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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

62ND PLENARY SESSION

Venice, Friday, 11 March 2005 at 9.30 a.m. –

Saturday, 12 March 2005 at 12.00 p.m.

SESSION REPORT

1. Adoption of the agenda

The agenda was adopted without amendment. It was noted that it was the sad occasion of the anniversary of the Madrid terrorist attack.

2. Communication by the Secretariat

The Secretariat informed the Commission of the numerous activities undertaken since the beginning of the year.

The number of non-European countries in the Venice Commission continues to increase with Chile's request to join.

The Secretariat also informed the Commission that it was waiting for members to be appointed for Bosnia and Herzegovina, Liechtenstein, Monaco and Serbia and Montenegro.

3. Co-operation with the Committee of Ministers

Within the framework of its co-operation with the Committee of Ministers, the Commission held an exchange of views with Ambassador Roland Wegener, Permanent Representative of Germany to the Council of Europe, and with Ambassador Per Sjögren, Permanent Representative of Sweden to the Council of Europe.

Ambassador Wegener thanked the Commission for its work and hoped that the Commission would continue its co-operation with the Committee of Ministers in particular in the framework of the Ago group on the honouring of commitments by Armenia and Azerbaijan. He stated that although both countries showed progress in the fulfilment of the Council of Europe standards and honouring of commitments undertaken by them, the Ago group found that the implementation of Council of Europe standards in those countries had slowed down. In particular, Armenia had not yet achieved constitutional reform and no great progress in the area of freedom of assembly and speech had been made. As to Azerbaijan, an outstanding problem was that a sizeable number of political prisoners had not been released. Although a presidential pardon could address the individual cases, it would be a stop-gap measure; a functioning law was needed.

Mr Jowell noted that the immediate future should concentrate on the urgent question of the realisation and implementation of the rights of individuals in countries which had fully democratic constitutions but had problems with the implementation and enforcement of the law.

Ambassador Sjögren stated that the Swedish government followed and appreciated the work of the Venice Commission. He focused on the key issues in the action plan for the Third Summit of the Council of Europe to be held in Warsaw in May 2005: human rights, rule of law and democracy (encompassing the implementation of Protocol No. 14, the strengthening of other Council of Europe mechanisms in the field of human rights, the strengthening of democracy and rule of law: a field in which the Commission had an important role to play and all member states would be called upon to co-operate with the Commission, and the follow-up to the Barcelona Conference including a proposal for establishing a forum for the future of democracy); the new challenges of combating terrorism, trafficking in human beings and domestic violence; the further development of social cohesion; co-operation with other international organisations

including the European Union and the OSCE (laying the foundations for a memorandum of understanding on the future co-operation between the EU and the Council of Europe); the complementarity of the roles of the Council of Europe, a more normative organisation, and the OSCE, a more field-oriented organisation.

Mr Constas hoped that the issue of the co-operation between the Council of Europe and the EU and OSCE would include practical measures to ensure that it would actually take place rather than remain theoretical. He underlined the need for the action plan to include the role of the Committee of Ministers itself in the Council of Europe, especially the co-operation of the Committee of Ministers with the Parliamentary Assembly of the Council of Europe and ultimately, the strengthening of the co-operation of the Committee of Ministers with the Commission. As to the establishment of a forum for the future of democracy, it was noted that before creating new organisations, one should consider whether there is truly a need to do so and whether one could not use the existing ones, for example, the Commission deals with not only the past and the status quo but also with the future of democracy. Ambassador Wegener stated that the Committee of Ministers had increased its efficiency by introducing the "six-month rule", that is to say, the Committee of Ministers should ordinarily reply to the Parliamentary Assembly of the Council of Europe within six months, and if need be, vote on a matter within six months. Monitoring is also better co-ordinated.

4. Co-operation with the Parliamentary Assembly

The Commission held an exchange of views with Mr Erik Jurgens, members of the Parliamentary Assembly, on co-operation with the Assembly.

Mr Erik Jurgens, member of the Committee on Legal Affairs and Human Rights, told participants that although the Parliamentary Assembly of the Council of Europe was not in a position to do much with respect to political prisoners in Azerbaijan, the Legal Committee might suggest in a debate in April that if the political prisoners are not released by June, the Parliamentary Assembly might refuse to accept the credentials of the delegation to the Parliamentary Assembly of the Council of Europe. He referred to the sad occasion of the anniversary of the Madrid terrorist attack. He underlined that Europe had to continue to combat terrorism. However, the reaction of the States had produced well-meant laws that were unfortunately ill-construed and overly-broad and touched the rule of law. What was needed was a broad report dealing with anti-terrorism laws in various countries. He would attempt to bring such a question before the Commission. The Venice Commission could help member states and the Council of Europe by formulating minimal rules and standards. The legal conscience of Europe lies not just in the European Court of Human Rights but also in the Venice Commission. He was pleased to hear that the Committee of Ministers was going to invite member states to consult with the Commission as to their legislation. He suggested that perhaps the Committee of Ministers could consult the Commission on matters such as treaties, especially ones on anti-terrorism.

