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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
(VENICE COMMISSION)

**65<sup>th</sup> PLENARY SESSION**

**Venice, Friday, 16 December 2005 at 9h30 –**

**Saturday, 17 December 2005 at 13h**

**SESSION REPORT**

### **1. Adoption of the Agenda**

The agenda was adopted as it stood.

### **2. Communication by the Secretariat**

Mr La Pergola welcomed Mr Juan Colombo Campbell and Mr Laszlo Trocsanyi, the new substitute members for Chile and Hungary respectively.

Mr La Pergola paid tribute to Mr Lancelot, outgoing substitute member for France. He had been extremely pleased to have Mr Lancelot as one of the Commission members, and had appreciated his contribution to the work of the Commission, which had benefited from his great wisdom.

Mr Buquicchio informed the Commission of the death of Mr Triantafyllides, a former member of the Venice Commission in respect of Cyprus, to whom the Commission paid tribute.

### **3. Co-operation with the Committee of Ministers**

In the context of its co-operation with the Committee of Ministers, the Commission held an exchange of views with Ambassador Gheorghe Magheru, Chair of the Ministers' Deputies and Permanent Representative of Romania to the Council of Europe, Ambassador Roland Mayer, Permanent Representative of Luxembourg to the Council of Europe and Ambassador Marios Lysiotis, Permanent Representative of Cyprus to the Council of Europe.

Ambassador Magheru referred to the co-operation between Romania and the Venice Commission and more specifically to the revision of the chapter of the Romanian Constitution concerning Romania's accession to the European Union. Meanwhile the revised Constitution had been adopted and Romania had signed, under the Luxembourg Presidency, treaty of accession to the European Union. Ambassador Magheru had accepted the invitation to the meeting on behalf of the Romanian chairmanship of the Committee of Ministers.

The Ambassador briefly described the priorities of the Romanian chairmanship for the following six months. It would first and foremost continue the work of the Polish and Portuguese chairmanships in implementing the Action Plan drawn up at the Third Summit of Heads of State and Government of the Council of Europe in Warsaw on 16 and 17 May 2005.

The Ambassador then explained how the Romanian chairmanship intended to foster the core values of the Council of Europe, ie human rights, democracy and the rule of law, and improve the efficiency of the Organisation while ensuring that it continued to carry the weight it deserved in European affairs. Romania wished to focus its chairmanship on promoting democratic standards and good governance and on enhancing the protection of human rights in Europe, not least in areas where the existing systems were not yet effective. It also wished to promote inclusive societies, by fostering diversity and dialogue between religions and cultures. Finally, it wished to enhance the efficiency and coherence of the European institutions as a whole.

Protocol No. 14 to the European Convention on Human Rights had not yet come into force, and, in keeping with the statement by the Romanian Minister of Foreign Affairs, the Ambassador called on the Commission members to seek support in their respective countries in speeding up the entry into

force of Protocol 14. In this connection he reminded the Venice Commission of the specific role it could play under the Romanian chairmanship.

Ambassador Mayer said that Luxembourg was one of the few long-established democracies to have asked the Venice Commission for opinions on its legislation. He then concentrated on the state of relations between the European Union and the Council of Europe. Co-operation between the two was now actually very intense as the European Commission was contributing some 43 million euros to joint programmes with the Council of Europe.

The Third Summit of Heads of State and Government of the Council of Europe in Warsaw on 16 and 17 May 2005 had ended with the adoption of a Political Declaration and an Action Plan, setting out the Organisation's main tasks for the coming years. The Action Plan stated that one of the main tasks for the Council of Europe would be to promote Europe's common fundamental values by strengthening democracy, good governance and the rule of law in member states. In this connection, the Warsaw Summit had provided the opportunity to establish a Council of Europe Forum for the Future of Democracy. The Action Plan stated that the Forum would act in close co-operation with the Venice Commission with a view to enhancing, through its reflection and proposals, the Organisation's work in the field of democracy. It also called on all member states to make use of the advice and assistance of the Venice Commission for the further development of European standards, in particular in the field of the functioning of democratic institutions and electoral law. With regard to relations with the European Union, the Action Plan recommended that co-operation with the European Union should be strengthened, through joint programmes and co-operation with specialised Council of Europe bodies, such as the Venice Commission.

In response to the guidelines in the Action Plan, the European Union would submit practical proposals in a memorandum on closer co-operation between the two organisations. These proposals should be ready very soon. Ambassador Mayer explained some of the main points that would be set out in the memorandum. First of all, he drew a distinction between two levels of co-operation: co-operation as it currently existed, which he referred to as technical co-operation, and additional co-operation at political level, with a view to devising common approaches and strategies, which was a completely new development.

Finally, he pointed out that Mr Jean-Claude Juncker, the Prime Minister of Luxembourg, had been charged by his fellow heads of state and government with preparing a report in a personal capacity on future relations between the two organisations.

