



Strasbourg, 28 June 2018

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Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**62ND MEETING
OF THE COUNCIL FOR DEMOCRATIC
ELECTIONS**

Venice, 21 June 2018 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 the agenda as it appears in document [CDL-EL-OJ\(2018\)002ann.](#)

2. Vice-presidency

The Council was invited to elect a Vice-President who would serve in office up to the end of the President's term in office i.e. until March 2019. Mr Darmanovic proposed Lord Balfe.

The Council elected Lord Balfe as Vice-President of the Council for Democratic Elections to serve in office, up to the end of the President's term in office.

3. Study – Recall of mayors

Ms Karakamisheva-Jovanovska presented the draft report ([CDL\(2018\)022](#)), the purpose of which was, as requested by the Congress, to examine the very concept of local recall referendum as a mechanism of direct participation, its possible justification and acceptability in today's representative democracies, as well as the impact it may have on the effective, democratic and legitimate governance of the concerned communities.

The draft showed that in Europe, recall had seldom been used in practice, but had drawn some renewed interest in recent years, while in other parts of the world it was more frequent and used mostly at regional or local level. European standards did not explicitly prohibit the recourse to recall but neither did they clearly authorise it. By putting an end to an elected office prior to regular elections, the recall went against the very principle of the free representative mandate on which today's democracies were based. The draft report therefore concluded that the recall of mayors might only be seen as an acceptable, though exceptional, democratic tool, complementary to representative democracy mechanisms, if it was regulated very carefully and coupled with adequate and effective safeguards to prevent its misuse. Therefore a number of key conditions must be fulfilled. *Inter alia*, popular recall should only be permitted in respect of mayors who were directly elected, if and when it was prescribed by the Constitution or national law; adequate safeguards should be provided in terms of legitimacy and legality of the recall process, such as sufficiently high thresholds for initiating and validating the recall, and a clear and reasonable timeframe and procedural safeguards. Several members underlined that recall of mayors/local elected representatives should only be admitted in the most exceptional circumstances, clearly defined by law and not for political reasons.

Mr Wienen and Mr Kask proposed amendments. Subject to these amendments, the Council agreed with the draft report on the recall of mayors/local elected representatives.

4. Kosovo – Financing of political entities

Mr Dimitrov introduced the draft opinion ([CDL\(2018\)016](#)) and stressed that the draft law under scrutiny contained significant amendments to the Law on the Financing of Political Entities and the Law on General Elections. It clarified the definition of a contribution to a political entity, strengthened publication requirements with respect to information on political entities' finances and included new tools for monitoring compliance with the rules. At the same time, the draft opinion recommended several further amendments, in particular giving the relevant Office under the Central Election Commission a clear mandate for financial monitoring, strengthening its independence and operational capacities, enhancing the regime of sanctions available for infringements of party and campaign funding rules and providing for consistent appeal channels. Mr Dimitrov also emphasised that the apparent lack of involvement of different political parties in the legislative process, as well as their lack of interest in this matter, gave rise

to concerns. In this connection, Mr Vilanova Trias stressed the need for a clear political will to implement the legislation on political financing. He added that a more comprehensive legal reform, aimed at full harmonisation of various legal acts, would also be necessary in the longer term.

Mr Nisic welcomed the draft opinion and stated that its recommendations would be very useful later in the process, in particular with respect to strengthening the monitoring and enforcement mechanisms. Lord Balfe drew attention to a number of points, in particular the need to involve various political parties – including from the opposition – more broadly and effectively in the further legislative process. His proposals for amendments were accepted by the Council.

The Council adopted the opinion on the draft law on amending and supplementing the Law on the Financing of Political Entities ([CDL-AD\(2018\)016](#)).

5. Study – Use of social media during electoral processes

Mr Vargas Valdez presented a document he had prepared entitled “Study on the role of social media and the Internet in democratic development”. This document aims at presenting in a systematic manner, State practice in the field of Internet and elections. The first chapter shows how Internet and social media have become essential in the electoral process. The second chapter treats electronic challenges to democracy, including cybercrime. Regulation of the internet and social media must respect freedoms, in particular, freedom of expression, economic freedom, the right to privacy and social rights. Key words are adaptability and international co-operation, if necessary through legislative harmonisation.

Several participants supported the study. Mr Barrett underlined that there should be a distinction between cyber-attacks and disinformation. Mr Lappin gave OSCE/ODIHR support for this distinction and said that the question of physical security during electoral campaigning should not be over looked.

