



Strasbourg, 25 January 2016

CDL-EL-PV(2015)006*
Or. Engl./Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

53rd MEETING
OF THE COUNCIL FOR DEMOCRATIC
ELECTIONS
Venice, 17 December 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 document CDL-EL-OJ(2015)005ann.

2. Voters residing *de facto* abroad : draft summary report

At its June 2013 meeting, the Council decided to study the issue of voters residing *de facto* abroad who remain registered as resident in their country of origin. This led to the drafting of several documents: a Secretariat memorandum ([CDL-EL\(2013\)011](#)), on which Ms Alanis Figueroa ([CDL-EL\(2015\)004](#)) and Ms Christina Binder (expert, Austria) ([CDL-EL\(2015\)003](#)) made comments; a contribution by Ms Alanis Figueroa concerning the situation in Latin America ([CDL-EL\(2015\)002](#)) as well as case studies relative to Bulgaria (by Mr Tanchev, [CDL-EL\(2015\)008](#)), the Republic of Moldova (by Mr Iurie Ciocan, expert and Mr Esanu, [CDL-EL\(2015\)005](#)) and Tunisia (by Mr Mohamed Krir, expert, [CDL-EL\(2015\)007](#)); these case studies are summarised in an information report on electoral lists and voters abroad in Bulgaria, the Republic of Moldova and Tunisia ([CDL-PI\(2015\)003](#)).

The draft summary report on voters residing *de facto* abroad ([CDL\(2015\)049](#)) is intended to sum up the findings of the various documents quoted above by focusing on the problems linked to voters *de facto* abroad and the solutions found to prevent fraud. It was submitted to the Council for adoption.

Mr Wiene stated that the Congress had adopted a document on this issue (CG-2015(28)6FINAL – see also Recommendation 369(2015) and Resolution 375(2015)), which highlights in particular that only voters who have a link to the territory concerned should have the right to vote in local and regional elections. The report is therefore also the result of the close co-operation with the Congress.

Mr Tanchev presented the report. Although it stated that there was no international standard that provided for the right to vote of citizens residing abroad, the international trend was favourable to out-of-country voting. States would enjoy a wide margin of appreciation with respect to the establishment of residence criteria, although, according to the European Court of Human Rights, it should not be unlimited. Citizens abroad on election day could be divided into three categories: those permanently abroad, who may have double nationality; those who are staying abroad temporarily (for example for academic or employment purposes); and those who are travelling abroad on election day (for business or personal reasons). While, according to the report, active electoral registration was the rule for citizens abroad, many national systems provided for passive registration for residents.

In order to prevent impersonation, identity controls at the polling station, which should not undermine the secrecy of the vote, could be made more efficient through the issuance of specific voters' ID documents; other measures would be: the use of biometric measures to identify duplication in records; the adoption of anti-counterfeiting measures for identity documents; the on-line verification of the identity of voters; controlled destruction of identification documents which remain unclaimed by citizens.

The Council adopted the draft summary report on Voters residing *de facto* abroad (CDL-AD(2015)040).

3. Award of the International Centre for Political Studies (ICPS)

The Venice Commission applied for three awards from the International Centre for Parliamentary Studies (ICPS): the International Institutional Engagement Award, the Gender Equality Award and the Minority Participation Award. The ICPS is a non-profit institution based in the United Kingdom and the prizes aim at fostering democracy by distinguishing electoral bodies and prominent people working in the field.

At the prize giving ceremony held in Puerto Vallarta (Mexico) on 14 November 2015, the Venice Commission received the International Institutional Engagement Award and was also shortlisted for the two other awards for which it had applied (the Gender Equality Award and the Minority Participation Award).

The work of the Council for Democratic Elections was instrumental in this success.

4. Communication by the Secretariat

The Secretariat presented the following activities:

- *Ukraine*

- Exchange of views on the legislation on local elections (22 October 2015)

A meeting with a national experts group in the electoral field was organised in Kyiv on 22 October 2015. This meeting was particularly interesting because the experts were able to inform the Commission about the most recent elements regarding the implementation of the new law on local elections during the campaign. The discussions mainly concentrated on the lessons learned during the preparation of the 25 October 2015 local elections. Several areas were identified as problematic in the light of the recent local elections and some possible changes discussed, relating for example to the counting and tabulation of results, the settlement of electoral disputes and the organisation of second rounds and by-elections, also considered highly problematic.

- 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)

Mr Wienen informed the Council that 57 observers were deployed, the largest delegation ever deployed by the Congress. This included the new Committee of the Regions and for the first time, 11 members from the PACE. Co-operation with the European Parliament was quite difficult because they were more politically oriented than other delegations.