5. Follow-up to earlier Venice Commission opinions

With respect to follow up to Venice Commission opinions, the Secretariat informed the Commission about four opinions relating to Albania, Georgia, Moldova and Turkey.

- *Albania: amicus curiae Opinion 312/2004 on the interpretation of Articles 125 and 126 of the Constitution of Albania (appointment of highest judges)*

At its October 2004 Plenary Session, the Commission had adopted at the request of the Constitutional Court of Albania the *amicus curiae* opinion on the Interpretation of Articles 125 and 136 of the Constitution of Albania regarding the appointment of highest judges (CDL-AD(2004)034) based on comments by Messrs Bartole and Cardoso da Costa.

Following the refusal by Parliament to give its consent to the presidential nomination of a judge of the Constitutional Court, the President of the Republic had asked the Court to interpret the articles of the Constitution on the nomination of judges of the Constitutional and Supreme Courts. The Commission came to the conclusion that when giving its consent to such presidential nominations, the Albanian Parliament has the power to decide upon the merits of the nominations and not only whether formal requirements had been met.

In its decision 22/2 of 18 January 2005, the Constitutional Court concluded that the Parliament indeed had the powers to "examine not only the fulfilment of formal criteria but also the *merits* of their appointment. As a result the Assembly of Albania has the authority to give or refuse the consent for the appointment of judges of the Constitutional Court and judges of the Supreme Court".

The implementation of another recommendation of the Commission to amend the Standing Orders of the Assembly in order to allow for an open debate of the presidential nominations by the Assembly thus giving the President the necessary information about the reasons for a refusal of consent falls within the competence of the Assembly.

- *Georgia: amicus curiae opinion 289/2004 on the relationship between the Freedom of Expression and Defamation with respect to unproven defamatory allegations of fact*

In March 2004, the Commission had adopted the opinion on the relationship between the Freedom of Expression and Defamation with respect to unproven defamatory allegations of fact (CDL-AD(2004)011) prepared at the request of the Constitutional Court of Georgia on the basis of comments by Mr Nolte.

The Commission had concluded that the obligation on a person who has made defamatory assertions of fact to prove that those assertions are true is acceptable. There are, however, situations - especially in cases of public concern - in which either the speaker, or his audience has a legitimate interest in assertions being able to be made even if the speaker cannot prove that they are true. Here, the freedom of expression requires that issues can be made subject to public debate even if full accuracy cannot be guaranteed. In such cases, balancing of a number of possible considerations is required in order to assess whether, in the specific case, freedom of expression takes precedence over interests of reputation. Much depends on, in particular, whether the speaker has acted *bona fide* and whether he or she has observed the appropriate duty of care when assessing the veracity of the allegation.

The Commission also pointed out that the clause relating to the prohibition of "incomplete dissemination of facts" in Article 18.2 of the Civil Code should be interpreted with particular care as it could violate the freedom of expression if sanctions were to be imposed in cases in which a statement failed to mention every conceivable aspect of a particular situation.

In its decision of 11 March 2004 - N2/1/241, Akaki Gogichaishvili v. the Parliament of Georgia, the Constitutional Court decided that Article 18.2 was constitutional to the extent that it obliges a person to retract information where that person has disseminated statements (facts), those statements are false, the person who has disseminated such statements cannot prove the truth of those statements, and those statements defame the honour and dignity of others. The requisite balancing is a task for the ordinary courts in each individual case. In its decision, the Court, however, requested Parliament to refine the notion of "information" in Article 18.2 in order to avoid any incoherent interpretation of the Article by the courts of general jurisdiction.

So far, Parliament has not yet amended Article 18.2 of the Civil Code.

- *Moldova: opinion 315/2004 - introduction of the individual complaint to the Constitutional Court*

At its December 2004 Session, the Commission had adopted the opinion on the draft law to amend and supplement the Constitution of Moldova introducing individual complaints to the Constitutional Court, based on comments by Messrs Paczolay and Nolte (CDL-AD(2004)043).

The draft law was designed to amend and supplement the Moldovan Constitution concerning the filing of individual complaints with the Constitutional Court and had been prepared at the request of the Constitutional Court of Moldova and the Permanent Representative of Moldova to the Council of Europe.

The Commission welcomed the introduction of the individual complaint in Moldova. The draft proposed the addition of a seventh judge, appointed by the President of the Republic, to help the Court deal with the extra workload. The Commission concluded that since the President of the Republic was elected by a qualified majority of members of Parliament, the introduction of a seventh judge, to be appointed by the President, as envisaged in the draft amendments, would serve to widen the pool from which Constitutional Court judges could be appointed. However, as a counterweight to the government's power to appoint two judges, the opinion recommended that the two judges appointed by Parliament be elected by a qualified majority.

Since the adoption of the opinion, the draft has been approved by the Moldovan Government in its original form and is now before Parliament.

