

The work of the Venice Commission in the field of electoral assistance

By

Sergey Kuznetsov

Department of elections and referendums, Venice Commission.

The Venice Commission

The European Commission for Democracy through Law, better known as the Venice Commission, is the Council of Europe's advisory body on constitutional matters.

Established in 1990 as a partial agreement of 18 member states of the Council of Europe, the Commission became an enlarged agreement in February 2002, thus allowing non-European states to become full members. At present all Council of Europe Member States are members of the Venice Commission. In addition, Kyrgyzstan joined the commission in 2004 and Chile in 2005. Argentina, Canada, the Holy See, Israel, Japan, Kazakhstan, the Republic of Korea, Mexico, the United States and Uruguay are observers. South Africa has a special co-operation status similar to that of the observers. The European Commission and OSCE/ODIHR participate in the plenary sessions of the Commission.

According to Article 1 of the Revised Statute of the European Commission for Democracy through Law the Commission is an independent consultative body which co-operates with the member states of the Council of Europe, as well as with interested non-member states and international organisations and bodies. Its own specific field of action shall be the guarantees offered by law in the service of democracy.

The Venice Commission is composed of “independent experts who have achieved eminence through their experience in democratic institutions or by their contribution to the enhancement of law and political science” (article 2 of the revised Statute).

The members of the Commission act on the commission in their individual capacity, the members are appointed for four years by the participating countries.

The work of the European Commission for Democracy through Law aims at upholding the three underlying principles of Europe's constitutional heritage: democracy, human rights and the rule of law. The Commission meets four times a year in Venice for plenary sessions and works in the following four main fields:

- constitutional assistance
- elections and referendums
- co-operation with constitutional courts
- transnational studies, reports and seminars.

As regards electoral matters the Commission strives to bring the electoral legislation of member states up to European standards. For any democratic society, free and fair

elections are of paramount importance; therefore, the Venice Commission has defined the principles applicable to democratic elections in the Code of Good Practice in Electoral Matters and a number of other standard-setting texts. It also drafts opinions and recommendations on the electoral legislation of member countries and organises training seminars targeting all actors involved in the electoral process. Another important aspect of co-operation consists in exchange of experience in the field of electoral legislation which is carried out through specialised meetings and the VOTA database. In August 2005 an internet FORUM was set up to facilitate an exchange of views between participating national electoral management bodies and international organisations. To a large extent these activities are carried out through the Council for Democratic Elections, a joint body set up in co-operation with the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe.

This report will try to give a brief information on the Council for Democratic Elections and on different activities and projects run by the Venice Commission in the field of electoral management.

(Most of the documents quoted in this report are available at the Web-site of the Venice Commission: www.venice.coe.int).

The Council for Democratic Elections

In 2002 the Commission set up, together with the Parliamentary Assembly and the Congress of Local and Regional Authorities, a new, tripartite body: the Council for Democratic Elections.

The Venice Commission had intensive co-operation with a number of States in the field of electoral assistance in the former years, too. The most important aspect of this co-operation is the adoption of opinions on electoral legislation. In this respect the Venice Commission increased its co-operation with ODIHR and started a practice of joint opinions of the two institutions.

On 8 November 2001 the Permanent Commission of the Parliamentary Assembly, acting on behalf of the Assembly, adopted resolution 1264 (2001), inviting the Venice Commission to:

- “i. set up a working group, comprising representatives of the Parliamentary Assembly, the CLRAE and possibly other organisations with experience in the matter, with the aim of discussing electoral issues on a regular basis;*
- ii. devise a code of practice in electoral matters which might draw, inter alia, on the guidelines set out in the appendix to the explanatory memorandum of the report on which this resolution is based (Doc. 9267), on the understanding that this code should include rules both on the run-up to the election, the elections themselves and on the period immediately following the vote;*
- iii. as far as its resources allow, to compile a list of the underlying principles of European electoral systems by co-ordinating, standardising and developing current and planned surveys and activities. In the medium term, the data collected on*

European elections should be entered into a database, and analysed and disseminated by a specialised unit.”

Following this resolution, the Council for Democratic Elections was founded on 7 March 2002. It consists of members of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe.

The ODIHR, the Parliamentary Assembly of the OSCE, the European Commission, the European Parliament and, as of the 3rd meeting (16 October 2002), the ACEEEO (Association of Central and Eastern European Election Officials) were all invited to participate in its work as observers.

The Council adopted its Internal Rules of Procedure on 11 March 2004 (CDL-EL(2003)017rev).

According to Article 1 of the Rules the Council for Democratic Elections is made up of:

9 members and 9 substitutes, as follows:

- 4 members and 4 substitutes appointed by the Venice Commission;
- 3 members and 3 substitutes appointed by the Parliamentary Assembly of the Council of Europe;
- 2 members and 2 substitutes appointed by the Congress of Local and Regional authorities of the Council of Europe.

Unless otherwise decided, the CDE shall hold its meetings on the day preceding the plenary meeting of the Venice Commission. The CDE appoints rapporteurs on questions submitted to its attention.

Code of Good Practice in Electoral Matters

As it was mentioned in the previous paragraphs, the Parliamentary Assembly resolution set three tasks to the Council.