Some important issues needed to be addressed by the authorities, such as the situation of media during the electoral campaign, the participation of independent candidates, transparency and funding of political parties. In spite of the very complex legal background, the elections were generally well administered.

Mr Delcamp pointed out the complexities of the situation regarding independent candidates, as well as the merging between the different administrative divisions, underway in Ukraine and the repercussions in the possible organisation of new elections.

The Secretariat explained the complexities of the legal context. The new law, adopted only 3 months before the local elections took place, gave political parties a lot of power, while the voters had little influence on the choice of the individuals elected from a party list. The right of the parties and party blocks to nominate up to two candidates per constituency raised questions about the equality of chances of the candidates as well as the way in which the votes were tabulated.

Ms Durrieu stressed the fact that the local elections had been carried out under the process of Minsk II.

- Conference on the challenges raised by the legislation on local elections (5-7 November 2015)

The Venice Commission Secretariat met with the group of national experts of Ukraine in the electoral field, who provided their feedback on the local elections and shared their observation reports and comments on the legal challenges. This exchange enabled a set of proposals concerning the future electoral reform (including the recommendation of drafting a comprehensive Electoral Code) to be prepared.

- Meeting with the *Verkhovna Rada* (Parliament) on the revision of electoral legislation in March 2016.

The Venice Commission will organise a Conference on the future electoral reform in the first quarter of 2016, in co-operation with the *Verkhovna Rada*.

- *Morocco*

The NHRC (National Human Rights Council) invited the Venice Commission to take part in a seminar on electoral legislation and practice which will take place in Rabat in January 2016. A possible reform of the electoral legislation is under discussion in Morocco and the seminar will be an opportunity to discuss the different models and the technical co-operation the Venice Commission may offer in the electoral field.

- *Latin America*

The Venice Commission participated in the 10th Congress of Electoral Management Bodies of Latin America organised by the OAS (Organisation of American States) in Rio de Janeiro on 19-20 November 2015. During this meeting, the OAS proposed the joint preparation of a comparative study on recent electoral reforms, on common standards and on the possible recommendations issued from observation reports, taking into account both the European and the Latin American experience. Mr Gerardo de Icaza will participate in the Council meeting in March to discuss the proposal.

- *Other past and future activities*

- Participation in the ad hoc Committee of experts on legal, operational and technical norms relating to e-voting (Strasbourg, 28-29 October 2015)

This Committee's aim is to update Recommendation 2004(11) on legal, operational and technical standards relative to e-voting. In particular the Committee decided that the Recommendation should contain the most important standards, which should be stable, whilst the more technical norms, which evolve most quickly, would be included in the appendices. The Committee will meet from time to time in Strasbourg but will work mainly online.

- Legal assistance to the Election Observation mission of the Parliamentary Assembly observing the parliamentary elections in Turkey (1 November 2015).

Mr Darmanovic represented the Venice Commission in the two elections, in June and in November. Although it was the same election cycle, the results and the context were very different. In both elections, the voting process was generally very professional and well organised, but the whole process was marked by different issues. Pressure on media, the advantages for certain incumbents, the attacks which happened during the elections were some of the elements raised by the PACE and OSCE/ODIHR reports. Some important recommendations of international organisations have not been followed, such as the reduction of the 10% threshold, one of the highest in Europe. This could be an element to work together with the Turkish authorities in a possible legal reform in the field.

Ms Martin-Rozumilowicz also stressed the importance of reducing the 10% threshold for political parties in Turkey, as a key example to other countries in the region. She also expressed concerns on freedom of media and journalists, as well as on the fact that the law did not provide for national citizen observers or international observers in the elections, which was an obstacle for some of them to observe these elections.

- Legal assistance to the Election Observation mission of the Parliamentary Assembly observing the parliamentary elections in Azerbaijan (1 November 2015).

Mr McNamara explained that the observation experience in Azerbaijan was quite fractious and controversial for the PACE. The bureau decided to send an observation mission, although the OSCE/ODIHR could not attend, and the OSCE Parliamentary Assembly had also cancelled their observation. A total of 29 members, including the Venice Commission representatives, observed in almost the whole country. Only one tabulation centre was observed, which showed the weakness of the mission. A statement was issued in the morning following the elections, welcoming the step towards democratic standards and the high voter turnout. Some members of the delegation were unhappy with this positive statement and a vote had to be taken, which was very unusual. Seven members voted against the statement. Nevertheless, the statement was issued by the head of the mission, Mr Jordi Xuclà.

