



Strasbourg, 11 April 2018

**CDL-EL-PV(2018)001\***  
Or. Fr.

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

**61<sup>ST</sup> MEETING  
OF THE COUNCIL FOR DEMOCRATIC  
ELECTIONS**

**Venice, 15 March 2018 at 10.00 a.m.**

**MEETING REPORT**

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### **1. Adoption of the agenda**

The Council adopted the agenda as it appears in document [CDL-EL-OJ\(2018\)001ann.](#)

### **2. Study – Individual right to re-election: presidential elections**

Mr Kang presented the draft Report on term limits – Part I Presidents. The report had been prepared at the request of the Organization of American States OAS which had put four questions to the Commission. The first concerned whether or not there exists a specific right to re-election and if so, what are its limits. The report provided a clear negative answer to this question. Limits on presidential re-elections are a modality or a restriction of the fundamental right to stand for office. The second question - Do term limits unduly constrain the human and political rights of aspirant candidates? – deserved a negative answer: in presidential and semi-presidential systems, term limits pursue the legitimate aims to protect human rights, democracy and the rule of law and derive from a sovereign choice of the people in the pursuit of the above mentioned legitimate aims of general interest, which prevail over the right of the incumbent president. The criteria for such restriction are both objective and reasonable, and are in principle not discriminatory.

In reply to the third question, the report concluded that presidential term limits do not unduly constrain the human and political rights of voters either, to the extent that they are a self-imposed restriction on the power of the people to choose a representative at their will with the aim of maintaining a democratic system. The possibility of holding those in power accountable is at any rate subject to the constitutional and legislative conditions of the electoral system. Finally, the best way to modify term limits within a constitutional democratic state is through a process of constitutional reform that follows the procedure set out in the constitution. The Constitutional or Supreme Court should only play a role after the adoption of the amendments by the constitutional legislator. Similarly, a referendum, if provided by the constitution, may be organized to endorse the changes to term-limits, but only after such changes have been adopted by the constitutional legislator. Changes strengthening the executive power should not benefit the incumbent.

In the ensuing discussion, the qualified nature of the right to be elected was stressed; it was underlined that excessively long presidential terms distort the right to political participation.

The question of limiting terms of prime ministers was raised. The report pointed to the important difference between presidents, who may not be removed except through complex impeachment procedures, and prime ministers, who are responsible before parliament and in principle, may be removed at any time.

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| <b>The CED adopted the Report on term limits – Part I Presidents (<a href="#">CDL-AD(2018)010</a>).</b> |
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### **3. Voting rights at local level as an element of successful long-term integration of migrants and IDPs in Europe's municipalities and regions (Congress)**

Mr Wienen presented the preliminary draft report by the Congress which examined the international standards with regard to the voting rights of Internally Displaced Persons (IDPs) and non-citizens, outlined the major challenges to the implementation of such rights and described the diversity of approaches chosen by Council of Europe member states in this respect. Since voting encouraged migrants and IDPs to actively participate in the life of their community, voting rights, at the local level, might be seen as a natural starting point for successful long-term integration. Mr Wienen pointed out that the Congress as well as the OSCE/ODIHR had regularly examined the question of enfranchisement of foreigners, IDPs and to a lesser extent, of refugees, in their election observation reports, which constituted an

important source of inspiration for the current draft report. The draft recommended in particular that the Committee of Ministers invite the Governments of member States to ensure the effective implementation of IDPs' voting rights.

Ms Binder added that the categories of persons – foreigners (refugees, migrants), IDPs – discussed in the report varied significantly as to their situation and legal status. Foreigners, by definition, did not have the citizenship of their state of residence and were therefore generally not covered by the right to political participation in major international human rights' instruments. That said a trend was emerging among European states towards the enfranchisement of long-term foreign residents, at least in local elections. The category of IDPs referred to persons forcibly displaced within the state of their nationality, who were within the scope of the right to political participation. Even though international standards and good practices provided useful guidance as regarded voting rights of IDPs in local elections, IDPs frequently faced obstacles of a legal or practical nature that prevented the practical exercise of their right to vote.

Ms Zikmund indicated that comments on the draft submitted, *inter alia*, by the OSCE/ODIHR and IFES, would be taken into account and that the draft report, once revised, would be presented to the Monitoring Committee of the Congress for adoption in June 2018 and, then, to the Plenary of the Congress. It would then also be presented to the Council for Democratic Elections.

