



Strasbourg, 3 July 2019

CDL-EL-PV(2019)001*
Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

65th MEETING
OF THE COUNCIL FOR DEMOCRATIC
ELECTIONS

Venice, 20 June 2019 at 10.00 a.m.

MEETING REPORT

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1. Adoption of the agenda

The Council adopted its agenda as it appears in this document.

2. Election of the President and Vice-President

The Council elected Oliver Kask as President and Lord Balfe as Vice-President.

3. Study - Recall of mayors and local elected representatives

Ms Jametti informed the Council that the study was drafted at the request of the Congress, following the procedure for the recall of the mayor of Chişinău, in order to know whether the recall was in conformity with international standards. Recall had to be distinguished from revocation (by an institution); both were part of a political process, contrary to destitution, which was a legal measure. Recall had also to be distinguished from imperative mandate. It might exist at national, regional or local levels and concern individual members of the legislature or the executive, or the whole body and be initiated, for example, at the request of the people, of the municipal council or of a national institution. In practice, it existed, in law and in fact, above all in America (Ecuador, Peru, United States) as well as in Japan; in Europe, it was rather rarely applied. Where mayors were directly elected, recall (by a popular vote) might be possible, contrary to revocation. The European Charter of Local Self-Government did not take a position on this issue. While the Venice Commission was opposed to imperative mandate, it had not so far addressed the issue of recall in general, which was intended at reinforcing the links between the elected officials and the electorate but did imply risks. Since recall was a political process, it was not submitted to substantive conditions. In conclusion, recall was rarely used in practice, but it had to be subject to important safeguards and therefore be exceptional, and the various aspects of the procedure should be clearly dealt with by the law.

Ms Karakamisheva added that there was no European or international legal document on the issue. The situation of mayors elected directly or indirectly must be clearly distinguished. Like Mr Wienen, she stressed the importance of the distinction between political and legal responsibility.

The Council adopted the draft report on the recall of mayors and local elected representatives (CDL-AD(2019)011).

4. Study - Use of digital technologies and elections

Mr Vargas Valdez underlined the complexity of the matter, due to the borderless nature of the internet and the private ownership of information. Internet and social media had become essential in the electoral process, but electronic challenges to democracy, including cybercrime, were high. This implied that the issue be addressed from a legal point of view, that is, in practice, through international soft law standards. Regulation of the internet and social media had to respect freedoms, in particular, freedom of expression, economic freedom, the right to privacy and social rights. Key words were adaptability and international co-operation. Mr Vargas Valdez therefore suggested that the rapporteurs draft a set of principles on the matter after the adoption of the report.

Following a suggestion by Mr Rubio Nuñez, two slight amendments would be made on monitoring of funding of electoral campaigns and the issue of (false) personal profiles.

The Council adopted the draft joint report of the Venice Commission and of the Directorate of Information Society and Action against Crime of the Directorate General of Human Rights and Rule of Law on Digital Technologies and Election (CDL-AD(2019)016).

5. Study – Election dispute resolution

Mr Holmøyvik presented the draft report, especially its structure and the remaining issues to be clarified or developed according to the rapporteurs. The Council gave its agreement that the rapporteurs and the secretariat pursue their work on the draft report with the aim:

- of clarifying the terminology used as well as the legal situation in some states (grounds for filing electoral complaints, list of persons and categories of persons entitled to challenge the various phases of the electoral process, countries where parliaments deal with complaints on parliamentary elections);
- of creating an appendix with the detailed references of the reports, opinions and case-law indicated in the numerous footnotes;
- of restructuring the draft report with regard to the types of complaints concerned.

6. Communication by the Secretariat

The following activities took place between the 64th and 65th meetings of the Council for Democratic Elections:

- Round table on electoral dispute resolution (Bishkek, Kyrgyzstan, 14 December 2018);
- Meeting of the Core Group of Experts on Political Parties, (Warsaw, Poland 12-13 January 2019);
- Intervention of the President of the Venice Commission before the Parliamentary Assembly of the Council of Europe, during the discussion of the draft report on "Updating guidelines to ensure fair referendums in Council of Europe member States" (Strasbourg, 22 January 2019);
- During February-March 2019, a series of trainings for national judges on election dispute resolution took place in different cities of Ukraine: Vinnytsia, Kyiv, Chernivtsi, Kramatorsk, Kharkiv, Dnipro and Odessa;
- Conference "Europe votes 2019: How to unmask and fight online manipulation" (Brussels, 11 February 2019);
- Legal assistance to the Parliamentary Assembly delegation observing parliamentary elections in the Republic of Moldova, 24 February 2019;
- 3rd General Assembly of the Arab Electoral Management Bodies and regional conference (Dead Sea, Jordan, 3-5 March 2019);
- Round table on draft amendments to the legislation regarding sanctions for election-related offences (Bishkek, Kyrgyzstan, 29 March 2019);
- Legal assistance to the Parliamentary Assembly delegation observing presidential elections in Ukraine, 31 March 2019;
- Study visit of the Malaysian Electoral Reform Committee (Berlin, Germany, 2 April 2019);
- Legal assistance to the Parliamentary Assembly delegation observing presidential election (first round) in North Macedonia, 21 April 2019;
- Seminar on social media in electoral campaigns (Bishkek, Kyrgyzstan, 25 April 2019);

- Legal assistance to the Parliamentary Assembly delegation observing presidential elections (second round) in North Macedonia, 5 May 2019;
- Seminar on good practices in electoral matters (Buenos Aires, Argentina, 30 May 2019);
- Brainstorming workshop with Members of Parliament on “Reform of the legal framework governing elections” in Armenia (Tsakhkadzor, Armenia, 8-9 June 2019);
- Visit of the Venice Commission’s team of electoral experts in the framework of the EU-funded project on reform of electoral legislation and practice in Kyrgyzstan (Bishkek, 13-14 June 2019);
- 2nd Seminar on Social media in electoral campaigns (Bishkek, Kyrgyzstan, 15-16 June 2019).

