



Strasbourg, 28 October 2019

CDL-EL-PV(2019)002*
Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**66th MEETING
OF THE COUNCIL FOR DEMOCRATIC
ELECTIONS**

Venice, 10 October 2019 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 adopts its agenda as it appears in this document.

2. Amicus curiae Brief for the European Court of Human Rights

Mr Holmøyvik said that this case, pending before the Grand Chamber, concerned the procedural guarantees that a State must provide in the context of a procedure to contest the result of an election or the distribution of seats, and in particular, the ratification of the powers of elected representatives. In Belgium, this power of ratification belongs to Parliament, at the federal level - according to the Constitution - as well as to the communities and regions, and no appeal is possible. The verification of credentials is also the verification of the results of elections, Parliament is the judge of its own election. As this system still exists in a number of European States, the Court's judgment will have an effect on other States that have the same system. However, most European States have introduced a judicial appeal against the results of the elections. In accordance with the Code of Good Practice in Electoral Matters and the Commission's opinions, there must be an effective remedy in electoral matters, including on the results; the appeal body must be impartial and sufficiently independent of the legislative and executive branches. This precludes Parliament from being the sole judge of its own election. As regards procedural guarantees, the procedure must be simple and informal, the time limits for appealing and processing appeals must be short, the right to an adversarial hearing must be guaranteed, proceedings must be transparent and decisions must be reasoned and made public: guarantees similar to those in Article 6 ECHR apply. In Belgium, there does not seem to be a hearing before an independent and impartial body or a guarantee of an adversarial process.

The Council adopted the Amicus curiae Brief for the European Court of Human Rights in the case of *Mugemangango v. Belgique* (CDL-AD(2019)021).

3. Revised code of good practice on referendums - issues to be addressed

The Council examined the issues to be addressed in the revision of the Code of good practice on referendums (see [CDL-EL\(2019\)003](#)).

Mr Alivizatos recalled the adoption of the Assembly Parliamentary's Report and Resolution on "Updating guidelines to ensure fair referendums in Council of Europe member States" in January 2019, asking the Venice Commission to update the code. The Assembly's main recommendations include the following:

- referendums should be embedded in the process of representative democracy and should not be used by the executive to override the wishes of parliament or be intended to bypass normal checks and balances;
- proposals put to a referendum should be as clear as possible and subject to detailed prior scrutiny, including by parliament, to ensure that they reflect voters' concerns and express their wishes;
- the campaign should ensure a balance between the different sides and allow voters access to balanced and quality information in order to be able to make an informed choice.

The Assembly report also stresses the independence of the organ responsible for the organisation of referendums.

Updating the Code is justified by recent political developments, including the more frequent use of the referendum, but also by the importance acquired by social networks.

The aim is not to revise everything - in particular, clauses similar to those of the Code of good practice in electoral matters - but to adapt the Code of good practice on referendums to the changes mentioned above. The revised Code will have the same structure as the current one (introduction, guidelines and explanatory report).

There is a discussion on topics such as the inclusion of the referendum in representative democracy, equality of opportunity, clarity of the issue, unity of content, access for people with disabilities, the right to vote for foreigners, the peculiarities of the referendum on secession, the decision-making or consultative nature of the referendum, the impact of social media.

Mrs O'Grady informed the Council that the Congress was working on a report on the local referendum, which is the most widespread in most countries and whose principle is found in the Charter of Local Self-Government. The report is expected to be adopted in the Autumn of 2020, and will take into account recent experiences.

The Council expressed its interest in a dialogue with the Committee on Political Affairs and Democracy of the Parliamentary Assembly on the subject.

4. Albania, Scope of the powers of a President to set the date of elections

Mr Kask pointed out that the Council would deal only with the electoral aspects of the draft opinion.

Ms McMorrow explained that the request for an opinion had been made by the Speaker of the Assembly in the context of impeachment proceedings against the President of Albania. He first cancelled the dates, then postponed the local elections of 30 June 2019 in a situation where the opposition MPs had given up their parliamentary mandates and had decided to boycott these elections. The draft opinion found no legal basis for the President to cancel elections or to postpone them. While the President referred to an exceptional situation and the imminent danger that a demonstration of the opposition might be abused to burn the Assembly, the Constitution provided that a state of emergency had to be initiated by the Council of Ministers and had to be approved by the Assembly. Emergency powers could thus not substitute the lack of a competence of the President and there had been no consensus of the parties to postpone the elections. However, there were several mitigating factors: the President had offered his assistance to the parties to overcome their conflict, in view of precedents the President could reasonably hope that the parties might find an agreement to postpone the elections, there was a difference in the constitutional status of local and parliamentary elections, the presidential decrees were never directly challenged in court and only declared void in incidental proceedings. Taken together, these elements could provide elements to the Assembly that the lack of competence of the President might not be so serious as to warrant an impeachment of the President.

