



Strasbourg, 8 January 2019

**CDL-EL-PV(2018)004\***  
Or. Fr.

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

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

**Venice, 13 December 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\(2018\)004ann.](#)

## 2. Turkey - Amendments to the electoral legislation and related “Harmonisation laws” adopted in March and April 2018

Mr Holmøyvik pointed out that the draft joint opinion ([CDL\(2018\)034](#)) dealt with two sets of amendments, which, according to the usual practice, were placed in the context of the 2017 constitutional revision. The revision process, which took place shortly before the elections, was hasty and insufficiently transparent. These late amendments are therefore not only contrary to the Code of Good Practice in Electoral Matters but also to a constitutional rule - the 2017 constitutional amendments however, waived this rule for the 2018 elections. If the purpose of the revision was to harmonise the legislation with the new text of the Constitution, the March amendments, in any case, are not linked to it. The 10% quorum remains extremely high, although its effect is somewhat mitigated by the possibility, created by the change, of forming alliances; changes in the composition of the election administration should be reconsidered as they question its impartiality; important elements of security and transparency have been touched upon (including the possibility for each voter to call on security forces and to move polling stations for security reasons).

Following a discussion involving several members and observers, the Council decided to make some amendments and clarifications.

**The Council adopted the Joint Opinion of the Venice Commission and ODIHR on Amendments to the Electoral Legislation and related "Harmonisation Laws" adopted in March and April 2018 ([CDL-AD\(2018\)031](#)).**

## 3. Study - Social media in Elections

Mr Vargas Valdez said that the draft report he had presented to the Council in June had been discussed by the Sub Committee on Latin America in Mexico City. The purpose of this report was to present in a systematic way the actions of the different states in the field of social media and elections, but also, more ambitiously, the legal scope and nature of the challenges posed by the Internet to democratic developments. The Internet and social media are very useful tools for promoting democracy, but at the same time they carry many risks that could jeopardise the integrity of the electoral process. It is therefore necessary to develop a different model, based on the principles of co-responsibility and international co-operation, which makes it possible simultaneously to guarantee social, individual and commercial rights. The regulation of the internet and social media must aim not only at balancing the various types of rights, but also at co-responsibility (involving private actors), adaptability and international co-operation. After presenting the interventions that took place in Mexico City, Mr Vargas Valdez informed the Council that the final version of the draft should be available by the June 2019 meeting. Ms Granata-Menghini added that this text would be useful for the revision of the guidelines on political parties.

## 4. Report - Updating guidelines to ensure fair referendums in Council of Europe member States

As Dame Cheryl Gillan had had to apologise, Mr Garrone introduced the [draft report](#) approved by the Political Affairs and Human Rights Committee, which would be submitted for adoption on 22 January 2018, to the plenary session of the Parliamentary Assembly of the Council of Europe. This report is part of the long-standing co-operation between the Assembly and the Venice Commission on referendums. The report contains a preliminary draft resolution

proposing to amend the Code of Good Practice on Referendums ([CDL-AD\(2007\)008rev](#)) to take account of developments since its adoption; calls on states to respect international standards in this area; proposes that an independent body be responsible for the verification of referendum questions and the supervision of the campaign.

Mr Vermeulen noted that the draft report took into account important developments which justified the revision of the Code of Good Practice and emphasised recurrent problems, such as the wording of questions and quorum; the social media issue needs to be considered.

Following the discussion, which included the question of the inclusion or exclusion of local referendums, Mr Kask concluded that there was agreement on the need to revise the Code of Good Practice on Referendums, which will be suggested to the Venice Commission. The work can proceed in parallel to that related to social media and elections.

## 5. Communication by the Secretariat

The following activities took place between the 63<sup>rd</sup> and 64<sup>th</sup> meetings of the Council for Democratic Elections:

- Legal assistance to the Parliamentary Assembly delegation observing presidential elections in Georgia (first round), 28 October 2018;
- participation in the OSCE/ODIHR Seminar on election observation (Vienna, Austria, 30 October 2018);
- participation in the XIIIth Inter-American Meeting of Electoral Authorities (Santo Domingo, Dominican Republic, 7-9 November 2018);
- Training session for judges on electoral dispute resolution (Kiev, 25 – 29 November 2018);
- Cetinje Parliamentary Forum on Election Laws (Cetinje, Montenegro, 8-9 November 2018);
- participation in the Forum on Voter Registration in Arab countries (Cairo, Egypt, 13-14 November 2018);
- participation in the International Conference on the draft election code (Bukhara, Uzbekistan, 16-17 November 2018);
- Legal assistance to the Parliamentary Assembly delegation observing presidential elections in Georgia (second round), 28 November 2018;
- participation in the conference on electoral justice and Sub-Commission on Latin America (Mexico City, Mexico, 29-30 November 2018); Mr Vargas Valdez informed the Council that the conference dealt with the following topics: relationship between the rule of law and democracy; the phenomenon of democratic disaffection and the challenges it poses to constitutional justice; the availability of inclusive mechanisms for direct and equal political participation, and how these shape modern electoral processes and access to justice; lessons learned from the electoral processes in the Americas in 2018. Emphasis was placed on the importance of soft law and in particular, the [Rule of law checklist](#) developed by the Venice Commission. There was also talk of the disaffection for democracy, direct consultation and democracy, as well as the contribution of the Venice Commission to the representation of women in politics. The fundamental character of electoral justice and the principle of independence of constitutional courts were also emphasised.
- participation in a workshop on the misuse of administrative resources (Chişinău, Republic of Moldova, 30 November 2018);
- participation in the meeting of the global network on electoral justice (Cancún, Mexico, 3-4 December 2018); it is a project developed by the Mexican Electoral Tribunal and supported by various international organisations, including the Venice Commission. This meeting brought together representatives of 31 countries,

24 international organisations and 4 academic institutions. The themes were: democratic disaffection; equality in political participation; the protection of democratic principles in elections; the digital revolution in political life, and the intervention of electoral jurisdictions. Emphasis was placed on the importance of the Inter-American Democratic Charter, the European Convention on Human Rights, but also the standards, guidelines and opinions of the Venice Commission. Special attention was also given to the use of social media, as well as to different models of electoral justice.

- legal assistance to the Parliamentary Assembly delegation observing early parliamentary elections in Armenia, 9 December 2018.

## **6. Future activities**

The Venice Commission will participate in:

- Round table on the case-law on electoral disputes (Bishkek, 14 December 2018)
- Legal assistance to the Parliamentary Assembly delegation observing parliamentary elections in the Republic of Moldova, 24 February 2019.

Mr Chahbazian said that it is planned to invite the Venice Commission to provide legal assistance for the presidential and parliamentary elections in Ukraine.

See also points 3 (social media and elections), 4 (updating guidelines for ensuring fair referendums in Council of Europe member States) and 7 (co-operation with ODIHR).

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

Mr Lappin informed the Council about ODIHR's electoral activities in 2018, as well as activities planned for 2019. ODIHR observed 16 elections in 2018, and is continuing to develop its monitoring activities. Mr Lappin pointed out that the European Union will launch a database of recommendations during the first quarter of 2019. Also in 2019, Albania, Montenegro and "the former Yugoslav Republic of Macedonia" might ask for advice. ODIHR is working on a handbook on social media.

Mr Markert informed the Council that, at the Cetinje conference (see point 5), it was noted that several Western Balkan states are in the process of revising their electoral legislation. Serbia and Kosovo could also ask for opinions. Activities are also expected in Armenia, whose government wanted to organise a partial reform of the electoral legislation before the elections; now a broader reform, including constitutional reform, is foreseen.

Mr Chahbazian recalled the need to refer to Council of Europe documents and to the Court's judgments in the reports of the international election observation missions. The legal memorandum to the Assembly could be used as a basis. Mr Lappin agreed but the number of citations must be limited.

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

The Council is invited to fix the date of its next meeting for Thursday, 14 March 2019 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 (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 (apologised/excused)

Mr Paul CRAIG (apologised/excused)

Mr Ben VERMEULEN

Mr Pere VILANOVA TRIAS (apologised/excused)

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

Mr Eirik HOLMØYVIK

Mr José Luis VARGAS VALDEZ

#### *Secretariat / Secrétariat*

Mr Thomas MARKERT

Ms Simona GRANATA-MENGHINI

Mr Pierre GARRONE

#### *Experts*

Mr Alberto GUEVARA CASTRO

### **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)

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)

Lord George FOULKES, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie (apologised/excused)

Mr Aleksander POCIEJ, 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)

Secretariat / Secrétariat

Mr Chemavon CHAHBAZIAN

Ms Despina CHATZIVASSILIOU-TSOVILIS (apologised/excused)

**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

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 LAPPIN, Deputy Head of the Election Department

Mr Vladimir MISEV, Election Adviser

**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 Harald JEPSEN, International Senior Adviser