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# THE ESSENCE OF THE RECOMMENDATIONS OF THE VENICE COMMISSION IN IMPROVING THE LEGISLATION OF UZBEKISTAN ON THE REFERENDUM

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## Abstract

In this article, the role and significance of the recommendations of the Venice Commission have been analyzed. In particular, some proposals of the Venice Commission on improving the legislation of Uzbekistan in the field of referendum were studied.

**Keywords** Referendum, international standards, legal regulation, elections, democratic values.

## INTRODUCTION

The European Commission for Democracy through Law – better known by the name of the city where it meets as the Venice Commission (hereinafter: the Commission) - was established by 18 member states of the Council of Europe shortly after the fall of the Berlin Wall in 1990. The Commission has played a key role in the adoption of constitutions by Eastern European countries that meet the standards of the European constitutional heritage .

The main task of the Commission is to provide constitutional and legal assistance, mainly to the States that participate in its activities. The Commission provides opinions at the request of not only States, but also the statutory bodies of the Council of Europe and international organizations participating in its work. In addition to the conclusions, the Commission also prepares general reports on the following main areas:

functioning of democratic institutions and protection of fundamental rights;

elections, referendums and political parties,

constitutional justice.

Initially created as an instrument of urgent

constitutional construction in the context of democratic change, the Commission has gradually become an internationally recognized independent forum for the exchange of ideas in the legal field. The Commission promotes the dissemination of the European constitutional heritage based on the basic norms of the European continent, while continuing to provide "urgent constitutional assistance" in Europe and beyond.

## Legal nature and composition

The Charter of the Commission. Established in 1990 as a partial agreement by the 18 member States of the Council of Europe, in February 2002 the Commission became an expanded agreement, which allowed non-European States to join it.

The Venice Commission consists of "independent experts who have gained international fame through their experience in democratic institutions or their contribution to the development of law and political science" (Article 2 of the revised Statute).

Its members include, in particular, university professors teaching constitutional and international law, judges of the supreme and constitutional courts, deputies of national parliaments, and high-ranking officials. They are

appointed by the member States of the European Commission for a four-year term. Since 2009, Mr. Gianni Buquicchio has been the President of the Commission .

### **Member States**

In February 2002, when all the member States of the Council of Europe joined the Venice Commission, it was transformed into an expanded agreement, which allowed non-European States to become full members. The Venice Commission includes all 46 member States of the Council of Europe. Kyrgyzstan joined the Commission in 2004, Chile in 2005, the Republic of Korea in 2006, Morocco and Algeria in 2007, Israel in 2008, Peru and Brazil in 2009, Tunisia and Mexico in 2010, and Kazakhstan in November 2011. The United States also joined the Commission as a full member in April 2013, Kosovo in September 2014, Costa Rica in 2016 and Canada in 2019. Thus, the Commission has 61 members .

The following States have observer status with the Venice Commission: Argentina, the Holy See, Uruguay and Japan. South Africa and the Palestinian National Authority have special cooperation partner status, similar to observer status.

European Commission, OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Organization of American States regularly participates in the plenary sessions of the Venice Commission.

### **Activities of the Commission**

In its work, the European Commission for Democracy through Law is guided by three basic principles of the European constitutional heritage that underlie the activities of the Council of Europe, namely: - democracy, protection of human rights and the rule of law. These three principles find practical implementation in four areas of activity:

Assistance in the field of constitutional law

Elections and referendums

Cooperation with the constitutional courts

Research, reports and "transnational" seminars.

Since its establishment, the Venice Commission has

been actively working in the field of electoral law, and, in particular, gives opinions on draft election laws. Over the course of two decades, the Venice Commission has issued more than 130 such opinions and adopted more than 60 general documents on issues related to elections, referendums and political parties.

In addition, the commission cooperates closely with the OSCE Office for Democratic Institutions and Human Rights (ODIHR). Most of the conclusions related to electoral law were developed jointly by two organizations .

The Commission regularly cooperates in the field of electoral legislation with such countries as Albania, Armenia, Bulgaria, Georgia, the Republic of Moldova and Ukraine. Periodically, the commission also works with other States, in particular with Russia, Great Britain, Croatia, Romania, Serbia, the "former Yugoslav Republic of Macedonia", the cantons of Switzerland, as well as with Kyrgyzstan, Uzbekistan and Mexico. In 2016 and 2017, the commission assessed legislation on elections, referendums and political parties in Armenia, Bosnia and Herzegovina, Bulgaria, Georgia, the Republic of Moldova, the "former Yugoslav Republic of Macedonia" and Ukraine.

The Venice Commission also deals with the issue of referendums: it formulates general recommendations, or considers issues related to referendums in individual countries. For example, the commission issued an opinion on the referendum on the independence of Montenegro and the referendum in the autonomous province of Trento in Italy.