Ambassador Lyssiotis spoke of Cyprus' sustained efforts to promote the Council of Europe's values. His government's concerns were the growing case-load of the European Court of Human Rights, which was resulting in delays in the handing down of judgments, and the Committee of Ministers' supervision of the execution of judgments. There had been more than 1,100 cases pending when the Venice Commission had submitted the opinion requested by the Parliamentary Assembly Committee on Legal Affairs<sup>1</sup>.

As pointed out in the opinion, "[a] timely and complete execution of the Court's judgments [was] of vital importance for the authority of the Court, for an effective legal protection of the victims of violations and for the prevention of future violations". Substantial progress had been made since this opinion had been submitted: a Group of Wise Persons had been established and Protocol No. 14 to the European Convention on Human Rights, which embodied some of the Commission's proposals, had been adopted, but it had not yet come into force.

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<sup>1</sup> *Opinion on the implementation of the judgments of the European Court of Human Rights (CDL-AD(2002)034).*

The enforcement of the rule of law was all the more important in Cyprus, given that sustained efforts had been made for years to reunify the country by means of a solution based on the rule of law, democracy and human rights.

In conclusion, Ambassador Lyssiottis suggested that the Venice Commission should continue to examine the question of the reform of the European Court.

#### **4. Co-operation with the Parliamentary Assembly**

The Commission held an exchange of views on co-operation with the Assembly with its representatives, Mr Peter Schieder and Mr Rudolf Bindig.

Mr Schieder said that the Parliamentary Assembly of the Council of Europe was fully satisfied with the implementation of the agreement concluded by the Venice Commission and the Assembly. It had not been necessary to make any changes to the agreement.

With regard to relations between the European Union and the Council of Europe, Mr Schieder said that in Recommendation 1724 (2005) of the Parliamentary Assembly on the Council of Europe and the European Neighbourhood Policy of the European Union (ENP), the Assembly asked the Venice Commission to assist with legislative and constitutional reforms aimed at establishing democratic institutions in the countries covered by the ENP.

Mr Bindig, member of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (the Monitoring Committee) and the Committee on Legal Affairs and Human Rights, said that the Committee on Legal Affairs had decided to ask the Venice Commission for an opinion on the lawfulness of secret detentions by the CIA and the transport of prisoners in the light of member states' obligations under international law, and in particular with regard to the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Mr Bindig added that the Monitoring Committee had concluded the post-monitoring dialogue with Slovakia and Latvia. Discussions had taken place concerning Azerbaijan, following the parliamentary elections on 6 November 2005, and the Russian Federation, with regard to the state of progress in the ratification of Protocol No. 6 to the European Convention on Human Rights. He also referred to the Monitoring Committee's discussions concerning Georgia, Armenia and Azerbaijan. Finally, he mentioned the recent amendments to the Russian legislation on non-profit-making organisations and public associations, on which the Council of Europe had given an initial expert opinion. Mr Bindig now hoped that the Duma would take account of this opinion when the law was given a second and third reading.

#### **5. Follow-up to earlier Venice Commission opinions**

The Commission was informed on follow-up to:

- Amicus Curiae opinion on the nature of the proceedings before the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina ([CDL-AD\(2005\)020](#)); Ms Granata-Menghini from the Secretariat recalled that in June 2005 the Commission adopted its amicus curiae opinion on the nature of the proceedings before the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina in connection with a case which was pending before the European Court of Human Rights. The

Commission, in response to three questions which had been put by the Court, concluded that although Annexes IV and VI to the Dayton Agreement were international treaties, the proceedings before both the Human Rights Chamber and the Constitutional Court of BiH were to be considered as “domestic” and did not amount to another international procedure within the meaning of Article 35 § 2 (b) of the European Convention on Human Rights.

On 15 November 2005, the Court adopted its judgment in the case in question. The Court fully shared the opinion of the Commission, which it quoted extensively.

On 13 December 2005, the Court requested the Commission to examine the question of the admissibility of the prohibition of financing of political parties by foreign political parties. Such opinion was to be examined by the Commission in March 2006.

- final opinion on constitutional reform in the Republic of Armenia ([CDL-AD\(2005\)025](#)); Mr Harutunyan informed the Commission that the constitutional amendments which were submitted to referendum on 27 November 2005 had been approved and were in force. Although the opposition and part of the civil society had claimed that the official referendum result did not reflect the reality, no complaints had been lodged with the Constitutional Court on this matter and the process of constitutional reform had thus to be considered as completed.
  
- opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative ([CDL-AD\(2005\)004](#)). Mr Markert from the Secretariat informed the Commission that discussions on constitutional reform within the group of representatives of the main political parties meeting under the auspices of former Deputy High Representative Donald Hays had moved from the expert level to the level of the leaders of these parties. He had attended a meeting in Brussels in November when an attempt was made to reach agreement on a constitutional reform which would not transform the present situation but be a first step forward. At this meeting agreement was reached on a new human rights chapter, the definition of the vital national interest veto and on strengthening the Council of Ministers. There was also agreement on the need to amend the rules on the presidency and the parliament in order to remove the discriminatory provisions criticised by the Venice Commission but no alternative way of electing these bodies could be agreed. The Republika Srpska based political parties also accepted to amend the Constitution giving to the State level broad powers in the area of European integration but this was considered insufficient by the other parties. At the meetings held in Washington on the occasion of the 10<sup>th</sup> anniversary of the Dayton Agreement the party leaders had not been able to reach an agreement on a text but had only adopted a declaration committing them to adopt constitutional amendments by March 2006. This was necessary if such amendments were to be reflected in the electoral legislation in time for next year’s elections.

## **6. Albania**

Mr Buquicchio told the Commission that he had gone to Tirana on 18 November, at the invitation of the Prime Minister, Mr Berisha, and the Speaker of the Parliament, Ms Topalli, to discuss the assistance the Venice Commission could offer the Albanian authorities, which were interested in co-operating on three subjects in particular: firstly, parliamentary immunity, which might be waived in cases of corruption and abuse of authority; secondly, a change to the electoral system, in the event of a consensus between the main political forces, which would require a review of the constitution; and thirdly, the system of principal state prosecutor.

## 7. Israel

Chief Justice M. Aharon Barak, President of the Supreme Court of Israel, presented the activity of his Court both in Israel and the Occupied Territories. In Israel, the adoption in 1992 of the Basic Laws concerning human rights allowed the Court to develop constitutional review, which had not previously been possible in a purely common law system without a written constitution. However, even before the Basic Laws, the Supreme Court had interpreted all legislation on the presumption that its underlying objective purpose is to advance human rights in a democracy (purposive interpretation). The Court had also liberalised its rules on standing, allowing even entities without personal interest, mostly human rights NGOs, to bring cases. The Court had also turned down claims for non-justiciability (political questions) in all cases concerning human rights. Since 1995, the Court invalidated laws contrary to the Basic Laws, which were found to have constitutional rank. As this catalogue of human rights was not complete (e.g. no right of equality), the Court held that these 'missing' rights were covered by the right to human dignity. This approach brought the Court under pressure from politicians and in some cases even led to threats against the life of the Chief Justice. Nevertheless, constitutional review had had an important impact on the other branches of power, which now checked their acts against the Basic Law in order to avoid their invalidation.

In the Occupied Territories, Israeli law did not apply. The Court decided mostly on the basis of international law governing belligerent occupation but also on the basis of the principles of reasonableness and proportionality. Again, the Court allowed for a wide standing including NGOs lacking personal interest. A number of rulings of the Court had been criticised as intervening in military considerations but the guiding principle applied by the Court had always been that even in times of war a substantive democracy must uphold the rule of law. The role of the judge is not restricted to adjudicating disputes between conflicting interests but most importantly to protect the constitution and democracy.

Asked whether in Israel there was still a danger that a constitutional court would be established in order to bypass the activist Supreme Court, Mr Barak replied that, in general, constitutional courts are the most important tools to defend constitutional values. The danger of bypassing the Supreme Court of Israel was currently not acute but this idea might be revived one day.

Mr Bradley pointed out that it was necessary to value the contributions of supreme courts to constitutional justice. Recently, the House of Lords had handed down some major decisions in favour of the protection of human rights.

Mr Torfason pointed out that Iceland could certainly learn a lot from the Supreme Court of Israel as concerns justiciability. He informed the Commission that during the current process of reform of the Constitution of Iceland the establishment of a constitutional court had been proposed. Due to legal traditions in Iceland, this proposal was however unlikely to be implemented.

Mr La Pergola insisted that the common law model of judicial review was certainly not inferior to constitutional courts. Both models had their merits. He suggested the organisation of a seminar on this topic, maybe in Israel.

Both Mr La Pergola and Mr Buquicchio expressed their hope that the accession of Israel as a full member of the Venice Commission could be settled under the Romanian chairmanship in the Committee of Ministers.

Ambassador Magheru promised to try to further this matter during Romania's presidency.

## **8. Kazakhstan**

Ms Bychkova, member of the Constitutional Council of Kazakhstan, informed the Commission that Kazakhstan was seeking to become integrated in European structures on the basis of respect for the Constitution. Political pluralism, supremacy of human rights and the rule of law were guiding principles. Kazakhstan had already made significant progress in this area. Time was however required for this process. A moratorium for the death penalty had been established and democratic institutions had been developed. Recently, the UN Covenant on Civil and Political Rights had been ratified. Such self-executing treaties were directly applicable in the Kazakh legal system and had priority over national legislation. The task of the Constitutional Council was to guarantee constitutional values as an independent institution. Its decisions were respected and carried the weight of law.