- *Turkey: Opinion 296/2004 - introduction of the individual complaint to the Constitutional Court*

Upon request by the Constitutional Court of Turkey, the Venice Commission had adopted in June 2004 an opinion (CDL-AD (2004)024) on draft constitutional amendments drawn up by the Court proposing to change the Court's organisation and to introduce the individual complaint. The purpose of the draft was to reduce the number of Turkish cases before the European Court of Human Rights by effectively dealing with them at the national level. The Court had transmitted its proposal to the Government and to Parliament. Two objections had been raised against the proposal mainly by the Court of Cassation and the Council of State: the election of a part of the judges by Parliament would politicise the Court and the introduction of an individual complaint would convert the Constitutional Court into just another instance of appeal.

As to the organisation, the Commission's opinion had found that the introduction of two chambers raised the problem of co-ordination between them but that could be a task of the plenary session of the Court. The opinion did not share the view that there was a danger of politicising the Court by enabling the Parliament to elect four out of 17 judges. The individual complaint to the Constitutional Court was to be welcomed. However, its limitation to the constitutional rights that are also covered by the European Convention on Human Rights was unusual and should be reconsidered.

Due the resistance by the other highest courts, the introduction of the individual complaint to the Constitutional Court of Turkey seems to be stalled and is not being actively pursued in Parliament.

6. Armenia

a) Draft Opinion on the draft law making amendments and addenda to the law on conducting meetings, assemblies, rallies and demonstrations of the Republic of Armenia

Mr Buquicchio informed the Commission that Mr Tigran Torossyan, Deputy Speaker of the Armenian National Assembly, was not in a position to attend the Plenary Session on account of the intense work schedule of the parliament. Mr Buquicchio also informed the Commission that Mr Torossyan wished that the discussion and adoption of the opinion on the draft amendments to the law on rallies be postponed until the Plenary Session in June.

Mr Malinverni, rapporteur in this matter, recalled that the Armenian legislation on demonstrations had already been extensively discussed within the Commission on a number of occasions. The proposed amendments to the law on rallies, which Mr Torossyan had submitted to the Commission in December 2004, appeared to improve the law slightly, but to an extent that was insufficient to ensure compliance with the standards applicable in the field of the right of freedom of assembly and the right to freedom of expression. In addition, the Commission had received information that certain recent amendments to the Armenian Criminal Code and Code of Administrative Violations made illegal and subject to criminal and administrative sanction the organisation and holding of demonstrations that should in fact be permitted.

Mr Malinverni and Ms Flanagan, also a rapporteur, recalled that the Parliamentary Assembly of the Council of Europe, in its Resolution 1405(2004), had requested the Armenian authorities to amend the law on rallies before March 2005. Accordingly, the rapporteurs proposed that the Commission should adopt the opinion with no further delay.

A number of Commission members expressly supported this proposal.

Mr Denis Petit, of OSCE/ODIHR, informed the Commission that ODIHR had also provided an expert assessment of those amendments. That assessment was largely in line with the position of the Commission. OSCE/ODIHR and the Commission planned to discuss the matter with the Armenian authorities the following week in Yerevan.

The Commission adopted the opinion on the draft law making amendments and addenda to the law on conducting meetings, assemblies, rallies and demonstrations of the Republic of Armenia (CDL-AD(2005)007).

b) Conference "Our Choice: European Integration"

Mr Constas informed the Commission about the Conference "Our Choice: European Integration", which took place in Ljubljana on 19 January 2005 in the framework of the Armenian Chairmanship of the South Caucasus Parliamentary Initiative. The Conference, which was well attended by representatives of the Parliaments of the three Caucasus states, was held in a positive atmosphere and allowed for constructive exchange between the participants from all countries. It showed the strong desire of South Caucasus countries to be fully integrated into European structures. A large part of the Conference was devoted to the monitoring procedures of the Council of Europe, which allowed parliamentarians to defend action in their countries, which would have a high political cost in their constituencies without the backing from the Council of Europe. The monitoring was not to be seen as a finger-pointing exercise but as an offer to assist in the democratic changes for the benefit of the people.

7. Azerbaijan

Mr Garrone informed the Commission on co-operation with Azerbaijan in electoral matters. On 1 March 2005 a delegation from Azerbaijan (Messrs Shahin Aliyev, presidential administration, and Safa Mirzayev, administration of the Parliament) had met representatives of the Venice Commission and the OSCE/ODIHR in Strasbourg in order to discuss the revision of the electoral code. The authorities of Azerbaijan should submit a draft revised text by 25 March to both, in order for them to provide an opinion which would be taken into account in the revised version of the code, to be adopted in Spring and applied to the next parliamentary elections in Autumn.

8. Bosnia and Herzegovina

a) Draft Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative provided pursuant to Assembly Resolution 1384

Mr Helgesen, who had chaired the joint meeting of the Sub-Commissions on Constitutional Reform and on International Law the day before, informed the Commission that the two sub-commissions had examined the draft opinion. The draft opinion had received general support. Some amendments were put to the text following proposals from the Office of the High Representative.

