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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

57th MEETING
OF THE COUNCIL FOR DEMOCRATIC
ELECTIONS

Venice, 8 December 2016 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 document [CDL-EL-OJ\(2016\)004ann](#).

2. Armenia – Law on Political Parties

At the October 2016 session of the Venice Commission, the Minister of Justice of Armenia requested the opinion of the Venice Commission on Armenia's draft constitutional law on political parties ([CDL-REF\(2016\)063](#)). A joint draft opinion ([CDL-PI\(2016\)012](#)) by the Venice Commission and the OSCE/ODIHR on this draft, drawn up on the basis of comments by Mr Barrett, Ms Biglino, Mr Darmanovic and the OSCE/ODIHR experts, was submitted to the Council for adoption.

Mr Barrett introduced the draft opinion, stressing that the draft law had been prepared following the adoption of a new Constitution in Armenia in December 2015. There was therefore a constitutional mandate to adopt a new Law on Political Parties, which will replace the 2002 Law currently in force. This draft requires a qualified majority of 3/5 of the deputies of the Assembly to be adopted.

The draft followed the constitutional mandate and, if adopted, would liberalise the formation and registration of political parties in Armenia. The draft reduced the number of founding members, as well as the minimum amount of members required to register the party, and it also lowered the territorial representation of parties. The need to reduce territorial and membership requirements had been raised in the past and it was positive that relevant provisions had been changed in the draft. At the same time, the draft law would benefit from certain revisions and additions. Political parties were in most democracies understood and treated as an extra-constitutional category. Over-regulation in this field was always dangerous, and while a law might in some way create a legal backdrop for improving internal democracy, regulating intra-party organisation too much might not actually be useful for achieving greater intra-party democracy. In particular, the draft law contained provisions that extensively regulated the internal operation of political parties but did not cover a number of aspects concerning the financing of political parties, nor did it promote and encourage intra-party gender equality. The rules on suspension of political parties and the meaning of “gross violation of the law” had to be clarified and strictly defined.

Mr Wiene also explained the recent experience of the Congress in the observation mission of the local elections in Armenia. Even though the use of new voting technologies was announced, no procedures or tests were put in place.

Mr Vermeulen asked to make references to the treaty provisions mentioned, and the fact that the law was generally in conformity with the standards available. He also pointed out to the tensions between the need for autonomy of political parties and the requirement to include specific regulations to promote, among other issues, gender equality provisions. The need to take into account counterbalancing values and to explain further the possibility of limiting the freedom of association in those specific circumstances had to be reflected in the text. Mr Balfe referred to Article 14 of the draft, which already included the principle of non-discrimination.

The Council adopted the Joint Opinion of the Venice Commission on the draft constitutional law on political parties of Armenia ([CDL-AD\(2016\)038](#)).

3. The misuse of administrative resources during electoral processes: the role of local and regional elected representatives and public officials – Congress resolution

At its 31st session (October 2016), the Congress of Local and Regional Authorities of the Council of Europe adopted [Resolution 402](#) (2016) on "misuse of administrative resources during electoral processes: the role of local and regional elected representatives and public officials". This resolution follows the adoption by the Council for Democratic Elections and the Venice Commission of the joint guidelines of the Venice Commission and the OSCE/ODIHR to prevent and respond to the misuse of administrative resources during electoral processes ([CDL-AD\(2016\)004](#)).

Mr Dickson presented the resolution. It noted that the issue of misuse of administrative resources is being addressed more at the national level than at the local level. However, as stated in [resolution 402](#), the specific role that elected representatives and local and regional public officials can play within electoral processes, as well as the intrinsic link on the ground between out-going elected officials, candidates and public officials, on the one hand, and voters on the other, justify attacking this problem from a local and regional perspective.

The resolution called, in particular, on associations of local and regional authorities of Council of Europe member States to engage in awareness-raising activities to develop a public ethos culture at local level, and suggested that local and regional authorities encourage civil servants and public officials to sign voluntary declarations of neutrality. It aimed at developing a checklist to assess compliance with international standards and best practices to prevent the misuse of administrative resources in electoral processes at local and regional.

Mr Kask thanked Mr Dickson and the Congress for their work and underlined the Council for Democratic Elections' interest on commenting on the checklist. Several other speakers emphasised the relevance and importance of the Congress initiative.

Ms Binder, Congress expert, summarised the main points of the report (document [CG31\(2016\)07final](#)), which led to [Resolution 402](#).

The report referred to the role of election observers in identifying problems arising during the campaign, which included pressure exerted on civil servants and public employees and the lack of clear division between State and party, disproportionate importance is given to the incumbent by the media, election day pressures, fraud, inadequate implementation of legislation or lack of political will to address abuses. The issue of misuse of administrative resources during electoral processes is dealt with in a number of international and national texts, even if some States are more interested in self-regulation. The checklist should address both the need for a legal framework indicating what is allowed and what is not, and also the need for self-regulation, civil society control, sanctions and remedies.