Kazakhstan wanted to approach the Venice Commission, which was seen as a key legal player. Following the participation of a representative of the Commission in the 10th anniversary of the Kazakh Constitution in August 2005, the Commission would again be invited to the anniversary of the Constitutional Council in March 2006.

Ambassador Magheru replied that he would inform the Committee of Ministers about the interest expressed by Kazakhstan.

## **9. Kyrgyzstan**

Mr Lapinskas recalled that the Venice Commission at its last session had adopted an Interim Opinion on constitutional reform in Kyrgyzstan which made a broadly positive assessment of the draft amendments proposed by the Constitutional Council in June. Thereafter a new draft was published by the Secretariat of the Constitutional Council which was significantly worse, proposing inter alia the abolition of the Constitutional Court. Some positive elements remained with respect to human rights, in particular the abolition of the death penalty and better guarantees for personal liberty.

At the Conference on Constitutional Reform held in Bishkek at the end of November, which was co-organised by the Venice Commission, most participants advocated returning to the June draft. The day before the Conference the President of Kyrgyzstan publicly declared that the proposal to abolish the Constitutional Court was a mistake. Following the conference President Bakiyev received the delegation from the Venice Commission and OSCE and expressed his interest in receiving an assessment from the Venice Commission on the final draft.

Ms Baekova informed the Commission that the President and representatives of the government had recently stated that constitutional reform should be postponed to the year 2009. This was troubling since there was an urgent need for more checks and balances to presidential power, stronger guarantees for the independence of the judiciary and better protection for human rights.

## **10. Serbia and Montenegro**

Mr Tuori, Mr Closa Montero and Mr Bradley presented the draft opinion ([CDL\(2005\)094](#)) prepared at the request of the Parliamentary Assembly on the compatibility of the existing legislation in Montenegro on the organisation of referendums with applicable international standards, which mainly concerned the 2001 Referendum Law of the Republic of Montenegro ([CDL\(2005\)076](#)).

They pointed out that under the terms of Article 60 of the Constitutional Charter of the State Union, upon the expiry of a three-year period, i.e. on 4 February 2006, the member states could begin to withdraw from the State Union following a referendum in accordance with recognised democratic standards. An amendment to the Charter stipulated that relevant international standards must be met and that a member state organising a referendum must co-operate with the European Union. The Parliamentary Assembly's request concerned three specific points: the required level of participation, the majority requirements, and the criteria for eligibility to vote. The question of the implementation of the decision taken by referendum was not examined in detail. It should be noted that a number of amendments had been made to the draft opinion following the meeting of the Council for Democratic Elections on 15 December.

There were few binding international standards in this field. The rapporteurs had based their considerations on the Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), the Guidelines for Constitutional Referendums at National Level (CDL-INF(2001)010) and constitutional norms and practice in other member states.

Under the Montenegro referendum law, the results were considered valid if the majority of registered voters had taken part in the poll, but there were no provisions governing the quorum of approval (acceptance by a minimum percentage of the electorate). This requirement was not inconsistent with international standards, which were not very precise in this regard. However, it would be preferable to establish the exact percentage of the electorate who must give their approval in the referendum, given what was at stake (the independence of Montenegro). In order that the result of a referendum should command more respect, the draft opinion recommended that the main political parties of Montenegro agree on the conditions governing the referendum, including the quorum of approval, if any.

The criteria governing eligibility to vote – exclusion of Montenegrin citizens resident in Serbia and inclusion of citizens of Serbia resident in Montenegro – were acceptable by international standards. The 24-month residence requirement seemed, however, to be excessive.

The referendum must also be conducted in compliance with the constitutional rules of Montenegro.

Several members of the Commission pointed out that it was necessary to ensure that the question put in the referendum was perfectly clear.

Mr Krivokapić, Speaker of the Parliament of Montenegro, said that the requirement of 50% participation was consistent with international standards and that in most states there was no quorum of approval. It was therefore unnecessary to impose such a quorum.

Mr Kaluđerović, representative of the Socialist People's Party of Montenegro, thought that the issue of independence should be decided only by a majority of at least 50% + 1 of registered voters. He thought that citizens of Montenegro resident in Serbia should be given the right to vote. He was in favour of involving the European Union in the process.

Mr Darmanović, substitute member of the Venice Commission, thought that the 50% participation threshold should be maintained but that, if a quorum of approval was introduced, the 50% threshold should be removed. With regard to the procedure to be followed if the people voted for independence in the referendum, the Constitutional Court had already declared in 2002 that the outcome of the referendum would be binding.