Mr Scholsem, introducing the draft opinion, said that the opinion did take up many ideas and arguments developed by the Commission throughout the last nine years. It had been prepared following the visit of a delegation to Sarajevo and Banja Luka last October. Its first part dealt, taking up the wording used in Resolution 1384 of the Parliamentary Assembly, with the efficiency and rationality of the constitutional arrangements in the country. It not only came to the conclusion that the constitutional arrangements were neither rational nor efficient but also contained recommendations for improving them. The State of Bosnia and Herzegovina was too weak to effectively participate in European integration, with most powers concentrated at the level of the Entities. The opinion concluded that the Constitution should grant more powers to the State level and considered mere ad-hoc transfers of responsibilities not sufficient. It also advocated more efficient decision-making processes both at State and Entity level. The vital interest veto should be defined more clearly and narrowly, and one should consider abolishing inefficient mechanisms such as the collective Presidency at State level and the Houses of Peoples of State and Federation. Within the Federation of Bosnia and Herzegovina, if it proved

impossible to abolish the Cantons, their responsibilities should be reduced to mainly executive functions.

The second question put by the Assembly concerned the compatibility of the Constitution of the State with the European Convention on Human Rights. The provisions on the composition and election of the collective Presidency and the House of Peoples were discriminatory and seemed incompatible with the ECHR and its Protocol No. 12. If those institutions were not abolished as suggested above, they had to be redesigned.

Finally, the Parliamentary Assembly asked the Venice Commission to examine the compatibility of the powers of the High Representative with the membership of Bosnia and Herzegovina in the Council of Europe. The draft opinion acknowledged the important and positive role played hitherto by the High Representative. However, this role could not last forever and gradual change seemed to be required. His power to impose legislation did contradict the right of the people to freely elect their legislature and risked creating a culture of dependency. His power to dismiss civil servants and elected officials was particularly problematic. As an immediate measure the draft opinion recommended the setting up of a panel of independent legal advisers which would have to be consulted on such decisions.

Mr Jowell underlined that the draft opinion tried to find solutions without redrawing borders. Bosnia and Herzegovina had to move from an ethnically based system to a system based on nationhood. He welcomed the recent decision of the High Representative to start a process of rehabilitating some of the dismissed officials.

Mr Tuori underlined the need to move from a Constitution imposed to end a war to a Constitution which was the fruit of the democratic process within the country.

The representative of the Office of the High Representative welcomed the opinion. By initiating a process of rehabilitation, the High Representative had already taken a step in this direction. The implications of the opinion would have to be discussed by the High Representative with the Peace Implementation Council. The representative of the Congress welcomed the emphasis in the opinion on strengthening local self-government. Ambassador Wegener welcomed the realistic approach of the opinion and its insistence on ending blocking mechanisms. As long as there remained a "blocking mentality" within the country, the powers of the High Representative were needed.

Mr Sadikovic disagreed with the assertion in the draft opinion that Bosnia and Herzegovina is a federation. There was no historical basis for federalism in the country, at best regionalisation could be envisaged. The Entities were artificial constructs based on ethnic cleansing. Recognising them contradicted the old maxim "*ex iniuria ius non oritur*".

Other speakers considered that the only correct term for describing the present constitutional structure in Bosnia and Herzegovina was that of federation. Despite further discussions no agreement between Mr Sadikovic and the majority could be reached, and Mr Sadikovic expressed his dissent with the opinion.

The Commission adopted the Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative as it appears in document CDL-AD(2005)004.

b) Draft Opinion on possible solutions to the matter of the decertification of police officers in Bosnia and Herzegovina

Mr Helgesen informed the Commission that in the course of the discussions within the Sub-Commission on International Law, the Office of the High Representative had proposed a certain number of amendments and had sought certain clarifications in respect of the draft opinion. While the working group thought that most of the suggestions could be taken on board, it appeared that certain elements of the opinion required further reflection. Therefore, the sub-commission proposed to postpone the adoption of this opinion.

The Commission decided to postpone the examination of the draft opinion on possible solutions to the issue of decertification of police officers in Bosnia and Herzegovina (CDL(2005)016).

9. Georgia

a) Status of South Ossetia

Mr Vardzelasvili, Deputy Minister of Justice, thanked the Commission for the informal comments on the plan for South Ossetia presented by President Saakashvili. These comments were sent by the Commission Delegation following its visit to Georgia at the end of January. Georgia was committed to a peaceful settlement of the conflict and would include the comments when preparing a more detailed version of the plan.

In particular, South Ossetia would have the right to design its own institutions, there would be a ministerial post for a representative of South Ossetia, possibly even at the level of Deputy Prime Minister. The judicial system envisaged for South Ossetia was still unclear. South Ossetia would have cultural autonomy and Georgian and Ossetian would be state languages. South Ossetia would be able to conclude international agreements, including with North Ossetia, and Georgia would ratify the Council of Europe Convention on transfrontier co-operation. While ultimately the status of the region had to be defined by the Georgian Constitution, it could be based on an agreement between Georgia and South Ossetia. South Ossetia should obtain guarantees, including representation within the constitutional court and a veto against decisions diminishing its autonomy.