#### **4. Report on the identification of electoral irregularities through statistical methods**

Mr Juraj Medzihorsky informed the Council that statistical identification of electoral irregularities was a new, quickly developing field. Since most results were accessible online, methods which needed little staff and money could be used to help identify electoral irregularities, in combination with classical methods. However, they could be bypassed by fraudsters.

The report referred to three approaches:

1) Numeral based methods, which relied on the occurrence of the last or other digits. These methods were based on the following assumptions: (a) Frequencies of numerals in correct elections are known and invented numbers will not correspond to them; (b) the results are correct subject to evidence to the contrary; (c) there is a threshold for evidence of irregularity; however, there were problems with all these assumptions.

Another group of numeral methods, instead of asking "were there irregularities", asked "what was their extent", so there was no need for an arbitrary threshold. The results were then split into two groups: the questioned results and the results believed to be correct, which need to be compared.

2) Shares based methods: for example, shares of voters who turned out, or yes votes in various polling stations were compared, and suspect results were identified (such as an excessive number of similar turnouts, or clusters of polling stations with suspect shares of winner's/invalid votes).

3) Risk limiting audits: this was the most rigorous method. It required physical access to ballots or records, and led to an audit on a random sample on the basis of which conclusions were drawn regarding the election as a whole. It implied assuming that certain results were not correct, and looking for evidence that they were.

In short, there were multiple statistical methods, which were a less expensive complement to conventional methods and did not suffice for definitive conclusions. Different methods were

sensitive to different forms of irregularities. Methods complemented each other, since each of them alone could not reach a conclusion. There was also new research on combining different sources of evidence such as election observation or reports by voters. For example, these kinds of evidence can help to identify the polling stations which are better candidates for auditing.

Mr Kask remarked that the more methods there are to identify falsification, the more fraudsters would try to find ways to fraud (as for doping). At any rate, most irregularities took place before elections (e.g. in the field of registration of candidates, abuse of administrative resources, drawing of constituencies).

Lord Balfe, as a statistician, underlined that the report was very useful, but also showed what cannot be done through statistical methods. Fraudsters would become more cautious by the use of statistical methods.

Mr Lappin agreed that statistical elements can be indicative, but not conclusive. Finally, Mr Erben stated that they were useful not only for election observation, but also for election management: many election commissions used such methods, and the Indonesian Constitutional Court had decided based on statistical data that objections were wrong.

**The Council for Democratic Elections took note of the report on the identification of electoral irregularities through statistical methods ([CDL-AD\(2018\)009](#)).**

## **5. Republic of Moldova – Amendments to the Electoral Code**

Mr Holmøyvik informed the Council that the draft joint opinion by the Venice Commission and the OSCE/ODIHR on amendments to the electoral legislation of the Republic of Moldova was a follow-up to the opinion adopted in June 2017 on the draft amendments to this legislation. It focused on amendments adopted after the previous opinion and had to be read in conjunction with the opinion on the financing of political parties adopted in December 2017. The legislation under consideration had introduced a mixed system, while the 2017 and 2014 opinions had raised serious concerns over the introduction of such a system, since single-member constituencies could be vulnerable to undue influence of local businesspeople. This conclusion was still valid in the absence of new information. A considerable number of recommendations had been addressed, at least partially. However, the draft opinion still made several recommendations for improvement, notably following the introduction of single-member constituencies. In particular, it reiterated the recommendation to lower thresholds. Concerning the establishment and drawing of constituencies, the law provided for an independent commission appointed by the government; while its composition was broad and inclusive, too wide a discretion was given to the government, so there was no guarantee for a balanced representation. The criteria for constituency borders were clearly set out in the law, in conformity with the Code of good practice in electoral matters; however, a number of constituencies exceeded the law's maximum size. The establishment of constituencies and polling stations in Transnistria and abroad raised particular challenges: the criteria for their establishment could be further clarified.

**The Council for Democratic Elections adopted the Joint Opinion by the Venice Commission and the OSCE/ODIHR on Amendments to the Electoral Legislation of the Republic of Moldova ([CDL-AD\(2018\)008](#)).**

## **6. Study – Election dispute resolution: information item**

Mr Samuele Dominioni had drawn up a preliminary study based on the legislation in the member States of the Commission. The legal data collected by the countries will be sent to all

Venice Commission members in due course so that they can check the content. The study deals with different aspect of litigation: the appeal procedure itself, the grounds for appeal, the standing, the time limits for appeal and for dealing with appeals, the decision making power of the electoral judge and the sanctions.