Mr Prebilib pointed out that the Congress had cancelled the observation of the local elections because of (a) uncertainties about the election date, (b) the problem of the democratic competitiveness of the elections, as in 31 out of 61 municipalities only one candidate stood for the vote and (c) security issues. To make election observation meaningful a broad political spectrum had to participate in the elections. Many stakeholders, including the President, had informed the Congress about the situation after the elections with all mayors and municipalities being under the control of the ruling party. The Congress Bureau decided to follow-up closely and to send a presidential mission and a monitoring mission to Albania in early 2020.

Mr Kask informed the Council that in some municipalities only between 8 and 10 per cent of voters had participated, even if the overall participation was about 21 per cent. The rapporteurs had received comments on the draft opinion from the President and Parliament, which would be taken into account in the final version of the opinion.

The Council approved the draft opinion on the scope of the power of the President of Albania to set the date of elections (see CDL-AD(2019)019).

5. Study – election dispute resolution (for information)

The secretariat informed the Council that it was working with the rapporteurs on an amended version which would take into account the written and oral remarks discussed at the last Council. The aim is to submit this revised draft report on the treatment of electoral disputes to the plenary in December (see [CDL-EL\(2019\)001](#) and [CDL-REF\(2019\)010](#)).

6. Communication by the Secretariat

The following activities took place between the 65th and 66th meetings of the Council for Democratic Elections:

- 16th EMB Conference on “Election dispute resolution” (Bratislava, Slovak Republic, 27-28 June 2019);

Mr Kask informed the Commission about the 16th European Conference of Electoral Bodies - electoral disputes and co-organised with the Slovak authorities. 100 participants from 37 countries attended the conference. They represented national electoral administrations and other bodies involved in electoral processes, in particular, judges in charge of electoral disputes. Electoral processes naturally lead to conflict. The challenge then is for all stakeholders to properly resolve such disputes. The law needs to be clear enough to avoid conflicts of jurisdiction and, in practice, all stakeholders must demonstrate a real willingness to implement the law. Compliance must be ensured with fundamental rights - in particular an independent judiciary, an effective judicial remedy and the right to a fair trial - as well as with international standards and national legislation, including:

- the competence of bodies dealing with such disputes,
- the grounds of appeal and the decisions which may be contested,
- the persons or categories of persons entitled to appeal;
- time limits for appealing and adjudicating appeals and
- the clarity of the decision-making process.

The conference was an opportunity to cooperate with other international organizations, such as the OSCE / ODIHR, the ACEEEO and International IDEA, as well as with the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe.

- participation in the II International Conference on “Cybersecurity and Electoral Justice” on the topic “Exponential progress of technology and disinformation and repercussion on electoral campaigns on social networks” (Madrid, 16-17 September 2019);
- participation in a meeting with Montenegrin authorities; expert assistance to the parliamentary Committee on further reform of electoral and other legislation, on the draft code of ethics for political parties during election campaigns (Podgorica, Montenegro, 19 September 2019);
- participation in the International conference “Denied by the system: establishing an all-inclusive system to protect democracy” (Tirana, Albania, 25 September 2019);

- participation in the 28th Conference of the ACEEEO on “Judicial protection of electoral rights and the transparency of elections” (Ljubljana, Slovenia, 25-26 September 2019);
- participation in the OSCE/ODIHR Seminar on Election dispute resolution (Vienna, Austria, 1 October 2019);
- participation in the IFES Seminar on Election dispute resolution (Sarajevo, Bosnia and Herzegovina, 7 – 8 October 2019).