The Georgian authorities envisaged setting up a Truth Commission with representatives from both sides and the international community and wanted to quickly adopt the law on restitution of property to victims of the Georgian-Ossetian conflict, taking into account the comments provided by the Venice Commission in its opinion on the draft law (CDL-AD(2004)037).

Ms Zhvania, Deputy Ombudsman of Georgia, added that a new version of the draft law would be finalised soon and that further feedback was expected from the Venice Commission. The new draft would in particular provide for an enforcement mechanism as advocated in the Commission opinion.

Mr Malinverni expressed his satisfaction about this very positive reaction by the Georgian authorities. Mr Vardzelasvili stressed the need for continued co-operation, including contacts with South Ossetian representatives.

b) Draft Opinion on draft constitutional amendments relating to the reform of the judiciary

Messrs Cardoso da Costa and Hamilton presented the draft opinion (CDL(2005)033) on draft constitutional amendments relating to the reform of the judiciary, which had been requested by the Chairman of the Constitutional Court in respect of an earlier version and the Minister of Justice of Georgia in respect of the current version of the draft amendments (CDL(2005)028).

The rapporteurs pointed out that the latest draft was substantially improved as compared to the first version, especially as it was no longer foreseen to dismiss all judges of the Constitutional Court and the Supreme Court with the exception of the President of the latter. The draft opinion welcomed the introduction of a 'real' constitutional complaint (also against final court decisions, not only against normative acts as in the current system) provided that provision was made to enable the Constitutional Court to deal with what would probably be a high number of complaints. As such, the enlargement of the court from 9 to 15 judges and its 'autonomisation', i.e. taking it out of the chapter on the Judiciary, was not problematic as long as the judicial character of the Court was maintained. However, the presidential monopoly for proposals for the judges of the Constitutional Court, who are elected by Parliament with a qualified majority, created a problem also in view of the specific political situation in Georgia. It was unclear whether the changed wording of the procedure of appointment of Supreme Court judges would in practice result in a change of the procedure. The involvement in the procedure of appointment of a new judicial council, to be established with constitutional guarantees of its independence, was recommended.

The tenure of 10 years for ordinary judges was problematic and should be changed to life tenure. On the other hand, the immunity of judges went too far and should be reduced to a functional immunity only. As there was a serious risk of politicisation, waiver of immunity for highest judges should not lie with Parliament but with an independent judicial council.

As concerns the impeachment of the Chairman of the Chamber of Control, criteria for such a dismissal were lacking. The Chairman should enjoy functional independence, in order to be able to speak out freely against the abuse of funds.

Mr Konstantine Vardzelashvili, Deputy Minister of Justice of Georgia thanked the Commission for its work and informed the participants that the draft was likely to be further changed as the work was on-going. It was likely that the individual complaint against final court decisions would be deleted from the draft because the Constitutional Court would not be ready to deal with such a high number of cases. In practice, the procedure of appointment of Supreme Court judges would not change under the new provisions. Already, an organic law provided for 10 years tenure for ordinary judges. A disciplinary commission would investigate cases of corruption before impeachment. The impeachment of judges by Parliament was a democratic procedure. Also as concerns the appointment of judges of the Constitutional Court, the new procedure would be more democratic because currently the President appointed three members of the Court without any checks and as he appointed also the members of the Supreme Court, the members of the Constitutional Court selected by the former also would derive from the

President. The new system provided for a qualified majority for the approval of the presidential proposals and thus the presidential powers would be limited.

The transformation of the existing advisory Council of Justice into an independent body was being discussed. Before the lifting of immunity, the presidents of the Supreme and Constitutional Courts would intervene in respect of ordinary and constitutional judges respectively.

Mr Vardzelashvili informed the Commission that the final draft of the amendments would be sent to the Venice Commission for an opinion.

The Commission adopted the opinion on draft constitutional amendments relating to the reform of the judiciary with amendments (CDL-AD(2005)005)..

10. Italy

In conformity with the Rules of Procedure, Mr La Pergola informed the Commission at the outset that he would abstain from any consideration and decision in respect of the matter. Mr van Dijk accordingly took over the presidency.

Mr Helgesen, one of the rapporteurs on this matter, explained that the working group had prepared only a preliminary assessment of the compatibility of the Gasparri and Frattini laws in the light of the standards established by the Council of Europe. Those standards were however few and rather vague. The working group therefore felt that it was necessary to supplement the opinion with a comparative analysis of the practice of other European states, which could provide some guidance or identify some common practices.

Mr Tuori, another rapporteur, while reiterating the need for supplementary research, explained that some points of concern had nevertheless already been identified at the preliminary assessment stage. Those related to the criteria for identifying a dominant position, and notably the concept of Integrated Communication System (SIC); the over-politicisation of RAI; the weakness of the press and its difficulties in attracting advertising revenues; and the *ex-post* nature of the control of possible conflicts of interest.

Ms Quadri, Head of the Legislative Office of the Ministry of Communications, explained in great detail the background, reasons and foreseen modalities of the so-called switch-off to digital television in Italy. She also highlighted the measures contained in the Gasparri law which were designed to ensure greater pluralism. She pointed out that it was foreseen to privatise RAI and to subject it to the ordinary rules on private companies, including those on the accountability of its managers. In respect of the press, Ms Quadri explained that certain measures contained in the Gasparri aimed at supporting it.