7. Future activities

- 16th EMB Conference on “Election Dispute Resolution” (Bratislava, Slovak Republic, 27-28 June 2019);
- Participation in the Regional Parliamentary Conference on misuse of administrative resources during electoral processes (Tbilisi, Georgia, 2-3 July 2019);
- International seminar on « Administrative justice and electoral disputes (Tunis, Tunisia, September 2019)
- Participation in the 28th Conference of the ACEEEO on electoral justice (Ljubljana, Slovenia, 25-26 September 2019).

Mr Kask informed the Council that a meeting of rapporteurs on updating the Code of Good Practice on Referendums had taken place before the meeting of the Council. It followed the adoption by the Parliamentary Assembly of Resolution 2251(2019) on Updating guidelines to ensure fair referendums in Council of Europe member States.

8. Co-operation with OSCE/ODIHR

The OSCE/ODIHR informed the Council on its current and future activities in the electoral field. Such information is contained in an appendix of the present report.

Mr Chahbazian pointed out the constructive co-operation with the OSCE/ODIHR in the context of International election observation missions. Recently, core teams of ODIHR referred in a more systematic manner to the proposals of Venice Commission experts in the draft preliminary conclusions and findings, but also to relevant reference documents of the Council of Europe and the case-law of the European Court of Human Rights.

9. Date of the next meeting

The Council fixed the date of its next meeting for Thursday, 10 October 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
Mr Oliver KASK (Chair/Président)
Ms Janine OTÁLORA MALASSIS (apologised/excused)

Substitute Members of the CDE / Membres suppléants du CED

Mr Richard BARRETT
Mr Eirik HOLMØYVIK
Mr Ben VERMEULEN (apologised/excused)
Mr Pere VILANOVA TRIAS

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

Mr Josep Maria CASTELLA-ANDREU
Ms Monique JAMETTI-GREINER
Ms Tanja KARAKAMISHEVA-JOVANOVSKA
Ms Katharina PABEL
Mr José Luis VARGAS VALDEZ

Secretariat / Secrétariat

Mr Thomas MARKERT
Ms Simona GRANATA-MENGHINI
Mr Pierre GARRONE
Ms Sylvia GRUNDMANN
Mr Gaël MARTIN-MICALLEF

Experts

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 (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

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 Stéphanie POIREL

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 Election Department (apologised/excused)

INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS (IFES)

Mr Nermin NISIC, Electoral Technical Assistance Expert

Appendix

Election Department Activities 2019



(Updated June 2019)

Needs Assessment Missions (NAMs):

1. Finland	Parliamentary	14 April	23-25 January
2. Andorra	Parliamentary	February	11-13 February
3. Lithuania	Presidential	12 May	28-31 January
4. Belgium	General	26 May	25-28 February
5. Spain	Early parliamentary	28 April	4-8 March
6. Albania	Local	30 June	18-21 March
7. Denmark	Parliamentary	17 June	25-29 March
8. Switzerland	Parliamentary	20 October	21-23 May
9. Greece	Early parliamentary	5 July	9-12 April
10. Portugal	Parliamentary	20 October	3-5 June
11. Poland	Parliamentary	November TBC	17-19 June
12. Canada	Parliamentary	21 October	2-5 July
13. Uzbekistan	Parliamentary	December	9-12 July

Election Observation Activities:

1. Moldova	Parliamentary	24 February	EOM
2. Ukraine	Presidential	31 March, 21 April	EOM
3. Slovakia	Presidential	16 March	EAM
4. Estonia	Parliamentary	3 March	EET
5. North Macedonia	Presidential	21 April, 5 May	EOM
6. Lithuania	Presidential	12 May	EAM
7. Spain	Early Parliamentary	28 April	EET
8. Albania	Local	30 June	EOM
9. Kazakhstan	Early presidential	9 June	EOM
10. Ukraine	Early parliamentary	21 July	EOM
11. Greece	Early parliamentary	5 July	EAM

Follow-up Activities:

1. North Macedonia	Technical Expertise	6-18 January
2. Serbia	Technical Expertise	22-24 January
3. North Macedonia	Conference on PWD	6 February
4. Montenegro	Parliamentary Discussions	19-20 February
5. Hungary	Presentation of FR	12-14 March
6. Montenegro	Technical Expertise	11-13 March
7. Georgia	Presentation of FR	21-22 March

8.	Mongolia	Technical Expertise	9-11 April
9.	Bosnia and Herzegovina	Conference on Ele. Admin.	15-17 April
10.	Pristina	Technical Expertise	15-17 April
11.	Bosnia and Herzegovina	Presentation of FR	14-17 April
12.	Armenia	Presentation of FR	13-15 May
13.	Serbia	Mid-term Review	15-17 May
14.	Kyrgyz Republic	Technical Expertise	26-28 May
15.	Bosnia and Herzegovina	Mid-term Review	28-31 May
16.	Warsaw	Regional Workshop, Roma	4 June
17.	USA	Presentation of FR	17-20 June
18.	Montenegro	Mid-term Review	1-4 July