The preparation of the checklist is an opportunity to strengthen co-operation between the Congress on one side, and the Venice Commission and the OSCE/ODIHR on the other. Ms Binder will prepare a first draft by the end of 2016, and then the Venice Commission and the OSCE/ODIHR will provide joint comments, if necessary with GRECO. The draft checklist will be debated by the Council for Democratic Elections at its meeting March 2017, with a view to its adoption by the Congress at the end of this month.

The Council took note of the Congress' [Resolution 402 \(2016\)](#) on the misuse of administrative resources during electoral processes: the role of local and regional elected representatives and public officials.

4. Communication by the Secretariat

- Ukraine

The secretariat presented planned activities in the Ukraine, notably the exchanges of views with the informal working group on Electoral Reform established by the Rada President on the various draft pieces of electoral legislation registered with the Rada.

The informal working group on electoral reforms created by the Speaker of Rada had examined the five draft laws on parliamentary elections registered with the Rada but a compromise had not been found on the choice of electoral system; most MPs from single-member constituencies opposed the introduction of a proportional system with open lists. In addition, Rada had not yet appointed new members of the Central Electoral Commission (most of the mandates having expired two years ago), which could delay the reform.

Some amendments to electoral legislation could take place in 2017, and the Venice Commission, in co-operation with the OSCE, the European Union and IFES should be involved.

The Council was informed that the 49 deputies had referred the amendments to the electoral law concerning the exclusion of candidates from party lists to the Constitutional Court (this law had been the subject of the opinion of the Venice Commission adopted in June 2016, [CDL-AD\(2016\)018](#)).

- Activities organised since the last meeting

Since the Council's October 2016 meeting the following activities, organised by the Venice Commission or in which the Venice Commission participated, have taken place in the field of elections and political parties:

- Legal assistance to the Parliamentary Assembly of the Council of Europe's delegation observing Parliamentary elections in Montenegro (16 October 2016);
- OSCE Anti-Corruption Expert meeting – “Lessons from South Eastern Europe” (Vienna, 24-25 October 2016);
- Regional Conference on “Follow-up to the recommendations of international Election Observation Missions in the countries of the Eastern Partnership” (Venice, 24-25 October 2016);
- Legal assistance to the Parliamentary Assembly of the Council of Europe's delegation observing Parliamentary elections in the Republic of Moldova (30 October 2016);
- OSCE/ODIHR Seminar on Election Observation and Follow-up of Recommendations (Vienna, 2 November 2016);
- 2nd meeting of the Ad hoc Committee of Experts on Legal, Operational and Technical Standards for e-voting (CAHVE) (Strasbourg, 3-4 November 2016);

- Legal assistance to the Parliamentary Assembly of the Council of Europe's delegation observing the first round of presidential elections in Bulgaria, 6 November 2016;
- 2016 Annual meeting of the core group of experts on political parties (Warsaw, 10-11 November 2016). The group initiated the revision of the joint OSCE/ODIHR and Venice Commission guidelines on the regulation of political parties ([CDL-AD\(2010\)024](#));
- Expert meeting on implementation of EU/OSCE election mission' recommendations and follow-up (Brussels, 28 November 2016);
- Legal assistance to the Parliamentary Assembly of the Council of Europe's delegation observing Parliamentary elections in "the former Yugoslav Republic of Macedonia" (11 December 2016).

5. Future activities

As mentioned above (point 4), the Venice Commission and the OSCE/ODIHR are called upon to work on the revision of the joint guidelines on the regulation of political parties. The revision was launched in 2015 as part of the annual meeting of the OSCE/ODIHR's Expert Working Group on Political Parties, held in Warsaw. Mr Esanu had taken part in 2015 and also took part in the meeting which was held on 10 and 11 November 2016, which also took place in Warsaw. At the last meeting, it was agreed to continue the revision of the joint guidelines by selecting several key subject, the definition of political parties; rules on party autonomy and internal democracy; measures to improve the principle of gender equality in political parties; rules governing the financing of political parties and new technologies. Mr Esanu, Mr Alivizatos and Mr Vermeulen will work on this revision in 2017. The joint guidelines will be adopted at the end of 2017 or the beginning of 2018.

The Monitoring Committee of the Parliamentary Assembly has asked the Venice Commission for an opinion on the amendments made to the Electoral Code of Bulgaria since the last joint opinion with the OSCE/ODIHR on the draft electoral code ([CDL-AD\(2014\)001](#)). This opinion will be prepared jointly by the Venice Commission and the OSCE/ODIHR.