Ms Bono, Deputy Head of the Legislative Office of the Presidency of the Council of Ministers, explained, with reference to the relationship between o*wnership* of a private business and conflict of interest, that the Italian Constitution prevented the compulsory sale of private assets and instead ensured the access of all citizens to public office irrespective of, *inter alia,* their wealth. Under the Frattini law, a political sanction was foreseen in certain cases, and it was the most severe sanction for a politician.

The Vice-President of the Commission invited both Italian representatives to provide the Secretariat with the written texts of their addresses before the end of March.

The Commission decided to resume consideration of the matter of the compatibility of the Gasparri and Frattini laws with Council of Europe standards in the field of freedom of expression and pluralism of the media at its next plenary session.

11. Mexico

Ms Flanagan presented the draft opinion (CDL(2005)024) on draft constitutional amendments (CDL(2005)022) relating to the Disappearance and Murder of a Great Number of Women and Girls in Mexico (comments by Ms Flanagan - CDL(2005)023) and Mr Vogel - CDL(2005)025). This opinion had been requested by the Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly of the Council of Europe. Ms Flanagan pointed out that the draft opinion was based on the facts as set out in the revised introductory memorandum on the "disappearance and murder of a great number of women and girls in Mexico" by the rapporteur Ms Vermot-Mangold (the "memorandum" - AS/Ega(2005)8), which had been assumed for the purposes of the opinion to be correct.

According to the memorandum, since 1993, hundreds of women and girls have been brutally murdered in the northern Mexican border state of Chihuahua. Many (though not all) consider that these murders and abductions of women arise because of "the pervasive disregard of women and their needs and rights", hence the use of the term "feminicides". The criminal investigation of these cases, which lies with the state of Chihuahua, suffered from a serious lack of effectiveness.

In order to remedy this problem, a draft Presidential decree amending Article 73 of the Mexican Constitution and a draft amendment to the Federal Code of Criminal Procedure and the Judicature Act of the Federation (CDL(2005)022) provide for the transfer of the power to prosecute "ordinary offences related to human rights violations when they transcend the powers of the States" from the Mexican states to the Mexican federal power. This transfer is to apply to future cases only, though.

The draft opinion concludes that Mexico as a State Party to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) explain is obliged to take necessary measures concerning the feminicides as reported in the Memorandum. The transfer of prosecutorial authority from the Mexican states to the Mexican federal power appears appropriate but could be limited by the prohibition on the retroactive application of criminal law as set out in Article 15 of the International Covenant on Civil and Political Rights. In a recent Australian case, the United Nations Human Rights Committee shed light on the standards required: the elements of the crime had to exist at the time the offence took place and each of those elements had to be proven by admissible evidence by the rules applicable at the time of the conviction of the accused. On the basis of the information available, the change proposed in the Mexican law does not impair or remove rights, does not create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction but would rather be a proportionate and thus permissible procedural change of the prosecutorial jurisdiction.

Mr. La Pergola underlined that in federal systems typically the Federation has to assume powers from its entities when the latter fails to implement international obligations resting upon the federal state but which fall within the competence of the entities.

The Commission adopted the opinion on draft constitutional amendments relating to the Disappearance and Murder of a Great Number of Women and Girls in Mexico (CDL-AD(2005)006).

12. Serbia and Montenegro

a) Constitutional developments

Mr Dimitijevic regretted that Serbia had still not been able to adopt a new constitution. There were two main drafts, one proposed by the government and the other by a group of experts working for President Tadic to which he himself belonged. The differences on the substance were not too important. They mainly concerned decentralisation. The main divergence was on procedure. The government wanted to apply the procedure set forth for amendments in the present constitution, which requires both a two-third majority in parliament and a majority of registered voters at a referendum. President Tadic's group favoured the election of a constituent assembly. On the positive side, nowadays nobody openly questioned in Serbia the need for the protection of human rights.

Mr Markert informed the Commission that on 7 March 2005 the Board for Constitutional Issues of the Parliament of Montenegro had asked the experts of the Council for Constitutional Issues to submit to it a document outlining the main principles for a future Constitution of Montenegro and, in preparing that document, to co-operate with the Commission.

b) Draft law on religious organisations in Serbia

Mr Jambrek, rapporteur on this matter, explained that the request for an expert assessment of the draft law on religious organisations in Serbia had been made by the Serbian Minister of Religions to the Council of Europe in late January. A meeting was to take place in Belgrade on 17 March 2005 in order to discuss the draft law and also gain more background information on the matter. The comments which were submitted to the Commission were therefore to be considered as a preliminary analysis, which would be complemented at a later stage.

Mr Jambrek underlined that the draft law seemed to be problematic in certain respects, *in primis* the possible need for religious groups to "register" in order to enjoy full freedom of religion, which would be contrary to European standards.