Mr Schieder, former President of the Parliamentary Assembly, said that the two-year residency requirement ought to be abolished

**The Commission adopted the opinion on the compatibility of the existing legislation in Montenegro concerning the organisation of referendums with applicable international standards (CDL-AD(2005)041), including the amendments proposed following the meeting of the Council for Democratic Elections.**

## 11. Ukraine

### a) Electoral legislation

The Commission held an exchange of views with Mr Iuri Kliuchkovskiy, Representative of the President of Ukraine, on electoral legislation and practice. Mr Kliuchkovskiy underlined the fact that, as a result of a lack of democratic traditions, the second round of the presidential election had been rigged, as had been established by the Supreme Court in its judgment of 2 December 2004. He commented on a number of points in the joint OSCE/ODIHR draft opinion ([CDL-EL\(2005\)055](#)) on the law of 7 July 2005 ([CDL-EL\(2005\)054](#)) on making amendments to the law on election of people's deputies of Ukraine ([CDL-EL\(2005\)021](#)). He particularly pointed out that amendments had been made in the media field, in keeping with the recommendations of the Venice Commission and the OSCE/ODIHR.

Mr Sanchez Navarro presented the aforementioned draft opinion ([CDL-EL\(2005\)055](#)). He drew particular attention to the problems stemming from the existence of several laws on the different types of elections in Ukraine. The previous mixed system had been replaced by an election system based on proportional representation with a 3% threshold for securing seats. The revised law took account of a number of previous recommendations of the Venice Commission and the OSCE/ODIHR. The main problems concerned five-year residence requirement for eligibility to stand for election, appeals (in particular the choice as to whether to lodge appeals with an electoral commission or a court) and the rules prohibiting foreign nationals and foreign media from taking part in the election campaign.

Mr Sanchez Navarro also presented the joint OSCE/ODIHR draft opinion on the draft law on the state register of voters of Ukraine ([CDL-EL\(2005\)056](#); see [CDL-EL\(2005\)022](#)). The proposed system was technically correct, but the draft opinion put forward a number of recommendations concerning its establishment.

**The Commission adopted the joint opinion of the Venice Commission and the OSCE/ODIHR on the law of 7 July 2005 on making amendments to the law on elections of people's deputies of Ukraine (CDL-AD(2000)02). It authorised the secretariat, in co-operation with the OSCE/ODIHR, to make the changes needed to take account of legislative amendments concerning the media, and to forward the revised version to the Ukrainian authorities.**

**The Commission adopted the joint opinion of the Venice Commission and the OSCE/ODIHR on the draft law on the state register of voters of Ukraine (CDL-AD(2006)003).**

*b) Appointment of judges of the Constitutional Court*

Mr Buquicchio informed the Commission about a serious delay in the appointment of judges to the Constitutional Court of Ukraine. Following the expiry of the mandate of several judges, Parliament had not appointed new members and had not sworn in five judges appointed by the Judiciary within the 30 day limit provided for by the Constitution. Therefore, even their appointment had lost its validity. As a consequence, the Court no longer had a quorum (only 5 out of 18 judges remained). The Secretariat had prepared a declaration directed to the Ukrainian authorities and especially the Parliament asking for the urgent appointment of the judges. The Constitutional Court of Lithuania, in its capacity of Presidency of the Conference of European Constitutional Courts, added its support to the declaration.

Mr Holovaty pointed out that the non-appointment of judges was an attack on democracy similar to preventing Parliament from operating. The Monitoring Committee of the Parliamentary Assembly had also adopted a declaration urging the appointment of judges.

**The Commission adopted a declaration on the appointment of judges to the Constitutional Court of Ukraine and decided to forward it to the Ukrainian authorities.**

*c) Decentralisation*

Mr Lapinskas reported on the seminar "On Decentralisation in Ukraine: Priorities for 2006", which had been organised in the framework of the activities of the Task Force on Regionalization in Ukraine of the Congress of Local and Regional Authorities. Speakers from other European countries had presented their experience in regional self-government. With a view to developing an action plan for decentralisation in Ukraine, the seminar provided an opportunity to take stock of the current state of regional democracy in Ukraine and for a discussion of various models of regionalisation.

During the seminar, Mr Lapinskas commented on constitutional provisions on the territorial structure of Ukraine. He recommended (1) reviewing the territorial basis by seeking an optimal formula for the territorial units, (2) defining the scope and limits of central control of local self-government taking into account international standards and practice, and (3) giving priority to representative institutions rather than executive ones.

**12. Working methods of the Commission – Follow-up to the meeting of the Enlarged Bureau**

Ms Flanagan informed the Commission that the Enlarged Bureau had reviewed on the basis of a Secretariat memorandum (CDL(2005)095) the working methods of the Commission. Discussions would continue at the next session of the Enlarged Bureau. On the whole, however, no major changes seemed required but only adjustments to present practice.

Mr Buquicchio informed the Commission that, taking into account the budgetary situation, the Enlarged Bureau had decided that as from 2006 members from the Central and Eastern European states admitted as members of the European Union would no longer receive a contribution from the Commission budget for attending plenary sessions and sub-commissions in Venice. In accordance with the statutory rule, it was up to the member states to cover the travel and subsistence expenses of members coming to Venice.

