomas introduced the draft joint opinion ([CDL\(2015\)035](#)) by the Venice Commission, the Directorate of Information Society and Action against Crime (DGI) and the OSCE/ODIHR, on the draft amendments to some legislative acts concerning prevention of and fight against political corruption in Ukraine ([CDL-REF\(2015\)031](#)). The opinion, drawn up on the basis of comments by Mr Frendo, Mr Paczolay, Mr Quentin Reed (DGI expert), and Ms Barbara Jouan, Mr Richard Katz and Mr Daniel Smilov (experts, OSCE/ODIHR Core group of experts on political parties), was prepared following a request from Mr Yehor Soboliev, Chair of the Committee for the prevention of and fight against corruption of the Verkhova Rada (Parliament) of Ukraine, to examine the conformity of the draft amendments with international human rights standards. First comments had been sent on 3 September to the Ukrainian authorities since they intended to adopt the law by the end of the month. On 14 September, a joint delegation of the OSCE/ODIHR and the Venice Commission, including an expert from the Directorate of Information Society and Action against Crime of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, had taken part in a Round Table in Kyiv, aimed *inter alia* at ensuring that these comments would be followed. The draft opinion submitted to the Council took into account the information received during this Round Table. The law was adopted on 8 October but its English version was not yet available.

A number of issues raised in previous opinions and mission reports of the Venice Commission and the OSCE/ODIHR had been addressed: the draft had introduced: public funding of political parties; more stringent requirements on party and campaign finance reporting; internal and external audit; as well as higher sanctions for violations of financing regulations. The main recommendations of the draft opinion focused on five issues: the lack of clarity of the provisions concerning public funding; the need to re-establish expenditure limits for parliamentary

elections and to extend them to presidential elections; the need to clarify the role of the various oversight bodies and to ensure their autonomy; the need to include loans, credits and debts in the overall reporting obligations and contribution limits and to ensure proportionate administrative and criminal sanctions for violations of the law. The draft opinion also suggested introducing a ban on paid electoral broadcast advertising.

**The Council adopted the Joint Opinion on the draft amendments to some legislative acts concerning prevention of and fight against political corruption in Ukraine ([CDL-AD\(2015\)025](#)).**

## **6. Information about the current and future activities**

- Communication by the Secretariat

Since the Council's June 2015 meeting the following activities, organised by the Venice Commission or in which the Venice Commission participated, have taken place in the field of elections and political parties:

- Political Party Expert Workshop, organised by the OSCE/ODIHR (Kyiv, 14 July 2015)
- Election seminar organised by the Serbian Chairmanship of the OSCE (Vienna, 20 July 2015), in which the Commission in particular intervened on the issue of administrative resources
- Assembly of the Association of World Electoral Management Bodies (A-WEB), (Punta Cana, Dominican Republic, 17-22 August 2015)
- Conference on "Money and Politics" (Mexico City, 3-5 September 2015)
- Meeting on gender equality, organised by the Central Electoral Commission of Georgia (Tbilisi, 8 September 2015)
- Hearing on gender equality in the electoral field, organised by the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe (Paris, 10 September 2015)
- Seminar on "A Human Rights approach to elections" (Glasgow, 14-15 September 2015)
- The 24th Conference of the Association of European Election Officials (ACEEEO) (Chisinau, 9-11 September 2015)
- Post-electoral Conference following the local elections in Albania (Tirana, 29 September 2015)
- Legal assistance to the Election Observation mission of the Parliamentary Assembly observing the parliamentary elections in Kyrgyzstan (4 October 2015)
- European Conference on the codification of electoral law, organised by the Permanent Electoral Authority of Romania (Bucharest, 19-20 October 2015)
- Meeting of the OSCE/ODIHR Core group of experts on political parties (Warsaw, 19-20 October 2015)

The following activities are already planned from now to the next meeting of the Council:

- Legal assistance to the Election Observation mission of the Congress of local and regional authorities of the Council of Europe observing the local elections in Ukraine (25 October 2015)
- Participation in the ad hoc Committee of experts on legal, operational and technical norms relating to e-voting (Strasbourg, 28-29 October 2015)
- Legal assistance to the Election Observation mission of the Parliamentary Assembly observing the parliamentary elections in Turkey (1 November 2015)

- Legal assistance to the Election Observation mission of the Parliamentary Assembly observing the parliamentary elections in Azerbaijan (1 November 2015)
- Training workshop for judges on electoral disputes (Yerevan, date to be confirmed)
- Regional Conference on gender equality in the electoral process (Tbilisi, 25-26 November 2015)

The Secretariat will give further details on these activities at the request of the members.

