



Strasbourg, 29 June 2017

**CDL-EL-PV(2017)002\***  
Or. fr.

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

**59<sup>th</sup> MEETING  
OF THE COUNCIL FOR DEMOCRATIC  
ELECTIONS**

**Venice, 15 June 2017 at 10.00 a.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 the agenda as it appears in document CDL-EL-OJ(2017)001ann.

### 2. Bulgaria

Following the request of Mr Cesar Florin Preda, Chairman of the Monitoring Committee of the Parliamentary Assembly, the Council was invited to examine, with a view to its adoption, the draft joint opinion by the Venice Commission and the OSCE/ODIHR on amendments to the Electoral Code of Bulgaria made between 2014 and 2016, drawn up on the basis of comments by Mr Holmøyvik and Mr Kask as well as Ms Binder (expert, OSCE/ODIHR) ([CDL\(2017\)001](#); see document [CDL-REF\(2017\)024](#)).

Mr Kask presented the draft joint opinion, recalling the series of amendments to the Electoral Code of Bulgaria from 2014 to 2016. He also recalled the OSCE/ODIHR and Venice Commission experts' visit which took place on 25 May 2017, within the context of the preparation of the opinion. He highlighted in particular, the problem of the late adoption of amendments - the last ones in 2016 when the elections were imminent - and the necessity of extensive public consultation. Some amendments introduced problematic provisions, in particular, with regard to the distribution of polling stations abroad. Mr Kask also pointed out that certain problems on the substance remained, notably relating to the settlement of election disputes, the prohibition of detainees' right to vote and the reliability of voters' lists. He also informed the Council that this series of amendments had made it possible to improve the electoral process, including the prevention of certain officials from campaigning and the publication of minutes of the election administration on the Web. Following discussions, some amendments to the draft opinion were adopted, in particular, on the possibility of persons belonging to minorities to campaign in their own language.

**The Council adopted the joint opinion by the Venice Commission and the OSCE/ODIHR on amendments to the Electoral Code of Bulgaria (CDL-AD(2017)016).**

### 3. Republic of Moldova

Following the request of Mr Andrian Candu, President of the Parliament of the Republic of Moldova, the Council was invited to examine, with a view to its adoption, the draft joint opinion by the Venice Commission and the OSCE/ODIHR ([CDL\(2017\)016](#)) on the draft legislation of the Republic of Moldova relating to the electoral system for the election of the Parliament ([CDL-REF\(2017\)028](#); see also documents [CDL-REF\(2017\)020](#), [021](#) and [022](#)) drawn up on the basis of observations by Mr Barrett, Mr Holmøyvik and Mr Kask as well as Ms Binder (expert, OSCE/ODIHR).

Mr Holmøyvik presented the draft opinion. Two drafts had been submitted to the Parliament, one introducing a one-round plurality system and the other a mixed system (instead of the current proportional system). The draft opinion focused on a consolidated draft, similar to the second draft (introducing a mixed system with separate ballots). A similar mixed system had been suggested in 2013 and examined in a joint opinion of the Venice Commission and the OSCE/ODIHR in 2014. This current draft opinion is therefore a follow up to the previous one and leads to the same conclusions. Indeed, similar problems have occurred in the Ukraine. The selection of an electoral system is a sovereign decision and the Venice Commission and the OSCE/ODIHR expressed no preference *in abstracto*. However, the choice must be made

within its specific context since a system can have different effects in different States. The suggested system raises major concerns in this specific context as independent majoritarian candidates may develop ties with business people or other persons serving their own interests. Many stakeholders from the Republic of Moldova have expressed their concerns. Whilst change requires the adoption of legislation with a wide consensus, obtained through extensive consultation with the public and all relevant stakeholders, the draft, although adopted by a strong majority, has not been the subject of a real consensus. There is a strong polarisation of political forces with many being opposed to it. Moreover, the adoption procedure for the draft at the first reading was very rapid giving no possibility of holding a meaningful and inclusive parliamentary debate. Such a fundamental change is not currently recommended.

Mr Kask said that a meeting had taken place with representatives of the Moldovan authorities on 15 June before the meeting of the Council for Democratic Elections and that they had agreed with most of the technical remarks.

The Council examined the written and oral amendments proposed by the members and decided to include several amendments in the document to be submitted for adoption at the plenary session of the Venice Commission.

**The Council adopted the joint opinion by the Venice Commission and the OSCE/ODIHR on the draft law on amending and completing certain legislative acts of the Republic of Moldova (electoral system for the election of the Parliament (CDL-AD(2017)012).**

#### **4. Study on Referendums – questionnaire**

Following a decision by the Scientific Council to launch a study on the dangers of referendum abuse, Mr Alivizatos prepared a draft questionnaire as a first step, which was submitted to the Council for adoption ([CDL\(2017\)022](#)).