Drafting a joint opinion with the OSCE/ODIHR on a revised draft electoral legislation of Albania is foreseen once such a project is available. An opinion on a draft revision of the Albanian legislation on the financing of political parties is also possible.

The Venice Commission, in co-operation with the UNDP, will take part in the organisation of the General Assembly of the Organisation of Arab Electoral Management Bodies on 7 February 2017, in Tunis. This activity will be followed by a conference on the independence of electoral administrations.

The Independent High Authority for the Tunisian Elections (ISIE) has invited the Commission to participate in a conference on the financing of electoral campaigns on 28-29 March 2017.

The first draft report on 25 years of international election observation should be submitted to the Council at its meeting in March 2017.

The Venice Commission's secretariat is preparing two compilations, one on referendums and the other on electoral disputes. The latter could be followed by a comparative study on the same theme. Mr Vargas suggested that the Latin American experience be taken into account.

The Council has already discussed the possibility of a study on gerrymandering. However, the theme seems narrow and it would be better to deal with the division of constituencies and the equal voting power in general.

Mr Kask, Mr Barrett and Mr Balfe are all designate rapporteurs. Ms Martin-Rozumilowicz had indicated that IFES has abundant documentation on the United States.

The Council then discussed the possibility of preparing a report on the identification of electoral fraud by statistical methods. Mr Garrone indicated that he had contacted people involved in this research, political scientists, statisticians or computer scientists: Prof Carsten Schürmann (Copenhagen), Prof Daniel Bochslers (Zurich and Copenhagen); Prof Philip B. Stark (Berkeley University), Mr Juraj Medzihorsky (Central European University). A report on the issue would seek to identify statistical evidence that would suggest irregularities or malfunctions in the system, rather than narrowly defined fraud (including mechanical or electronic systems).

The Council invited the secretariat to contact experts with a view to preparing a preliminary Study on the matter. Mr Shlyk believed that bodies responsible for the observation of elections should be consulted.

The Venice Commission has participated in the first two meetings of the Committee of Experts on Media Pluralism and Transparency of Ownership (MSI-MED). A third meeting is planned for March 2017. The draft feasibility study on the use of the Internet in elections, submitted to the second meeting, suggested reviewing the documents of the Venice Commission on election observation. If the Committee of Experts follows this suggestion, the Council may be invited to consider whether it intends to prepare a text on this matter.

Members were invited to make proposals for future activities.

Mr Vargas suggested addressing the issue of social networks in electoral campaigns. The matter will be discussed at a later meeting.

6. Co-operation with the OSCE/ODIHR

An exchange of views took place with representatives of the OSCE/ODIHR, on the possibilities of future co-operation.

Mr Shlyk indicated that the co-operation between OSCE/ODIHR and the Venice Commission had been very valuable and had helped to strengthen common messages. Mr Barrett's participation in November in an event in Vienna on the new Electoral Code of Armenia with representatives of this country was very much appreciated and was useful in discussing the follow-up to the recommendations included in observation reports. The work to prepare the observation of elections in Bulgaria and Armenia is starting with a needs assessment mission, and all activities will be done in co-operation with the Venice Commission. OSCE/ODIHR is also very much interested in contributing to any future study on election dispute resolutions.

7. Date of the next meeting

The Council fixed its next meeting for Thursday 9 March 2017 at 10.00 a.m.

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)

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Mr Srdjan DARMANOVIC (excusée/apologised)
Mr Aivars ENDZINS (excusée/apologised)
Mr Oliver KASK (Vice-Chair/Vice-Président)

Substitute Members of the CDE / Membres suppléants du CED

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Ms Paloma BIGLINO CAMPOS (excusée/apologised)
Mr Paul CRAIG (excusée/apologised)
Mr Ben VERMEULEN

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Ms Josette DURRIEU, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie (excusée/apologised)
Mr Jordi XUCLÀ, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe/Commission pour le respect des obligations et engagements des Etats membres du Conseil de l'Europe

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Ms Eka BESELIA, Committee on Legal Affairs and Human Rights/Commission des questions juridiques et des droits de l'homme (excusée/apologised)
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Members / Membres

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Mr Jos WIENEN, Chamber of Local Authorities/Chambre des pouvoirs locaux (Chair)

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Mr Alexander SHLYK, Head of the Election Department

Mr Alexey GROMOV, Election Adviser

Mr Marcin WALECKI, Head of the Democratisation Department

Ms Alice THOMAS, Chief of the Legislative Support Unit

EUROPEAN UNION / UNION EUROPEENNE

European External Action Service (EEAS) / Service européen pour l'action extérieure (SEAE)

Mr Emanuele GIAUFRET (excusée/apologised)

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Mr Pietro DUCCI, Democracy and Elections Unit (excusée/apologised)

INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE (INTERNATIONAL IDEA)

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