7. Future activities

- participation in the XIVth Inter-American meeting of electoral management bodies (Panama City, Panama, 13 – 14 November 2019);
- legal assistance to the Parliamentary Assembly delegation observing elections in Belarus, 17 November 2019;
- participation in the collaboration on the elaboration of a tool kit on election dispute resolution, (November-December 2019);
- participation in the 14th Annual implementation meeting for endorsers of the Declaration of principles for international election observation (Warsaw, Poland, 20-21 November 2019);
- participation in workshop no.5 of the OCTOPUS Conference, dedicated to “Cybercrime, fake news & election interference” (Strasbourg, France, 22 November 2019);
- participation in a Seminar on election dispute resolution (Tbilisi, Georgia, 29 November 2019);
- co-organisation, with the Parliamentary Assembly of the Council of Europe, of the Regional parliamentary conference on preventing and responding to the misuse of administrative resources during electoral processes (Tbilisi, Georgia, 2-3 December 2019);
- co-organisation, with the Administrative Court of Tunisia, of an international symposium on “Administrative Justice and Electoral Disputes” (Tunis, 12-13 December 2019);
- (New) Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic issues (see [CDL-AD\(2006\)018](#)).

Mr François Friederich presented the Activities of the Directorate General of Democracy in the electoral field:

- Albania: Bridge training for members and staff of the Central Electoral Commission (November); this activity, which has been defined with the Central Electoral Commission, will extend until early 2020;
- Bosnia and Herzegovina: Study on violence against women in politics; following a Parliamentary Assembly study on the harassment of women politicians, DGII decided to undertake a study on this issue in Bosnia and Herzegovina, with a view to assisting in the context of the local elections of Bosnia and Herzegovina in 2020 - this concerns the establishment of a code of good conduct in parliament and in elected bodies, as well as awareness-raising activities;
- Georgia: collaboration in the elaboration of a tool kit on election dispute resolution (November-December), in co-operation with the Venice Commission;
- Georgia: seminar on Election dispute resolution (29 November 2019) in co-operation with the Venice Commission;
- Republic of Moldova: post electoral conference (December 2019), this conference will follow local elections;
- Ukraine: preparation of a tool kit on media monitoring of elections for Civil Society Organisations; this tool is already available, and a conference on the use of new voting technologies will be organised in December at the request of the Central Electoral Commission;

- presentation of the Elecdata platform; this platform contains information on the organisation of elections, electoral administration, electoral legislation, results, participation and representation of women, youth participation; it was developed in co-operation with the Venice Commission Secretariat and the Mexican Federal Electoral Tribunal, who are responsible for the VOTA database.

8. Co-operation with OSCE/ODIHR

The OSCE/ODIHR informed the Council on its current and future activities in the electoral field. In particular, the OSCE / ODIHR will observe with the Parliamentary Assemblies of the Council of Europe and the OSCE the presidential elections in Belarus. The Assembly will also observe parliamentary elections in Uzbekistan. It will organise a number of activities on the follow-up given to its recommendations in the Western Balkans. The Electoral Dispute Resolution manual has just been published, to be followed by a handbook on election observation, which will include social media.

Lord Foulkes stressed the importance of co-operation between the Parliamentary Assembly of the Council of Europe and the OSCE in the electoral field. He wondered whether it would not be possible to have more observation activities in Western Europe and North America. Ms Badalyan indicated that such activities are not always possible due to financial constraints, and that they depend on needs assessment missions. Mr Chahbazian said that it was logical for the Parliamentary Assembly to concentrate on election observation in States whose legislation had been the subject of an opinion by the Venice Commission.

9. Date of the next meeting

The Council is invited to fix the date of its next meeting for Thursday, 5 December 2019 at 10.00 am.

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

CED OCTOBER/OCTOBRE 2019

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

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

Mr Nikos ALIVIZATOS
Mr Josep Maria CASTELLÀ ANDREU
Ms Grainne McMORROW

Secretariat / Secrétariat

Mr Thomas MARKERT
Mr Pierre GARRONE
Mr Schnutz DÜRR
Ms Silvia GRUNDMANN
Mr Serguei KOUZNETSOV
Mr Mesut BEDIRHANOGU

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

**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
(apologised/excused)

Mr Stewart DICKSON, Chamber of Regions/Chambre des régions (apologised/excused)

Substitute members / Membres suppléants

Mr Vladimir PREBILIC, Chamber of Local Authorities/Chambre des pouvoirs locaux

Ms Rosaleen O'GRADY, Chamber of Regions/Chambre des régions

Secretariat / Secrétariat

Ms Renate ZIKMUND

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

Mr François FRIEDERICH

Mr Guillaume LOISEAU

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)

Ms Lusine BADALYAN, Acting Deputy Head of Election Department

EUROPEAN UNION / UNION EUROPEENNE

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

INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS (IFES)

Ms Beata MARTIN-ROZUMILOWICZ, Director for Europe and Eurasia