While existing general documents appeared to be in favour of referendums, several opinions of the Commission have been critical of the procedure used in constitutional referendums. The issue was discussed by the Scientific Council and also in the plenary session. The aim of the study and therefore the questionnaire is to identify problems relating to the referendum procedure on the basis of the practices of the different States, without calling into question the very principle of the referendum. It refers systematically to the Code of Good Practice in Referendum.

Several members have doubts about the possibility of carrying out an objective assessment of the quality of the referendum procedure in their replies to the questionnaire.

Mr Markert stressed that the questionnaire was not intended to evaluate a particular referendum but to collect material in order to identify recurring problems in the field of referendums.

The Council decided not to formally adopt the questionnaire but to communicate its discussions to the plenary session.

## **5. Identification of electoral irregularities by statistical methods**

As agreed at the December 2016 meeting, the secretariat contacted four experts, Mr Bochsler, Mr Medzhorsky, Mr Schürmann and Mr Stark, with a view to preparing a report on the identification of electoral irregularities by statistical methods (these irregularities do not only include actual fraud). Mr Schürmann presented the progress of this work to the Council.

The challenge of using statistics is to identify what is suspicious. The presentation was divided into three parts:

- Threat landscape. The possible irregularities are numerous, voluntary or involuntary; some data is accessible to observers, others are not.
- Statistical testing: they can relate to result figures, turnout, the number of invalid votes, etc.; correlation between indicators (eg high participation and high uniformity). The aim is to find out what should happen if there is no irregularity (null hypothesis) and what should happen if there is one (alternative hypothesis).
- Limitations:
  1. The hypothesis is wrong
  2. There might be explanations for the outcome of a test other than fraud (the irregularity)
  3. The result is unlikely but not impossible (Murphy's law, different tests lead to different results)
  4. The test focuses on particular observations only, manipulation may have taken place elsewhere
  5. Traces of statistical anomalies have been erased

In conclusion, statistical tests cannot replace direct evidence of manipulation or rigorous audits. It is a tool to identify areas where election fraud (irregularity) may have occurred, but it is not enough to substantiate the claim that election fraud (irregularity) really happened.

Several members and speakers noted the usefulness of such instruments for election observers. Work should therefore focus on making election observers available to collect statistical data. These instruments should be simple and be freely available, advertising their existence could have a preventative effect. Mr Shlyk said that the OSCE/ODIHR already had long experience in the field of statistical analysis.

## **6. 14<sup>th</sup> European conference of electoral management bodies “Operational electoral management bodies for democratic elections”**

Mr Kask reported on the 14<sup>th</sup> European conference of electoral management bodies “Operational electoral management bodies for democratic elections”, which took place in St Petersburg, Russian Federation, 15 and 16 May 2017 ([CDL-EL\(2017\)001syn](#)), in co-operation with the Central Election Commission of the Russian Federation and the Interparliamentary Assembly of the Commonwealth of Independent States.

The theme of the conference was "Operational electoral management bodies for democratic elections". Specifically, the participants discussed three main issues: "Functional electoral management bodies"; "Professional electoral management bodies"; and "Towards genuinely democratic elections".

Approximately 130 participants attended the conference, representing electoral management bodies and other institutions involved in electoral matters from 23 European countries and 5 non-European countries.

After fruitful discussions, the participants adopted the conclusions. Amongst other issues, participants recalled existing principles and standards in the electoral matters, which are contained in various international documents. They also recognised the regulatory role played by electoral administration and their responsibility in the implementation of electoral legislation. They underlined the importance of the impartiality of electoral management bodies, their professionalism and the need for strong internal structures in order to achieve good electoral cycles. Mr Kask announced that the 15<sup>th</sup> European conference of electoral management bodies will be held in Oslo, Norway, 19 and 20 April 2018. The theme of the conference will be "Security in elections".

## **7. Communication by the Secretariat**

Since the Council's March 2017 meeting and apart from the European conference of electoral management bodies, 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:

- Activities organised between the Council's 58<sup>th</sup> and 59<sup>th</sup> meetings :
  - Long term technical assistance to the Central Electoral Commission of "the former Yugoslav Republic of Macedonia" (15 March-15 June 2017) in particular, a workshop on resolution of electoral disputes was held in Skopje from 30 May to 1 June 2017;
  - Conference on "Financing of political parties in Ukraine: current legislation, recent developments and prospects" (Kiev, 15 March 2017);
  - Round table on "International standards and electoral dispute resolution in Ukraine" (Kiev, 16 March 2017);
  - Legal assistance to the Parliamentary Assembly delegation observing parliamentary elections in Bulgaria, 26 March 2017;
  - International conference on "The use of new information technologies in electoral process: challenges, risks and prospects" (Kiev, 27-28 March 2017);
  - International conference on "The financing of political life during the election period"; the conference was followed by a workshop entitled "International perspectives on techniques of control of the financing of election campaigns", (Tunis, 28-29 March 2017);
  - Legal assistance to the Parliamentary Assembly delegation observing parliamentary elections in Armenia, 2 April 2017;
  - Legal assistance to the Parliamentary Assembly delegation observing the presidential election in Serbia, 2 April 2017;
  - Several meetings on electoral reform in the Kyrgyz Republic (16-19 May 2017);
  - International seminar on best practices in the electoral field (Buenos Aires, 29-30 May 2017).