The Council decided to undertake a joint study on the use of social media during electoral processes with the Council of Europe's Internet Media and Governance Division.

6. Study – Election dispute resolution: information item

The secretariat informed the Council on the progress of the study of the electoral litigation.

The secretariat verified legislative data collected by country with regular consultation with members of the Commission. A first version of the report should be submitted to the Council by the end of the year.

7. Communication by the Secretariat

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

- Assistance to the Kyrgyz Republic in the electoral field (seminar on cyber security, Strasbourg, 3 April 2018; study visit on data protection to Malta, 5-6 April 2018);
- Round table on the electoral reforms process in Ukraine (Kiev, 4-5 April 2018);

- Joint parliamentary seminar on “the misuse of administrative resources during electoral processes: a major challenge for democratic elections” (Tirana, 10-11 April 2018);

Ms Zikmund indicated that the brochure called “Administrative resources and fair elections – A practical guide for local and regional politicians and public officials”, had been distributed and which followed a recommendation of the Venice Commission and the OSCE/ODIHR to prepare a more user-friendly document. This document will be translated into French and most like into other languages.

Mr Chahbazian said that this seminar was co-organised by the Parliamentary Assembly and the Venice Commission and followed a conference on the same theme organised in November 2017 in London with the Eastern Partnership States.

- Legal assistance to the Parliamentary Assembly delegation observing presidential elections in Azerbaijan, 11 April 2018;
- Legal assistance to the Parliamentary Assembly delegation observing presidential election in Montenegro, 15 April 2018;
- Meeting of the Norwegian Election Act Committee (Oslo, 17 April 2018);

Mr Kask, participated in this meeting, he said that the Commission had been created by the Parliament and is composed of representatives from different parties, who have four years to prepare a revised draft electoral code. Among the questions raised were the overrepresentation of sparsely populated constituencies, the eligibility of civil servants, as well as electronic voting and the use of new technologies.

- 15th European Conference of Electoral Management Bodies, on “Security in Elections” (Oslo, 19-20 April 2018);

Mr Kask stated that the EMB (Electoral Management Bodies) conference had grown into a very large event, bringing together EMBs, academics and international organisations from all over Europe and beyond. The issue of security is an issue of e-governance or e-democracy, does not concern only elections. Ceasing to use new technologies is not a solution, but it is difficult for EMBs and other sectors of government to address these issues, they need more and more to co-operate with private enterprises like facebook or twitter.

- Event on Democratic Participation and Electoral Matters (Brussels, 26 April 2018);
- 2nd Scientific Electoral Experts Debates on Equal suffrage, and International Conference on free elections, Parliaments and nation building (Sinaia, 3-4 and 5-6 May 2018);

Mr Kask stated that, following the First Scientific Electoral Experts Debates which took place in Bucharest in 2016, the Second Scientific Electoral Experts Debates, held in Sinaia, May 2018, organised by the Venice Commission in co-operation with the Permanent Electoral Authority of Romania, were dedicated to equal suffrage and will lead to a publication in the Romanian Journal of Electoral Studies. The reports concerned various aspects of the principle of equality, relating to gender and minorities as well as equal voting power and equality in a changing environment; the report on constituency delineation and seat allocation was introduced. The event gathered around 100 participants from all over the world and will, hopefully, become a tradition.

The Scientific Debates were followed by a conference entitled "Free elections, parliaments and nation building" organised by the Permanent Electoral Authority. Contrary to the Scientific Debates, the conference's approach was mainly based on political science and history.

- Meeting on electoral reform in Albania, and in particular on out-of-country voting and new technologies (Tirana, 15 May 2018);
- Meetings with the electoral stakeholders in order to provide expert assistance in the process of on-going discussions on necessary changes to electoral legislation in Bosnia and Herzegovina (Sarajevo, 22-24 May 2018 and 4-6 June 2018);
- A Workshop on new voting technologies in elections (Tirana, 6 June 2018).
- Regional Seminar on amendments to the electoral code in Ukraine (Vinnitsa, 15 June and Chernihiv, 16 June 2018).

Mr Vargas Valdez informed the Council that the VOTA database had been fully updated. Since 2012, there was a joint programme between the Electoral Tribunal of the Judicial Power of the Federation and the Venice Commission which led to this update.

To date the VOTA database contains a total of 488 texts available in English, French or Spanish, including:

- 65 Constitutions or election-related excerpts of the Venice Commission member States and other countries,
- 25 main reference texts of the Venice Commission in the field of elections and political parties such as the Code of good practice in electoral matters;
- 242 national laws and 156 Commission opinions on electoral legislation of individual countries, generally prepared jointly with the OSCE/ODIHR. The database can be searched by country or by topics such as types of elections, electoral systems or political parties, with the help of a systematic thesaurus.