Mr Jambrek further pointed out that the draft law of Serbia needed to be examined against the background of the Charter on Human and Minority Rights and Civil Liberties of Serbia and Montenegro, whose provisions were directly applicable in Serbia. Accordingly, the Serbian law could not adopt a more restrictive approach than the Human Rights Charter. In addition, it was to be noted that under the Charter, it was always possible to appeal to the State Court against administrative decisions affecting fundamental rights. The same possibility was not explicitly provided for under the Serbian draft law: a provision establishing that possibility was therefore to be added to the draft law in order to avoid any misunderstandings.

The Commission endorsed the comments of Messrs Jambrek and Christians on the draft law on religious organisations in Serbia.

13. Ukraine

In the autumn of 2004, the Congress asked the Venice Commission to prepare an opinion on the draft National Strategy on the Reform of the Territorial Organisation System of the Authorities in Ukraine. The Commission endorsed the comments made by Messrs Lapinskas, Bartole and Yves Luchaire (CDL(2005)030, 031 and 032).

The Commission endorsed the comments made by Messrs Lapinskas, Bartole and Luchaire (CDL(2005)030, 031 and 032).

14. Other constitutional developments

- *Canada*

Mr Benoît Pelletier, Minister of Quebec for Canadian Intergovernmental Affairs, for the Canadian *Francophonie* and for the Reform of Democratic Institutions informed the Commission about the new Council of the Federation.

The Council of the Federation was set up in Canada in 2003 at the initiative of the province of Quebec. It is chaired by the premier of each province or leader of each territory on a rotational basis for one year. It is a not a constitutional institution, but a political inter-provincial instrument of permanent co-operation and exchange, which facilitates the ability of the provinces and territories to prepare coherent common positions in order to strike a better balance in the relations between the provincial and federal government, especially in areas where the federal and provincial government have shared competences.

An action plan adopted by the Council of the Federation in February 2004 includes the following priorities: to address the problem of fiscal imbalance between the federal and provincial governments; to strengthen the economic union in the federation and the elimination of trade barriers between the provinces and territories; to examine the possibility of provincial and territorial participation in the process of the appointment of judges to the Supreme Court of Canada and senators to the Senate; and to examine provincial and territorial participation in the negotiation of international agreements involving the matters falling under the competences of the provinces and territories.

He briefly spoke on the issue of asymmetric federalism. In September 2004 the federal and provincial governments signed an inter-governmental agreement on health care, in which the concept of asymmetric federalism was expressly recognised as well as the possibility of using it in individual agreements.

15. Study on existing national remedies for the excessive length of proceedings

Ms Granata-Menghini explained that the study had been proposed by the Romanian authorities on the occasion of the conference held in Bucharest on 8 and 9 July 2004 to celebrate the tenth anniversary of the entry into force in Romania of the European Convention on Human Rights.

She pointed out that the study related to the existing remedies for the unreasonable length of proceedings. Other instances of the Council of Europe had been working on related matters : the Committee of experts for the improvement of procedures for the protection of human rights (DH-PR), for example, was preparing a document on follow-up to the implementation of the Recommendation Rec(2004)6, concerning remedies but not specifically in respect of the excessive length of proceedings; the European Commission for the Efficiency of Justice had just completed a study on the European judicial systems; it focused on the causes of delays in the proceedings. The Commission's study was obviously not intended to duplicate any of the work of those instances, but instead to complement their work by dealing specifically with the *remedies* in respect of the *length* of proceedings. The Secretariats of the Commission, of DH-PR and of CEPEJ were co-operating and liaising on the matter. All materials already available had been exchanged.

A questionnaire had been prepared and distributed to a selected list of Commission members, i.e. to those on whose countries no information was available to the Council of Europe. A number of replies had been received and were presented to the Commission.

Mr Matscher explained that the unreasonable length of proceedings was a problem which was experienced by most if not all European States but which had reached alarming proportions in certain countries. The possible solutions to that problem were certainly diverse and complex. The study aimed in the first place at collecting information on the remedies which currently exist in Europe; a comparative analysis of those remedies would subsequently be carried out with a view, *inter alia*, to assessing their effectiveness, advantages and disadvantages. Finally, it would probably be possible to draw certain conclusions and make certain recommendations on what kinds of remedies to adopt in certain circumstances. Once completed, the study would certainly be useful for the States and also for the Committee of Ministers within the framework of its tasks of supervision of compliance with the judgments of the European Court of Human Rights.

Mr Matscher also recalled the importance for the members of the Commission to co-operate and reply to the questionnaire in due course.

Mr Desch, Chairman of the European Commission for the Efficiency of Justice (CEPEJ) presented the work of the CEPEJ and in particular the recently adopted report on European judicial systems 2002, which was the result of the replies to the questionnaire sent in by 40 member states. It was the first ever evaluation of European judicial systems on such a large scale. He explained that the CEPEJ worked on the implementation of its Framework Programme: "A new objective for judicial systems: the processing of each case within an optimum and foreseeable time frame". The CEPEJ had set forth eighteen lines of action which States were invited to apply in order to reduce the time frames of proceedings.