## **8. Future activities**

- In addition the following activities are planned from now to the next meeting of the Council:
  - As regards the study on the allocation of seats to constituencies, the secretariat has prepared, as a first step, a table presenting the situation in the various States. Members of the Council for Democratic Elections have been asked to verify and complete the table as required, the revised version of which will be circulated after the session;
  - Mr Vargas Valdez will present a proposal for a comparative study on the regulation of the use of internet and social media during electoral processes. The rapid advance of information technology and the increase of internet users has raised the question of how to regulate the internet and social media's use during electoral processes. The study aims to examine how to create an inclusive participatory model of the use of social media during electoral processes while safeguarding freedom of expression. Mr Vargas Valdez also informed the Council that the National Institute of Elections intended to submit several electoral laws to the Venice Commission for opinion;
  - Legal assistance to the Parliamentary Assembly delegation observing the parliamentary elections in Albania, 25 June 2017;
  - A compilation on electoral disputes should be prepared for the next session of the Commission, with a view to the preparation of a study;
  - The draft report on "Lessons to be learnt from 25 years of international election observation (IEO)", should also be presented to the next session.

## **9. Co-operation with OSCE/ODIHR**

An exchange of views took place with the representatives of the OSCE/ODIHR on the possibilities of future co-operation. Mr Shlyk informed the Council about the ongoing and future electoral OSCE/ODIHR activities. He referred to the excellent co-operation between the two institutions and in particular, concerning the recent electoral opinions on Bulgaria and the Republic of Moldova as well as the election observation missions. He went on to inform the Council about the forthcoming co-operation, notably on the occasion of the observation of election mission to Albania. He informed members that the OSCE/ODIHR will publish two new reference documents in September 2017: Guidelines on the role of security providers during elections and a Handbook on observing and promoting the participation of persons with disabilities in electoral processes. The Venice Commission secretariat has been invited to an Expert meeting in Warsaw, with a view to improving these draft publications and subsequently, to provide comments.

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

The Council is invited to fix the date of its next meeting for Thursday 5 October 2017 at 10.00 am.

## **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)*

Mr Srdjan DARMANOVIC  
Mr Aivars ENDZINS  
Mr Oliver KASK (Chair/Président)  
Ms Janine OTÁLORA MALASSIS (apologised/excused)

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

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

#### *Other members of the Venice Commission / Autres membres de la Commission de Venise*

Mr José Luis VARGAS VALDES

#### *Secretariat / Secrétariat*

Mr Thomas MARKERT  
Ms Simona GRANATA-MENGHINI  
Mr Pierre GARRONE  
Mr Serguei KOUZNETSOV  
Mr Gaël MARTIN-MICALLEF

#### *Experts*

Mr Alberto GUEVARA CASTRO  
Mr Carsten SCHÜRMANN

### **PARLIAMENTARY ASSEMBLY / ASSEMBLÉE PARLEMENTAIRE**

#### *Members / Membres*

Lord Richard BALFE, Committee on Legal Affairs and Human Rights/Commission des questions juridiques et des droits de l'homme  
Ms Josette DURRIEU, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie (apologised/excused)  
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 (apologised/excused)

#### *Substitute members / Membres suppléants*

Ms Eka BESELIA, Committee on Legal Affairs and Human Rights/Commission des questions juridiques et des droits de l'homme (apologised/excused)  
Mr Corneliu Mugurel COZMANZIUC, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie (apologised/excused)  
Mr Tiny KOX, Monitoring Commission/ Commission de suivi (apologised/excused)

Secretariat / Secrétariat

Mr Chemavon CHAHBAZIAN

**CONGRESS OF LOCAL AND REGIONAL AUTHORITIES (CLRAE) / CONGRÈS DES  
POUVOIRS LOCAUX ET RÉGIONAUX (CPLRE)**

Members / Membres

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

Mr Stewart DICKSON, Chamber of Regions/*Chambre des régions*

Secretariat / Secrétariat

Ms Stéphanie POIREL

Ms Ségolène TAVEL

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

Mr François FRIEDERICH

**OBSERVERS / OBSERVATEURS**

**ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE)**

Office for Democratic Institutions and Human Rights (ODIHR) / Bureau des institutions  
démocratiques et des droits de l'Homme (BIDDH)

Mr Alexander SHLYK, Head of the Election Department

Mr Oleksii LYCHKOVAKH, Election Adviser

**EUROPEAN UNION / UNION EUROPEENNE**

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

(apologised/excused)

European Parliament / Parlement européen

(apologised/excused)

**INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE  
(INTERNATIONAL IDEA)**

(apologised/excused)

**INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS (IFES)**

Ms Beata MARTIN-ROZUMILOWICZ, Director for Europe and Eurasia