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8. Future activities

The following future activities are planned:

- Legal assistance to the Parliamentary Assembly delegation observing early presidential and parliamentary elections in Turkey, 24 June 2018;
- 3rd Conference on money and politics (Tbilisi, 26-27 June 2018);
- Workshop on out-of-country voting (Tirana, 27 June 2018); Venice Commission experts will also participate in activities on electoral administration and media during electoral campaign;
- Seminar on election dispute resolution in Ukraine, co-organised with the judiciary school (Odessa, 5-6 July 2018);
- Other seminars on the Ukrainian Electoral Code will be organised in July in other large cities, (Odessa, Dnipro, Kherson, etc);
- 27th ACEEO Conference on "**Guaranteeing Voter Privacy, Security and Integrity**" (Vilnius, 6-7 September 2018);

- Legal assistance to the Parliamentary Assembly delegation observing elections in Bosnia and Herzegovina, 7 October 2018.
- A Venice Commission expert will assist the Mexican Federal Electoral Court in electoral dispute resolution at the end of August – beginning September.
- Continuation of electoral co-operation with Kyrgyzstan. In particular, an expert will prepare an analysis of election dispute resolution in this country.

9. Co-operation with the OSCE/ODIHR

Mr Lappin presented the list of OSCE/ODIHR election observation missions. A joint opinion would be prepared for the next meeting on the recent amendments to the electoral law of Turkey; other opinions could deal with Albania, Armenia, “the former Yugoslav Republic of Macedonia” and Montenegro. In Albania, the OSCE/ODIHR worked with the *ad hoc* Committee on Electoral Reform, in co-operation with the Venice Commission and, in “the former Yugoslav Republic of Macedonia”, with a comprehensive working group on elections which is in the drafting process on amendments to legislation. A handbook on election dispute resolution was being prepared and would be shared with the Venice Commission, while a handbook on social media was envisaged, which would address in particular cyber-security. 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, 18 October 2018 at 10.00 am.

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

CED JUNE/JUIN 2018

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 (apologised/excused)

Mr Oliver KASK (Chair/Président)

Ms Janine OTÁLORA MALASSIS (apologised/excused)

Substitute Members of the CDE / Membres suppléants du CED

Mr Richard BARRETT

Mr Paul CRAIG (apologised/excused)

Mr Ben VERMEULEN

Mr Pere VILANOVA TRIAS

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

Mr Philip DIMITROV

Ms Tanja KARAKAMISHEVA-JOVANOVSKA

Mr José Luis VARGAS VALDEZ

Secretariat / Secrétariat

Mr Thomas MARKERT

Ms Simona GRANATA-MENGHINI

Mr Pierre GARRONE

Ms Artemiza-Tatiana CHISCA

Mr Schnutz DÜRR

Mr Michael JANSSEN

Experts

Mr Alberto GUEVARA CASTRO

PARLIAMENTARY ASSEMBLY / ASSEMBLEE 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

Mr Tiny KOX, Committee on the Honouring of Obligations and Commitments by member States of the Council of Europe (Monitoring Committee) / Commission pour le respect des obligations et engagements des Etats membres du Conseil de l'Europe (Commission de suivi) (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 Aleksander POČIEJ, Committee on the Honouring of Obligations and Commitments by member States of the Council of Europe (Monitoring Committee)/ *Commission pour le respect des obligations et engagements des Etats membres du Conseil de l'Europe (Commission de suivi)*

Secretariat / Secrétariat

Mr Chemavon CHAHBAZIAN

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES (CLRAE) / CONGRES DES POUVOIRS LOCAUX ET REGIONAUX (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

Mr Luc MARTENS, Chamber of Local Authorities/Chambre des pouvoirs locaux
(apologised/excused)

Ms Dusica DAVIDOVIC, Chamber of Regions/Chambre des Régions (apologised/excused)

Secretariat / Secrétariat

Ms Renate ZIKMUND

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

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 KATZ, President of the OSCE/ODIHR Core Group of Experts on Political Parties

Mr Richard LAPPIN, Senior election advisor

EUROPEAN UNION / UNION EUROPEENNE

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

European Parliament / Parlement européen

INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE (INTERNATIONAL IDEA)

INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS (IFES)

Mr Nermin NISIC, Kosovo Country Director