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

The following activities took place between the 60<sup>th</sup> and 61<sup>st</sup> meetings of the Council for Democratic Elections:

- participation in the 12<sup>th</sup> implementation meeting of the declaration of principles for international election observation (Washington DC, 13-15 December 2017);
- participation in a conference on Financing of political parties in Moldova: Lessons learned in the Eastern Partnership (Chişinău, 15 December 2017);
- participation in an international conference on the Role of administrative courts in electoral disputes (Cairo, 8-9 January 2018);
- participation in the Conference on Voting of Albanian citizens abroad (Tirana, 23 January 2018);
- participation in a workshop on the draft law on the presidential elections in Lybia (Tunis, 25-26 January 2018) ;
- meetings with representatives from different state organs and international organisations to discuss the opportunities to develop co-operation between the Venice Commission and Kyrgyzstan, define strategic priorities and future plans for the reform of the electoral system (Bishkek, 21-22 February 2018).

## **8. Future activities**

The following future activities are planned:

- Joint parliamentary seminar on “the misuse of administrative resources during electoral processes: a major challenge for democratic elections” (Tirana, 10-11 April 2018); Mr Chahbazian stated that in November 2017, the Parliamentary Assembly and the Venice Commission had organised a seminar on the same subject in London and that the Parliamentary Assembly plans to draw up a study after the Tirana Conference;
- Legal assistance to two Parliamentary Assembly delegations observing the presidential election in Azerbaijan on 11 April 2018 and in Montenegro on 15 April 2018;
- Meeting of the Norwegian Election Act Committee (Oslo, 17 April 2018);
- 15<sup>th</sup> Conference of Electoral Management Bodies on the theme “Security in Elections” (Oslo, 19-20 April 2018). This 15<sup>th</sup> edition will focus on security in elections, the security of people and buildings during the electoral process, but also cybersecurity. The latter covers the security of information systems and how to fight against cyber-attacks, as well as citizens’ confidence in elections, and in particular the prickly issue of misinformation during electoral campaigns, both in traditional media and on social networks;
- 2<sup>nd</sup> Scientific Electoral Experts Debates (Sinaia, 3-4 May 2018). These debates will deal with equal suffrage.

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

An exchange of views took place with the representatives of the OSCE/ODIHR on the possibilities of future co-operation. Mr Lappin welcomed the excellent co-operation with the Venice Commission, which was continuing to intensify, and he informed the Council about on-going and future electoral activities of the OSCE/ODIHR, many of which would be in co-

operation with the Venice Commission. He submitted lists of recent and forthcoming activities which gave evidence, *inter alia*, of the high number of election observation missions and follow-up activities (technical assistance); the latter are gaining increasing importance. Mr Lappin furthermore mentioned the preparation of new handbooks on Election dispute resolution, on Social media and on the Promotion of the participation of women in elections. He welcomed the suggestion by Lord Balfe to co-ordinate in particular the work on Election dispute resolution, bearing in mind that a Venice Commission study on this topic was under preparation.

The OSCE/ODIHR and the Venice Commission will co-operate at the meeting on the Electoral Law of Norway on 17 April 2018.

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

The Council fixed the date of its next meeting for Thursday, 21 June 2018 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 (apologised/excused)  
Mr Aivars ENDZINS  
Mr Oliver KASK (Chair/Président)  
Ms Janine OTÁLORA MALASSIS

#### 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 (apologised/excused)

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

Mr Gianni BUQUICCHIO  
Mr Josep Maria CASTELLA ANDREU  
Ms Sarah CLEVELAND  
Mr Eirik HOLMØYVIK  
Mr Ilwon KANG

#### Secretariat / Secrétariat

Mr Thomas MARKERT  
Ms Simona GRANATA-MENGHINI  
Mr Pierre GARRONE  
Mr Schnutz DÜRR  
Mr Michael JANSSEN

#### Experts

Mr Alberto GUEVARA CASTRO  
Mr Juraj MEDZIHORSKY

### **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  
Mr Corneliu Mugurel COZMANZIUC, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie (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 Jordi XUCLÀ, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie

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

Mr Stewart DICKSON, Chamber of Regions/Chambre des régions

Substitute members / Membres suppléants

Ms Dusica DAVIDOVIC, Chamber of Local Authorities/Chambre des pouvoirs locaux  
(apologised/excused)

Secretariat / Secrétariat

Ms Renate ZIKMUND

Expert

Ms Christina BINDER

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

(apologised/excused)

**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 Richard LAPPIN, Election advisor

**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)**

Mr Peter ERBEN, Senior Global Electoral Advisor