### **13. Report of the Meeting of the Council for Democratic Elections (15 December 2005)**

Mr Torfason, Vice-Chair of the Council for Democratic Elections, informed the Commission of the outcome and conclusions of the Council meeting on 15 December.

The Council had examined the draft joint recommendations of the Venice Commission and the OSCE/ODIHR on amendments to the electoral code of Moldova ([CDL-EL\(2005\)048](#); [CDL-EL\(2005\)023](#)). A draft amendment to the draft opinion, concerning a point discussed at the meeting of the Council for Democratic Elections, was distributed to the Commission.

Mr Martin-Micallef informed the Commission that Mr Lupu, Speaker of the Parliament of Moldova, had asked for the Venice Commission's opinion on the Moldovan electoral code at a time when the Commission had already gone quite a long way in drafting recommendations. These could therefore be redrafted in the form of an opinion. It would also be a good idea to make slight changes to the text to take account of the amendments to the electoral code adopted on 17 November 2005 and the comments of the Congress of Local and Regional Authorities of the Council of Europe.

**The Commission adopted the joint opinion of the Venice Commission and the OSCE/ODIHR on the amendments to the electoral code of Moldova (CDL-AD(2006)001). It authorised the secretariat, in co-operation with the OSCE/ODIHR, to alter it to take account of the legislative amendments of 17 November 2005, and to forward the revised version to the Moldovan authorities.**

Mr Torfason informed the Commission that the Council for Democratic Elections had adopted the opinion on the draft organic law on "making amendments and additions to the election code of Georgia" ([CDL-EL\(2005\)047](#); [CDL-EL\(2005\)033](#) and [CDL-EL\(2005\)034](#)).

**The Commission adopted the opinion on the draft organic law on "making amendments and additions to the election code of Georgia" (CDL-AD(2005)042).**

Mr Torfason said that the Council for Democratic Elections had adopted the interpretative declaration on the stability of the electoral law ([CDL-EL\(2005\)017rev2](#); see item II.2.b of the Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev).

**The Commission adopted the interpretative declaration on the stability of the electoral law (CDL-AD(2005)043).**

Mr Torfason told the Commission that Croatia was undertaking the reform of its electoral legislation, with a view to drafting a comprehensive electoral code. Its preparation might however be deferred until after the 2007 elections. The draft law on the State Election Commission had, on the other hand, been submitted to the Venice Commission and the OSCE/ODIHR for an expert opinion and the text should be adopted in February. A round table on this subject had been held in Zagreb on 13 December.

**The Commission authorised the secretariat, in agreement with the rapporteurs and the OSCE/ODIHR, to forward the draft opinion on the draft law on the State Election Commission to the Croatian authorities before the next session.**

Mr Torfason told the Commission that the Council for Democratic Elections had discussed the declaration on women's participation in elections ([CDL-EL\(2005\)031](#)) and had instructed the secretariat to prepare a revised version in time for the next meeting. The revised declaration should take account of the proposals of the CDEG, the CDLR and Mr Jurgens, acting on behalf of the Parliamentary Assembly.

The items concerning Montenegro and Ukraine are dealt with under items 10 and 11.

#### **14. Study on the excessive length of proceedings**

Mr van Dijk introduced the preliminary report on national remedies in respect of excessive length of proceedings and explained that it was based on the replies to the questionnaire that had been circulated earlier on in the year. All members were requested to verify that the replies concerning their country were correct and to submit any possible clarification or comment to the Secretariat as soon as possible. The working group composed of Messrs Van Dijk, Matscher and Aurescu, would complete the analysis and make recommendations, and would submit the report to the Commission in March 2006. This study was to be presented to the public at the conference which the authorities of Romania, as the Presidency of the Committee of Ministers, would organise in co-operation with the Commission, in Bucharest at the beginning of April 2006.

#### **15. Other constitutional developments**

##### *a) Slovenia*

Mr Jambrek informed the Commission of the latest constitutional developments in Slovenia. Some constitutional revisions had taken place but most of them had failed as it was not easy to alter the Constitution. The revisions had concerned the following issues: Slovenia's accession to the European Union; changeover to an electoral system based on full proportional representation; a minor change concerning the extension of Article 14 of the Constitution, concerning equality before the law.

The failures to amend the constitution had concerned in particular the attempt to adopt a law establishing regions in Slovenia a constitutional law, and the endeavour to ensure the independence of the judiciary. There were still five or six constitutional amendments pending, which had little hope of being approved by parliament. The Constitutional Court had acquired greater legitimacy since it had developed a substantial body of case law, helping to fill in gaps in the Constitution.