First, to establish a permanent working group – this has been satisfied by setting up the Council itself. The second aim was to prepare a code of good practice in electoral matters. The Code of Good Practice in Electoral Matters was adopted by the Venice Commission at its 52nd session.

The Code contains guidelines and an explanatory report offering details on the issue. It aims to define a European electoral heritage which should be respected when organising democratic elections. The document is divided into two parts. The first part deals with the principles of European electoral heritage, namely free, equal, universal, secret and direct elections at regular intervals. The second part relates to the conditions of implementation of these principles and in particular to the respect of fundamental rights such as freedom of expression, assembly and association, observation of elections and guarantees to be ensured with respect to funding and security.

The Code of Good Practice is not a binding document under international law. The Code of Good Practice in Electoral Matters was forwarded to the Parliamentary Assembly which on 30 January 2003 adopted Resolution 1320 (2003) and Recommendation 1595 (2003), both concerning the Code of Good Practice in Electoral Matters (CDL-AD (2002) 23. These documents gave the Code of Good Practice, which had already been adopted by the Council for Democratic Elections and the Venice Commission, official status at Parliamentary Assembly level. The recommendation called on the Committee of Ministers to transform the Code of Good Practice in Electoral Matters into a European convention.

The Code of Good Practice in Electoral Matters was also debated at a CLRAE meeting on 20 March 2003.

The Committee of Ministers of the Council of Europe, at its 114th session at Ministerial level (12-13 May 2004), adopted a declaration on the Code of Good Practice in Electoral Matters, and undertook to give political support to this document drawn up by the Council for Democratic Elections. Following this, the Committee of Ministers forwarded to the Parliamentary Assembly a complementary reply to Recommendations 1595(2003) of the Parliamentary Assembly and 124(2003) of the Congress of Local and Regional Authorities of the Council of Europe. Before a decision is taken on whether to draw up a Convention on this matter, the Committee of Ministers prefers, as does the Venice Commission, to take into consideration the experience gained in the application of the Code.

Opinions and Recommendations

One of the main activities of the Council for Democratic Elections remains the preparation of opinions and recommendations on national legislation and practice in the field of elections. From the very beginning of its operation it has started drafting recommendations concerning possible improvements to legislation and practices in particular member states. The first ones, which were already adopted in 2003 immediately after the establishment of the Council, related to Georgia and to Armenia.

In recent years the Venice Commission adopted opinions on electoral law in Armenia, Azerbaijan, Georgia, and Ukraine prepared jointly by the experts of the Venice Commission and OSCE/ODIHR.

General studies and recommendations on electoral issues

On the request of the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe the Council for Democratic Elections has prepared a number of specific documents setting general standards in a number of fields of electoral legislation and practice in Council of Europe Member States.

For example, the Council for Democratic Elections and the Venice Commission also adopted an *Election Evaluation Guide*, which is not confined solely to legislation, but

also covers the issue of its implementation. This document includes three questionnaires to be used during election observation: a questionnaire on visits to polling stations before opening, a questionnaire to be completed for each polling station and a questionnaire on observation of the vote counting. The Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe already used the Election evaluation guide during election observation.

This work is currently continued in cooperation with OSCE/ODIHR and in the nearest future the OSCE and the Council of Europe's observation missions might use the observation forms elaborated on this basis.

Another example could be the report on "*Electoral systems: overview of available solutions and selection criteria*" adopted by the CED and the CDL. This report is divided into two parts. The first one deals with "electoral systems on offer" and summarises the various possibilities governing the casting of votes as well as the counting of votes and the distribution of seats. The second part is dedicated to criteria for selecting a particular election system and the implications of that choice. It underlines in particular the three major functions of an electoral system: representation, selection and investiture, which are completely fulfilled by no election system. It summarises the three historical models of democracy: the elitist model, the mass democracy model and the consumerist individuation model.

Seminars and Training Workshops

Starting from 2002 training workshops on the holding and supervision of elections were organised in Armenia, Albania, Azerbaijan, Georgia, Moldova and Ukraine.

This is a new activity of the Venice Commission aimed at ensuring that common European standards are applied in practice, through a better knowledge of how they are applied in other European countries. The target groups of these training workshops are people involved in the preparation, adoption and implementation of electoral law, first of all election administrators and election observers, members of electoral Commissions and NGOs specialised in electoral matters but also judges, lawyers and media for example.

The Venice Commission assisted the Central Election Commission of Georgia in the preparation of the November 2003 and January 2004 elections, and the Constitutional Court of Armenia in the settlement of disputes related to the presidential elections.

Electoral Observation Missions

In accordance with Item 15 of the agreement concluded with the Parliamentary Assembly of the Council of Europe, the Venice Commission initiated participation in electoral observation missions. Ukraine was the first country concerned under the terms of the

agreement. A member of the Venice Commission and a member of the Secretariat went to Ukraine for the first and second round of the Presidential elections as legal advisers of the Parliamentary Assembly.

Such assistance missions were carried out during the observation missions of the PACE to Palestine, Moldova and Albania.

The next mission will take place in Azerbaijan in November 2005.

“VOTA” Electoral Database

Another important project dealt with by the Council is a database on electoral matters. The VOTA database is operational from February 2005. This database has been installed in the Venice Commission offices and the electoral laws are currently being integrated and indexed according to the systematic thesaurus adopted by the Council.

This database is accessible from the internet: www.venice.coe.int/vota .