



Strasbourg, 17 December 2019

**CDL-EL-PV(2019)003**  
Or. Engl./Fr.

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

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

**Venice, 05 December 2019 at 10.00 a.m.**

**MEETING REPORT**

### 1. Adoption of the agenda

The Council adopted its agenda as it appears in document CDL-EL-OJ(2019)003ann, and added the point “co-operation with the Congress”.

### 2. Study – Inclusion of a not internationally recognised territory in a State’s nationwide constituency for parliamentary elections

Mr Cameron explained that the report originated in a request by PACE Rules Committee against the background of the procedural challenge of the credentials of the Russian delegation to PACE. One of the grounds was the inclusion of the Crimean territory into the nation-wide constituency for the elections to the Russian Duma. The Venice Commission had dealt with the illegality of the seizure of the Crimean territory before, the report now reiterated that states and international organisations are under an obligation not to recognise, either explicitly or implicitly, the illegal situation determined by the annexation. The report recalled that elections need to comply with the standards of international law, of international humanitarian law and human rights law, but there were no specific rules on the matter.

The report explained that while the obligation not to recognise an annexation implicitly is indisputable, there are practical limitations to the obligations built into it. This means that there is a margin of appreciation for both states and international organisations as to how to live up to this obligation. For the Parliamentary Assembly, in the Commission’s view, complying with this obligation under international law does not necessarily entail the obligation to refuse the credentials of the Russian delegation.

In the ensuing discussions, the principle of electoral law that despite irregularities an election may still validly express the vote of the people was recalled. The need to take into account the future interests of the inhabitants of the occupied territory as regards their voting rights was also stressed.

**The Council approved the Report on the compliance with Council of Europe and other international standards of the inclusion of a not internationally recognised Territory in a State’s Nationwide Constituency for Parliamentary Elections ([CDL-AD\(2019\)030](#)).**

### 3. Study – election dispute resolution

Mr Holmøyvik presented the revised draft report, which included many amendments and additions, following comments made at the first meeting of the Council in June 2019.

He then submitted a proposal for a timetable for the continuation of the work and future adoption of the report: addition of sources and amendments to the text in response to comments received; addition of an annex on the relevant case law of the European Court of Human Rights and final discussion and adoption by the plenary at its March or June 2020 session. Once the report has been adopted, the Council will put forward a proposal for the development of a list of criteria on the subject.

#### **4. Communication by the Secretariat**

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

- participation in the 3<sup>rd</sup> Plenary Assembly of the Global Network of Electoral Justice debating on mechanisms of representation, equal access to electoral justice and democracy and corruption (Los Cabos, Mexico, 6-8 November 2019);
- participation in the XIV<sup>th</sup> Inter-American meeting of electoral management bodies (Panama City, Panama, 13 – 14 November 2019); in the side-lines of this meeting, the secretariat, the Mexican authorities and the OAS discussed the holding of a joint conference of American and European electoral management bodies in Mexico in the autumn of 2020; the vast majority of the electoral management bodies that had been consulted from both continents are in favour.
- legal assistance to the Parliamentary Assembly delegation observing parliamentary elections in Belarus, 17 November 2019;
- co-organisation of a training for judges and electoral practitioners on the electoral dispute resolution process (Tashkent, Uzbekistan, 21-23 November 2019);
- participation in the 14<sup>th</sup> Annual implementation meeting for endorsers of the Declaration of principles for international election observation (Warsaw, Poland, 20-21 November 2019);
- co-organisation of workshop no. 5 of the OCTOPUS Conference, dedicated to “Cybercrime, fake news & election interference” (Strasbourg, France, 22 November 2019);
- co-organisation of a Seminar on election dispute resolution and presentation of a toolkit for election dispute resolution (Tbilisi, Georgia, 29 November 2019);
- round table on electoral matters in Georgia (Tbilisi, Georgia, 30 November 2019); Mr Barrett and Mr Markert participated in this meeting with the majority and the opposition. The current Constitution provides that the mixed system will still be applied in 2020, and a fully proportional system in 2024. The proposal put forward in 2019 to introduce the proportional system as early as 2020 did not obtain a three-quarters majority in Parliament. Following mass demonstrations, the European Union organised the round table in question. The opposition wishes to introduce the German system, which seems to raise constitutionality issues, as well as the single non-transferable vote in multi-member constituencies; the Commission continues to monitor the case;
- 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).

#### **5. Future activities**

- co-organisation, with the Administrative Court of Tunisia, of an international symposium on “Administrative Justice and Electoral Disputes” (Tunis, 12-13 December 2019);
- participation in a workshop on Political Party Financing (Sarajevo, 27-28 January 2020);
- participation in a workshop on “The legal limits of direct democracy” (Zurich, Switzerland, 28 February 2020);
- preparation of the Guide on the Use of State Resources in Electoral Campaigns in Tunisia (in co-operation with UNDP ; 1<sup>st</sup> quarter of 2020);
- on the project for a joint conference of American and European electoral administrations, see point 4.

## **6. Co-operation with the Congress**

Mr Wienen informed the Council of the Congress' work on local referendums, which were complementary to representative democracy. This report will also deal with citizens' assemblies. Mr Wienen proposed regular exchanges of views between the Venice Commission, which is working on the revision of the Code of Good Practice on Referendums, and the Congress. Mr Kask said that the revision of the Code will focus on national referendums.

Following the adoption of a resolution on the local elections in Turkey observed by the Congress, the Congress could ask the Commission for an opinion on the conformity of the dismissal and refusal to appoint elected mayors with the rule of law.

## **7. 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 the parliamentary elections in Uzbekistan. It organises many activities in the Western Balkans under a programme funded by the European Union and Austria; it has also been active in Georgia. It has drafted an opinion on the draft law on elections in Mongolia. It continues to prepare the manual on election observation, which will include social media. On the 14th Annual Implementation Meeting of the Declaration of Principles for International Election Observation, see item 4.

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

The Council is invited to fix the date of its next meeting for Thursday, 19 March 2019 at 10.00 am.

## **LIST 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 Oliver KASK (Chair/Président)  
Mr Ben VERMEULEN)

#### *Substitute Members of the CDE / Membres suppléants du CED*

Mr Eirik HOLMØYVIK (confirmed)  
Mr Pere VILANOVA TRIAS

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

Mr Gianni BUQUICCHIO (Chair/Président)  
Mr Veronika BÍLKOVÁ  
Mr Iain CAMERON  
Ms Katharina PABEL  
Mr José Luis VARGAS VALDEZ

#### *Secretariat / Secrétariat*

Mr Thomas MARKERT  
Ms Simona GRANATA-MENGHINI  
Mr Schnutz DURR  
Mr Pierre GARRONE  
Mr Mesut BEDIRHANOGLU  
Mr Gaël MARTIN-MICALLEF

#### *Experts*

Mr Alberto GUEVARRA CASTRO  
Ms Anne PETERS

### **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

#### *Substitute members / Membres suppléants*

#### *Secretariat / Secrétariat*

### **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

#### *Substitute members / Membres suppléants*

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)**

**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 Ana RUSU, 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)**