There had been another interesting development: the authors of the existing Constitution, supported by members of the judiciary and academics, had met informally as a group of independent experts with a view to proposing a new draft Constitution. These experts were not members of any political party or state body and had met on a purely individual and voluntary basis. The group comprised nine members: four former presidents of the Constitutional Court, the President of the Supreme Court, the Minister of Justice, the Slovenian judge at the European Court of Human Rights and two eminent professors of constitutional law. The group intended to publish a draft Constitution in March or April 2006, and would leave it to the authorities and the parliament to decide what further steps to take. Mr Jambrek pointed out that he did not expect the Venice Commission to give its

official backing but invited the members of the Commission on an informal and individual basis to make it known if they were interested in taking part in this working group with a view to drafting a new Slovenian constitution.

*b) Iceland*

Mr Torfason informed the Commission of recent constitutional developments in Iceland. In 2004 the parliament had decided to revise the Constitution, which had been adopted in 1920 when Iceland had recovered its sovereignty. The Constitution had been substantially amended since then, in particular through changes to the electoral system in the nineteen sixties and more recently.

A draft law on media ownership, which had been highly criticised by the opposition, had been submitted to parliament. For the first time in Iceland, the President of the Republic had refused to give his assent to a law. This right of veto ought to be exercised with caution and only by way of exception.

Lastly, a draft constitutional revision would be proposed in autumn 2006, concerning the relationship between the President and the parliament, but also other aspects of the Constitution, such as the judicial system and local and regional authorities. Several conferences had been held in connection with this broad reform. For instance, in September 2005 the secretariat of the Venice Commission had been invited to attend a conference on the theme of referendums.

*c) Italy*

Mr Bartole informed the Commission about the constitutional reform recently adopted by the Italian parliament; a procedure of endorsement of this reform through a referendum was under way. The reform addressed the relations between the State and the regions; the latter had been given exclusive competence in respect of health and education matters. The position of the Prime Minister had also been strengthened: he had been given the power to dismiss ministers as well as to dissolve parliament. In such a case, the parliament would be able to continue and to appoint a new Prime Minister, but only with the same majority as that which had won the elections. This latter aspects testified to the fear for sudden changes in the majority, but risked reducing political dynamism. The composition of the Constitutional Court had also been modified. The second chamber of parliament had been changed and was to represent the regions. The division of competences between the two chambers was however regrettably unclear. Finally, while the powers of the regions were deemed to have been strengthened, in some areas their competences had been made concurrent with those of the central government.

*d) Monaco*

Mr Chagnollaud informed the Commission of His Royal Highness Prince Albert II of Monaco's accession to the throne. He also pointed out that the principality had ratified the European Convention on Human Rights.

Observer States

*Republic of Korea*

Mr Kim informed the Commission of the latest constitutional developments in the Republic of Korea. In 2004, the Constitutional Court had held that a special law establishing the new administrative capital outside the Korean capital of Seoul was unconstitutional, as the location of

the current capital was one of the clearly established provisions of the Constitution. The government in office had taken note of the Court's ruling and had sought a new location for the administrative capital. On the basis of the amended law, 12 of the 18 ministries had been established in the new administrative capital, 150 kilometres to the south of the capital, while the President's office, the Supreme Court, the National Assembly, the Ministries of Unification, Foreign Affairs, Defence, Equality between Women and Men, Justice and Administration had remained in Seoul. In June 2005, a group of 222 legal experts, professors and citizens had lodged an appeal with the Constitutional Court, claiming that the new law was unconstitutional. In November 2005 the Constitutional Court had dismissed the applicants' appeal. The Court had held that the revised law, establishing the principle of a new administrative capital, did not amount to a division of the capital of Korea, as the bodies at the heart of Korean institutions, for instance the Presidency and the National Assembly, were still located in Seoul.

With regard to co-operation between Korea and the Venice Commission, Mr Kim underlined their close links in matters concerning constitutional justice and said that Korea wished to continue co-operating with a view to developing constitutional justice further. He also pointed out that Korea wished to become a full member of the Venice Commission and would therefore make an application for full membership in the course of 2006.

#### **16. Report of the Meeting of the UniDem Governing Board (15 December 2005)**

Mr Luchaire informed the Commission of the meeting of the UniDem Governing Board, which had taken place on 15 December.

Seminars on the following themes were scheduled for 2006:

- The pre-conditions for a democratic election (Bucharest, 17 and 18 February 2006);
- Second chambers: a seminar on this theme was to be held by the Congress of Local and Regional Authorities of the Council of Europe, in co-operation with the Venice Commission, probably in Vienna in June 2006, under the aegis of the Austrian Presidency of the European Union;
- Legal protection against the acts of international institutions: a seminar was to be held on this subject in Croatia in September 2006.

The members were invited to propose themes for seminars in 2007.

The UniDem campus in Trieste, which had been set up to provide legal training for public officials, was operating efficiently and was very much appreciated. A network and a newsgroup would be set up on the Council of Europe portal in 2006 to ensure links between the participants.

#### **17. Other business**

#### **18. Dates of the next sessions**

The Commission confirmed the date of its 66<sup>th</sup> Plenary Session: 17-18 March 2006.