Mr Desch explained that the work of the CEPEJ and of the Venice Commission on the matter were complementary in many respects : the CEPEJ's task was to identify ways of preventing excessive delays from occurring, while the Commission's study related to how to remedy to those delays, once they had occurred. Both organs would thus co-operate on the matter.

Mr Nick briefly presented the experience of Croatia in this area.

The Commission decided to resume consideration of the study after the receipt of all the replies to the questionnaire.

16. Federalism

Mr Scholsem informed the Commission on the Third International Conference on Federalism, which took place in Brussels on 3-5 March 2005. The timing coincided with the 175th anniversary of Belgium's independence and with the 25th anniversary of federalism in Belgium. Mr Buquicchio presided a very animated working group that dealt with the topic of federalism as a way of preventing and resolving conflicts. The discussion included the possibility of using federalism in the cases of Afghanistan, Iraq and the Congo. A fourth conference is planned in Brussels and is to be organised by Canada or Switzerland.

17. Adoption of the draft Annual Report of Activities for 2004

The Secretariat emphasised the need to adopt the draft Annual Report of Activities for 2004 at the March Session, as the report had to be sent to the Committee of Ministers in May. Chile had asked to join the Commission and that would also be discussed at that time.

The Commission examined and adopted the draft Annual Report of Activities for 2004.

18. Election of the President, Vice-Presidents and Members of the Bureau as well as the Chairs of the Sub-Commissions

The Commission elected its President, Vice-Presidents, members of the Bureau and the Chairs of its Sub-Commissions for a period of 2 years.

The results of the elections were as follows.

- Mr La Pergola was unanimously elected President.

- Mr Mifsud Bonnici, Mr Dutheillet de Lamothe, Mr Endzins and Ms Flanagan were unanimously elected Vice-Presidents.

- Mr Baglay, Mr Solyom and Mr Zahle were unanimously elected members of the Bureau.

The following were unanimously elected as Chairs of the Sub-Commissions:

- Mr Torfason was elected Chair of the Sub-Commission on Constitutional Justice;
- Mr Malinverni was elected Chair of the Sub-Commission on Federal and Regional State;
- Mr Constas was elected Chair of the Sub-Commission on International Law;
- Mr Matscher was elected Chair of the Sub-Commission on Protection of Minorities;
- Mr Jowell was elected Chair of the Sub-Commission on Constitutional Reform;
- Mr Scholsem was elected Chair of the Sub-Commission on Democratic Institutions;
- Mr Luchaire was elected Chair of the Governing Board of UniDem;
- Mr Van Dijk was elected Chair of the Sub-Commission on South Africa;

- Mr Omari was elected Chair of the Sub-Commission on the Mediterranean Basin;
- Mr Helgesen was elected Chair of the Sub-Commission on Latin America;
- Mr Tuori was elected Chair of the Administrative Group;
- Mr Jambrek was elected Chair of the Sub-Commission on South East Europe; and
- Ms Suchocka was elected Chair of the Ethics Committee.

19. Report of the Joint Meeting of the Sub-Commission on Constitutional Reform and the Sub-Commission on International Law (10 March 2005)

This item was dealt with under item 8 of the Session Report: Bosnia and Herzegovina.

20. Report of the Meeting of the Council for Democratic Elections (10 March 2005)

Mr Jurgens, Chair of the Council for Democratic Elections, informed the Commission on the results and conclusions of the meeting of the Council for Democratic Elections.

- The Council adopted the revised version of the report on electoral rules and affirmative action for national minorities, drawn up by Ms Lazarova Trajkovska, with a few amendments.

The Commission adopted the report on electoral rules and affirmative action for national minorities' participation in decision-making in European countries (CDL-AD(2005)009).

- The Council adopted the preliminary joint opinion of the OSCE/ODIHR and the Venice Commission on the revised draft amendments to the electoral code of Armenia, with a few amendments. The text comments on the draft as it stood on 15 December 2004, and had been discussed, in its provisional version, during a visit of the Venice Commission and the OSCE/ODIHR to Armenia on 3-4 March 2005. It should be followed by a new opinion on a revised version of the draft.

The Commission adopted the preliminary joint opinion of the OSCE/ODIHR and the Venice Commission on the revised draft amendments to the electoral code of Armenia (CDL-AD(2005)008).

- The Council agreed to authorise the Secretariat to publish draft joint opinions with OSCE/ODIHR on the Venice Commission's public website.

The Commission authorised the Secretariat to publish draft joint opinions with OSCE/ODIHR on the Venice Commission's public website.

21. Other business

Members who have not already done so are invited to supply a CV and photograph for the website of the Venice Commission.

Those who have already done so are invited to check their CV on the website to ensure that it is up to date.

22. Dates of forthcoming sessions

The Commission confirmed the date of its 63rd Plenary Session: 10-11 June 2005; Sub-Commission meetings and a meeting of the Council for Democratic Elections will take place as usual on the day before the Plenary Session.

The dates of the other sessions in 2005 are confirmed as: 21-22 October 2005 and 16-17 December 2005.

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