



Strasbourg, 18 November 2021

CDL-EL-PV(2021)002*

Or. Engl./Fr

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

72nd MEETING
OF THE COUNCIL FOR DEMOCRATIC
ELECTIONS
Hybrid
14 October 2021 at 10 a.m. – 11:30 a.m.

DRAFT 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 adopted its agenda as it appears in this document.

2. Albania – Draft Amicus Curiae Brief on the competence of the Constitutional Court of Albania regarding the validity of the local elections held on 30 June 2019

Mr Holmøyvik said that the opinion dealt with three questions posed by the Constitutional Court of Albania. The first question concerns the interpretation of Article 131 (1) (e) of the Constitution, which deals with the eligibility of the President of the Republic, deputies and "officials of the bodies provided for in the Constitution", and the verification of their election. The rapporteurs are of the opinion that municipal councillors and mayors are "officials of the bodies provided for in the Constitution", but that the competence of the Constitutional Court does not include the examination of the validity of local elections. This does not prevent the Constitutional Court from exercising its control over electoral legislation.

The second question concerns the principles of the regularity of elections and political pluralism and their interrelation. These principles are unlikely to conflict with each other because they are expressed in very different types of rules. Parliament has a wide margin of appreciation in deciding to provide a legal basis for postponing elections; in the absence of such a basis, the Constitutional Court could consider the postponement unconstitutional.

On the (third) question of whether, in a climate of legal uncertainty, the actions of public authorities and political parties violated the right of voters to have a meaningful choice, the draft memorandum points out that political uncertainty has profoundly and recurrently affected the Albanian political scene. If "public authorities and political parties" have not ensured "the best interest of the voter", the reason is not only their "actions" but the ongoing controversies between them that erode the very legitimacy of democracy before the electorate. Mr Holmøyvik said that it was the joint responsibility of the public authorities and the entire political spectrum to restore confidence in Albania's institutions and in the electoral process. This includes the responsibility of all stakeholders to promote political dialogue between political forces as well as between national institutions, such as the Central Election Commission. It also includes restoring meaningful choice for voters. All these elements are essential, but not exclusive, preconditions for democratic elections.

The Council approves the Amicus Curiae Brief on the competence of the Constitutional Court of Albania on the validity of the local elections of 30 June 2019 (CDL-AD(2021)037).

3. Hungary – Draft joint opinion on the 2020 amendments to the electoral legislation

Mr Darmanovic informed the Council that, as often in the last years with Hungarian laws, a request was made after the law had been passed in Parliament, at the request of the Parliamentary Assembly of the Council of Europe. The amendments were full of technical improvements which were welcome. The opinion mainly concentrated on two issues:

- 1) The need to adopt electoral legislation by broad consensus after extensive public consultations with all relevant stakeholders. This requirement had not been satisfied in the previous amendments which were submitted for opinion to the Venice Commission and ODIHR in 2012, and still was not in 2020, which is regrettable;
- 2) On the substance, as agreed by all interlocutors during the online visit, the essential issue was the sudden and dramatic increase of the number of single-member constituencies in

which parties need to nominate candidates if they want to be allowed to stand in the proportional part of the elections: from 27 to 71 constituencies, and from 9 to 14 districts (in addition to Budapest). This amendment was introduced late in the legislative process. The majority stated that the amendments were designed at excluding fake parties, but its main effect is to favour big parties and in particular the incumbents, forcing all opposition to unite if it wants to obtain a significant number of majoritarian seats. The draft therefore recommended significantly reducing the number of single-member constituencies in which each party needs to nominate candidates simultaneously in order to be able to run a national list of candidates.

The Hungarian authorities had asked to postpone the opinion since Hungary will hold legislative election in six months. Mr Darmanovic remarked that there were precedents when the Commission provided opinions in similar or shorter times before elections even at request of the Parliamentary Assembly or the Congress of Local and Regional Authorities of the Council of Europe. There is ample time for implementing the opinion, in particular its main recommendation.

Ms Kseniya Dashutsina, on behalf of ODIHR, added that the use of cardinal laws was not appropriate in the electoral field, at least for provisions of technical character, as underlined in the past by ODIHR. She also raised the issue of the exclusion from the right to vote of mentally disabled citizens. The draft opinion was largely positive on technical issues, in particular concerning the registration process and the adaptation to the challenges posed by COVID-19.

Mr Kask concluded that the decision on a possible postponement would be made by the plenary session of the Venice Commission after hearing the Hungarian authorities, but it was clear that the rapporteurs and ODIHR were not in favour of such postponement.

The Commission adopted the Joint Opinion on the 2020 amendments to the electoral legislation of Hungary (CDL-AD(2021)039).

4. Future activities

Mr Kask informed the Council:

- that he would take part in a panel discussion on the occasion of ODIHR's 30th anniversary during the afternoon of 15 October 2021.
- That the 18th European Conference of Electoral Management Bodies, dedicated to "Lessons learned from the impact of the COVID-19 health crisis on electoral processes", would take place online on 29 October 2021. It would be co-organised by the Venice Commission and the National Electoral Committee of Estonia and be under the Hungarian Chairmanship of the Council of Europe's Committee of Ministers.

5. Date of the next meeting

The Council fixed the date of its next meeting for Thursday, 9 December 2021 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 Ben VERMEULEN (apologised/excusé)

Mr Oliver KASK **President/Président**

Ms Janine OTÁLORA MALASSIS (apologised/excusée)

Substitute Members of the CDE / Membres suppléants du CED

Mr Richard BARRETT

Mr Eirik HOLMØYVIK

Ms Katherina PABEL (apologised/excusée)

Mr Pere VILANOVA TRIAS

Secretariat / Secrétariat

Ms Simona GRANATA-MENGHINI

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Mr Pierre GARRONE

Mr Gaël MARTIN-MICALLEF

Mr Michael JANSSEN

Experts**PARLIAMENTARY ASSEMBLY / ASSEMBLEE PARLEMENTAIRE**Members / Membres

Mr Antonio GUTIÉRREZ, Committee on Legal Affairs and Human Rights/Commission des questions juridiques et des droits de l'homme

Mrs María Valentina MARTINEZ FERRO, 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/excusé)

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Mr Givi MIKANADZE, Committee on Legal Affairs and Human Rights/Commission des questions juridiques et des droits de l'homme (apologised/excusé)

Mr Piero FASSINO, Committee on Political Affairs and Democracy/Commission des questions politiques et de la démocratie (apologised/excusé)

Mr Claude KERN, 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/excusé)

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES (CLRAE) / CONGRES DES POUVOIRS LOCAUX ET REGIONAUX (CPLRE)Members / MembresMr Stewart DICKSON, Chamber of Regions/Chambre des régions **Vice-President/Vice-président**

Ms Gunn MARIT, Chamber of Regions/Chambre des régions (apologised/excusé)

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Ms Randi MONDORF, Chamber of Regions/Chambre des régions (apologised/excused)
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Mr Ulvi AKHUNDLU, Deputy Head of Election Department
Ms Kseniya DASHUTSINA, Election Adviser

EUROPEAN UNION / UNION EUROPEENNE

European External Action Service (EEAS) / Service européen pour l'action extérieure
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**INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE
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INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS (IFES)

Mr Nermin NISIC, Director for Albania, Bosnia and Herzegovina and Serbia
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