In order to ensure the stability of the electoral law and the formation of a common European heritage in this area, the Venice Commission and the Council for Democratic Elections are involved in the development of principles of electoral law. In particular, documents such as a Set of Recommendations for elections and a Set of recommendations for Referendums have been developed. These documents were approved by the Parliamentary Assembly and the Congress of Local and Regional Authorities, with the support of the Committee of Ministers, and are used by the Council of Europe as standards in the electoral

field.

Every year, the Commission holds a Conference of national bodies responsible for elections, as well as organizes comparative legal seminars. In 2016, the commission initiated a series of scientific exchanges between election experts, together with the Romanian electoral authority. The Commission conducts professional development seminars for members of central election commissions, as well as for judges involved in the settlement of electoral disputes and related issues, and provides long-term assistance to these commissions.

The Commission also advises the missions of the Parliamentary Assembly of the Council of Europe that participate in election observation. For example, in 2016, the commission participated in nine electoral observation missions: in Belarus, Bulgaria, Georgia, Jordan, Morocco, the Republic of Moldova, Montenegro, Serbia and the "former Yugoslav Republic of Macedonia".

The Commission's work in the electoral field is led by the Council for Democratic Elections, a tripartite body that includes representatives of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. More information about the work of the Council for Democratic Elections can be found here.

The activities of the Venice Commission are carried out in the following areas:

Preparation of conclusions (for individual countries) and general studies;

Conducting seminars, advanced training courses, consultations;

Administration of the VOTA election database ;

Development of documents related to political parties.

Recommendations for Uzbekistan

At the invitation of the authorities of the Republic of Uzbekistan and based on the recommendations of the Needs Assessment Mission, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed a Limited mission to monitor the Constitutional Referendum (OMPR) scheduled

for April 30, 2023. The ODIHR EOM assessed the compliance of the referendum process with OSCE commitments, other international obligations and standards of democratic elections and referendums, as well as national legislation. In a Statement on the preliminary results and conclusions published on May 1, the ODIHR OMNR concluded that the referendum was «technically well prepared and widely positioned as an intention to strengthen various rights and freedoms» .

As a result of the observation, the mission put forward a number of proposals.

Some of the proposals relate to civil rights and freedoms. It is recommended that the legislative framework in the field of freedom of peaceful assembly, freedom of association and freedom of expression be reviewed in such a way that any restrictions on the exercise of these freedoms are appropriate, proportionate and applied in accordance with international standards.

Libel provisions and other similar provisions, including provisions on "insulting" and spreading "false information", should be decriminalized in accordance with international standards. The norms of libel legislation should be exclusively civil in nature, and civil remedies should take precedence over monetary penalties.

Another part of the proposals concerned the improvement of the referendum system as a whole.

In particular, it is proposed to revise the legislative framework on holding referendums so that it regulates such important aspects of the process as the conduct of an election campaign, its financing, as well as impartial and balanced media coverage. The mission recommended that the process of nominating and appointing members of referendum commissions at all levels be reviewed in such a way as to ensure the independence of the bodies organizing the referendum from the executive branch, local administrations and mahalla committees.

In accordance with international best practice, the use of additional lists should be allowed only in cases where voting citizens have changed their place of residence between the publication of the

final lists at their polling stations and polling day. At the same time, appropriate protection measures should be applied against abuse of this procedure.

In accordance with OSCE commitments, independent civilian monitoring of the electoral process should be provided for at the legislative level.

In accordance with international standards, measures should be taken to ensure that votes are counted fairly and that the results of such counting are accurately and honestly reflected in the reports. In particular, the legislation should provide for the inclusion in the final protocols of commissions at all levels of information necessary for cross-checking data, and the publication of the final results by polling stations.

Some recommendations related to the media. For example, restrictions on all fundamental freedoms, including freedom of expression, must strictly comply with the principles of legality, legitimacy, expediency and proportionality.

In order to promote pluralism of opinions, it is recommended to transform the National Broadcasting Company into a genuine public media with an independent appointment of leadership and a clearly defined public mandate. The financing model of public broadcasters should ensure their financial independence. Such media should be obliged to ensure the balance and impartiality of news reports, current affairs broadcasts and discussion programs, including when covering the referendum.

In order to ensure the effective exercise of freedom of expression, any restrictions on Internet resources must be transparent, clearly defined by law and subject to judicial supervision.

In general, the suggestions and recommendations presented are of a recommendatory nature. However, their implementation corresponds to the democratic ideals that the country aspires to. Therefore, their gradual implementation should be discussed by the relevant state bodies of the Republic of Uzbekistan.

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