- Co-operation with the OSCE/ODIHR

An exchange of views took place with representatives from the OSCE/ODIHR on the possibilities of future co-operation. Mr Richard Lappin informed the Council about on-going and future activities of the OSCE/ODIHR, in particular the different past, current and future election observation missions, including the local elections in Ukraine (25 October 2015), the early legislative elections in Turkey (1 November 2015) as well as the future constitutional referendum in Armenia (6 December 2015). Mr Lappin also stated that needs assessment missions will be organised in Spain and in “the former Yugoslav Republic of Macedonia”. He highlighted the excellent co-operation with both the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe during the most recent observation missions. He also informed the Council that the OSCE/ODIHR provides an e-learning course for short-term election observers online through its [web site](#). He added that the OSCE/ODIHR intends to publish, by the beginning of next year, a manual on the actions taken by OSCE participating States regarding OSCE/ODIHR recommendations; this will be the first document of this type within the electoral community and the Venice Commission will be consulted.

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

The Council fixed its next meeting for Thursday 17 December 2015 at 10:00 a.m.

## LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

### VENICE COMMISSION / COMMISSION DE VENISE

#### Members of the Council for Democratic Elections (CDE) / Membres du Conseil des élections démocratiques (CED)

Ms Maria del Carmen ALANIS FIGUEROA (excusée/apologised)

Mr Srdjan DARMANOVIC

Mr Aivars ENDZINS

Mr Oliver KASK (**Vice-Chair/Vice-Président**)

#### Substitute Members of the CDE / Membres suppléants du CED

Mr Richard BARRETT (excusé/apologised)

Ms Paloma BIGLINO CAMPOS

Mr Paul CRAIG (excusé/apologised)

Mr Ben VERMEULEN (excusé/apologised)

#### Secretariat / Secrétariat

M. Thomas MARKERT

Mme Simona GRANATA-MENGHINI

M. Pierre GARRONE

M. Gaël MARTIN-MICALLEF

#### Experts

M. Serhii KALCHENKO

### PARLIAMENTARY ASSEMBLY / ASSEMBLÉE PARLEMENTAIRE

#### Members / Membres

Mme Josette DURRIEU, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie

Mr Michael McNAMARA, Committee on Legal Affairs and Human Rights/Commission des questions juridiques et des droits de l'homme

Mr Jordi XUCLÀ, Monitoring Commission/ Commission de suivi

#### Secretariat / Secrétariat

Mr Chemavon CHAHBAZIAN (excusé/apologised)

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

#### Members / Membres

Mr Jos WIENEN, Chamber of Local Authorities/Chambre des pouvoirs locaux (**Chair**)

#### Secretariat / Secrétariat

Ms Stéphanie POIREL

### DIRECTORATE GENERAL OF DEMOCRACY / DIRECTION GENERALE DE LA DEMOCRATIE (DGII)

M. François FRIEDERICH

**OBSERVERS / OBSERVATEURS**

**OSCE**

**ODIHR / BIDDH**

Mr Richard LAPPIN  
Ms Alice THOMAS

**EUROPEAN UNION / UNION EUROPEENNE**

**European External Action Service (EEAS) / Service européen pour l'action extérieure (SEAE)**

Mr Emanuele GIAUFRET (excusé/apologised)

**INTERNATION INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE - IDEA**

Mr Frank McLOUGHLIN, Programme Officer, Electoral Processes

**EUROPEAN PARLEMENT / PARLEMENT EUROPEEN**

Mr Pietro DUCCI, Democracy and Elections Union (excusé/apologised)