A dissenting statement was issued by three members of the Socialist group, which was more critical. It drew attention to the shortcomings indicated by the Venice Commission and never addressed in the electoral legal framework, including the follow-up to be given to recent judgments issued against Azerbaijan by the European Court of Human Rights. A copy of this statement was annexed to the main report.

The mission statement was quite balanced and reflected the dissenting statement and also another statement by the United European Left. It also pointed out weaknesses in electoral law, as raised by the OSCE/ODIHR and the case-law of the ECtHR. It did not mention, however, the fact that some opposition leaders are still in prison despite ECtHR judgments. The conclusions and recommendations again pointed to the positive statement and referred to counting procedures, which were not observed, but were praised as transparent. There were no independent civil society groups observing the election, and the Venice Commission has criticized in many opinions the legal framework in this respect.

Mr McNamara also apologised for the aggressive treatment towards the Venice Commission member of staff present during the visit. Mr Markert thanked Mr McNamara

for the apology and mentioned that in the letter sent by President Gianni Buquicchio to the President of the PACE following this visit, it was stressed that this was an exception to the otherwise excellent co-operation with the Assembly. Indeed, the Venice Commission had not been consulted on problematic legal issues and therefore could not change the statement, which pointed out wrongly that the Venice Commission had recommended introducing cameras in polling stations.

- Regional Conference on gender equality in the electoral process (Tbilisi, 25-26 November 2015).
- Participation in a Conference organised by the Carter Center on human rights and electoral standards (Atlanta, 14-15 January 2016).

Mr Darmanovic will represent the Commission at this event. The Conference follows on from a similar Conference organised in 2015, which had specifically focused on the global mechanisms (mainly judicial) in the field and the role of election observers, in particular those from the civil society.

- The 13th Conference of European Electoral Management Bodies will take place in Bucharest on 14-15 April 2016. The theme of the Conference is: “new technologies in elections: public trust and challenges for electoral management bodies”
- This Conference will be preceded on 12-13 April 2016, by a scientific conference “1st electoral expert debates” devoted to electoral law and to new technologies, in particular the constitutional problems which may arise from these innovations. The reports prepared for this Conference will be published in the review “Electoral expert” edited by the Permanent Electoral Authority of Romania. These “electoral expert debates” should take place on a regular basis.

5. Co-operation with the OSCE/ODIHR

Ms Martin-Rozumilowicz’s term at the OSCE/ODIHR was ending, and from January 2016 she will start working as the new director for Europe in IFES. She was thanked for her excellent work for many years with the Venice Commission, in many missions and opinions.

In 2016, 21 elections will take place, and hopefully the good co-operation will continue. Beyond electoral observation, there are several elements to be considered in 2016. Firstly, the pending handbook on electoral observation recommendations, which will focus on follow-up to recommendations made in elections observation reports. The joint Venice Commission – OSCE/ODIHR guidelines on the use of administrative resources should also be adopted in 2016, jointly with the Venice Commission.

6. Date of the next meeting

The Council fixed its next meeting for Thursday 10 March 2016 at 10 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**) (excusé/apologised)

Substitute Members of the CDE / Membres suppléants du CED

Mr Richard BARRETT
Ms Paloma BIGLINO CAMPOS (excusée/apologised)
Mr Paul CRAIG (excusé/apologised)
Mr Ben VERMEULEN

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

M. Gianni BUQUICCHIO (President/Président)

Secretariat / Secrétariat

M. Thomas MARKERT
M. Pierre GARRONE
Ms Amaya UBEDA de TORRES

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, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe/Commission pour le respect des obligations et engagements des Etats membres du Conseil de l'Europe (excusé/apologised)

Membres suppléants / Substitute Member

Mr Tiny KOX, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe/Commission pour le respect des obligations et engagements des Etats membres du Conseil de l'Europe (excusé/apologised)

Secretariat / Secrétariat

Mr Chemavon CHAHBAZIAN (excusé/apologised)

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

Members / Membres

Mr Stewart DICKSON, Chamber of Regions/Chambre des régions (excusé/apologised)

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

Expert

M. Alain DELCAMP

Secretariat / Secrétariat

Ms Renate ZIKMUND

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

M. François FRIEDERICH (excusé/apologised)

OBSERVERS / OBSERVATEURS

OSCE

ODIHR / BIDDH

Mr Richard LAPPIN (excusé/apologised)

Ms Beata MARTIN-ROZUMILOWICZ

EUROPEAN UNION / UNION EUROPEENNE

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

Mr Emanuele GIAUFRET (excusé/apologised)

EUROPEAN PARLEMENT / PARLEMENT EUROPEEN

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

INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE - IDEA

OTHER

Mr Alberto GUEVARA CASTRO