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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT REPORT

ON

**MEASURES TO IMPROVE
THE DEMOCRATIC NATURE OF ELECTIONS
IN COUNCIL OF EUROPE MEMBER STATES**

on the basis of comments made by

Mr Jean-Claude COLLIARD (Member, France)

**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*

I. Introduction

1. At its meeting of 14 December 2011, the Parliamentary Assembly's Political Affairs Committee discussed measures to improve the democratic nature of elections in Council of Europe member states, with a view to adoption by the Assembly of a report on this question in 2012. The committee based its discussions on an outline report written by Mr Jean-Charles Gardetto (Monaco, EPP/CD).¹ The representative of the Venice Commission, Mr Jean-Claude Colliard (Member, France) presented the work of the Commission in this area. The Political Affairs Committee then requested a written contribution from the Venice Commission on this topic.

2. This report is intended first of all to provide a brief overview of what has been achieved in this field, often referred to as "Europe's electoral heritage" and secondly, to identify areas where progress can still be made in the near future.

3. In point of fact, the Venice Commission has, over the last two decades, written several documents of a general nature outlining international standards in the electoral field.

4. Co-operation with the Parliamentary Assembly is particularly valuable in this regard. The Council for Democratic Elections, in which the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities are involved, is a key forum for reflection and discussions on this question.

5. *This report was adopted by the Council for Democratic Elections at its ... meeting (Venice, ...) and by the Venice Commission at its ... session (Venice, ...).*

II. Europe's electoral heritage

6. The first task for the Council for Democratic Elections was the drafting of the Code of Good Practice in Electoral matters, which sought to provide a compilation of the applicable standards common to Europe's electoral heritage. This Code² was approved by the Parliamentary Assembly and the Congress of Local and Regional Authorities, and the Committee of Ministers expressed its support for the document in a solemn declaration.

7. Most of these standards derive from conventional constitutional principles applicable to electoral law: universal, equal, free and secret suffrage carried out at regular intervals. Alongside these principles are the necessary conditions for their effective implementation; these include respect for human rights, the stability of electoral law and procedural guarantees such as the organisation of elections by an impartial body with an efficient observation system and an effective system of appeal.

8. On paper, all this is set out, in greater or lesser detail, in the legislation of Council of Europe member states. In practice, it is a little more delicate: for example, free suffrage is of course freedom of expression, as secured in principle by the above-mentioned standards, but it also refers to the freedom of voters to form an opinion, in particularly through the neutrality of the public media, which is often more difficult to achieve.

9. From this point of view, Mr Gardetto's report usefully identifies a number of recurring problems noted in election observation reports. These will not be dealt with one by one, but it should be noted that many tie in with topics which the Commission has already addressed or intends to address. In this connection, reference should be made to its 2006 report on electoral law and electoral administration in Europe - Synthesis study on recurrent challenges and

¹ AS/Pol (2010) 31.

² CDL-AD(2002)023rev.

problematic issues³ and its 2010 report on the timeline and inventory of political criteria for assessing an election.⁴

10. Among the principles of Europe's electoral heritage, a number of key points should be emphasised:

- The universal nature of suffrage:

11. This requirement is, in theory, satisfied with regard to the right to vote, even though frequently there still remains the issue of voter registration which should be made much easier or even automatic. It is less so in terms of the right to stand for election, which is its corollary: while there are various acceptable restrictions (residence, no conviction of serious crimes, etc.), others may be more debatable (requirement for a number of supporting signatures, financial deposit) all of which are not reprehensible in principle but must be applied in a reasonable way and not become insurmountable.

- The neutrality of the state and the administration:

12. This requirement is particularly fundamental since the government is a stakeholder insofar as its very existence may depend on the results of the elections. It is therefore difficult for it to be both judge and party, even though this does occasionally happen, for example in France where the one consolation is that it is under the supervision of the courts. Despite the fact that this does constitute a genuine safeguard, it does not necessarily look the ideal approach.

13. It is therefore essential to stress the importance of an independent electoral administration, or at least independent electoral commissions, particularly for the drawing up of constituencies, the allocation of seats, the way the campaign is run, the calculation of funding and reimbursements, etc. The Venice Commission has, moreover, begun studying the question of the use (and misuse) of administrative resources.

- The problem of campaign funding:

14. While the public funding of political activities is now broadly accepted and widespread, there are still many problems as regards application: the ratio applied between parties and candidates and, perhaps most importantly, the issue of setting a maximum amount of election expenditure to avoid situations in which money plays a dominant role, as can be seen in the United States. In addition, the rules laid down must be effective, which presupposes a control mechanism and genuine penalties for non-compliance.

15. To this can be added the question of the legality of donations from businesses and private organisations, given that it is difficult to imagine that their contributions have no ulterior motive. A great deal of thought needs to be given as to whether these should be prohibited (as they are in France), limited, made public, etc.

- The media issue:

16. It would appear to be relatively clearly established that state-owned media should be subject to rules of equity and equality, but this is not so easy to enforce and in practice is one of the most violated of principles.

17. However, what about the media that are in private hands? One just needs to mention the names of Fox or Berlusconi to show how important this can be in political debate. Is it

³ CDL-AD(2006)018.

⁴ CDL-AD(2010)037.

acceptable for such media to campaign on behalf of a particular candidate or party? Traditionally, this has been accepted for the press, but it is a much more sensitive question as far as broadcasting is concerned in view of the latter's impact. This is an area where rules have yet to be written, and at the moment we are only at the very initial stages.

III. Future developments

18. There are still many issues to consider, especially for the Venice Commission, and Mr Gardetto's report will undoubtedly help in this endeavour.

19. As stated above, the Venice Commission has begun a study on the use of administrative resources.

20. It has also received a request from the Parliamentary Assembly's Political Affairs Committee relating to the limitation of parliamentary terms of office, comprising two aspects:

- limiting the duration of terms of office – is this desirable? Without going so far as the general principle of non-reelection applied in Mexico, which as we know can be circumvented in practice, should there be a limit – two terms of office, three terms of office, or an age limit, the compulsory retirement of elected representatives? This question, which is central regarding the executive in presidential systems, is now being asked for the legislative;
- concurrent offices, for example local and national; the Venice Commission is, as a first stage, preparing a comparative study of the rules and practices observed in the different Council of Europe member states, and could subsequently consider drafting guidelines.

21. This will lead to exploring in greater detail some of the points already addressed in the aforementioned report on electoral law and electoral administration in Europe.⁵

22. This very detailed report noted "problems and open challenges of the electoral legislation and administration process". It comprises 12 chapter headings, but of course here the Commission will not go into all of these points. Most have been addressed not only in this report, but also in other Venice Commission documents.

23. The Venice Commission remains at the disposal of the Parliamentary Assembly to further develop certain aspects which the Assembly considers worthy of more detailed examination.

24. The topics that could be addressed or further developed include state neutrality and administration in the electoral process: the Venice Commission has already begun work on this question, and more particularly the use of administrative resources.

25. If necessary, other specific topics already addressed by the Venice Commission could be further developed, such as:

- the independence of electoral commissions, the logical follow-on from the previous point;
- the question of the rules applying to the media, both public and private, in ordinary times and particularly during election campaigns;
- the question of election campaign funding, and especially the rules applying to funding from legal entities (limitation, publication, prohibition?);
- the effectiveness of appeals in electoral matters and the guarantees they offer.

⁵ CDL-AD(2006)018.