The others sessions for 2006 are confirmed as follows:

67 <sup>th</sup> Plenary Session	9-10 June
68 <sup>th</sup> Plenary Session	13-14 October
69 <sup>th</sup> Plenary Session	15-16 December

Sub-Commission meetings and meetings of the Council for Democratic Elections will take place as usual on the day before the Plenary Sessions. The next meeting of the Council for Democratic Elections will exceptionally take place on Saturday, 18 March 2006 at 14h30.

**LIST OF PARTICIPANTS**

<b>ALBANIA/ALBANIE :</b>	M. Luan OMARI
<b>ANDORRA/ANDORRE :</b>	M. François LUCHAIRE
<b>ARMENIA/ARMENIE :</b>	Mr Gagouik HARUTUNYAN
<b>AUSTRIA/AUTRICHE :</b>	M. Franz MATSCHER
<b>AZERBAIJAN/AZERBAIDJAN</b>	Mr Lätif HUSEYNOV (Apologised/Excusé)
<b>BELGIUM/BELGIQUE :</b>	M. Jean-Claude SCHOLSEM (Apologised/Excusé)
<b>BOSNIA AND HERZEGOVINA/ BOSNIE-HERZEGOVINE</b>	M. Cazim SADIKOVIC (Apologised/Excusé)
<b>BULGARIA/BULGARIE :</b>	Mr Anton STANKOV
<b>CHILE</b>	Mr José Luis CEA EGANA (Apologised/Excusé) Mr Juan COLOMBO CAMPBELL
<b>CROATIA/CROATIE :</b>	Mr Stanko NICK
<b>CYPRUS/CHYPRE :</b>	Mr Panayotis KALLIS
<b>CZECH REPUBLIC/ REPUBLIQUE TCHEQUE :</b>	Mr Cyril SVOBODA (Apologised/Excusé) Ms Eliska WAGNEROVA (Apologised/Excusée)
<b>DENMARK/DANEMARK :</b>	Mr Henrik ZAHLE (Apologised/Excusé)
<b>ESTONIA/ESTONIE :</b>	Mr Oliver KASK
<b>FINLAND/FINLANDE :</b>	Mr Kaarlo TUORI
<b>FRANCE :</b>	M. Olivier DUTHEILLET DE LAMOTHE (Apologised/Excusé) Mr Alain LANCELOT
<b>GEORGIA/GEORGIE :</b>	Mr John KHETSURIANI
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<b>HUNGARY/HONGRIE :</b>	Mr Peter PACZOLAY Mr Lazslo TROCSANYI
<b>ICELAND/ISLANDE :</b>	Mr Hjörtur TORFASON
<b>IRELAND/IRLANDE :</b>	Ms Finola FLANAGAN
<b>ITALY/ITALIE :</b>	Mr Antonio LA PERGOLA <b>(Président/President)</b> Mr Sergio BARTOLE
<b>KYRGYZSTAN/KYRGHYZSTAN :</b>	Ms Cholpon BAEKOVA
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<b>MALTA/MALTE :</b>	Mr Nicolae ESANU (Apologised/Excusé)
<b>MOLDOVA :</b>	M. Dominique CHAGNOLLAUD
<b>MONACO</b>	Mr Peter VAN DIJK
<b>NETHERLANDS/PAYS-BAS :</b>	Mr Jan HELGESEN
<b>NORWAY/NORVEGE :</b>	Ms Hanna SUCHOCKA (Apologised/Excusée)
<b>POLAND/POLOGNE :</b>	M. José CARDOSO DA COSTA (Apologised/Excusé)
<b>PORTUGAL :</b>	

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**UKRAINE :** Mr Serhiy HOLOVATY  
Mr Daniel BILAK

**UNITED KINGDOM/  
ROYAUME-UNI** Mr Jeffrey JOWELL (Apologised/Excusé)  
Mr Anthony BRADLEY

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Ambassadeur Roland MAYER, Représentant permanent du Luxembourg auprès du Conseil de l'Europe  
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Mr LEE, Kwang-ho, First Secretary, Korean Embassy to EU & Belgium

Mr KIM, Joon-Kyu, Assistant Minister, Ministry of Justice, Rep. of Korea

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Ms Cheryl SAUNDERS, President, International Association of Constitutional Law (Apologised/Excusée)

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Mr Aharon BARAK, President, Supreme Court of Israel

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Office for Democratic Institutions and Human Rights/

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Mr Dan DUMITRU, Secrétaire d'Etat, Gouvernement de la Roumanie

Mr Dan HAZAPARU, President, Romanian Foundation for Democracy through Law

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Mr Velizar KALUDJEROVIC, member of Parliament and Executive board, Socialist People's Party of Montenegro

Ms Radmila DJURISIC, Head of Cabinet of President of Socialist People's Party of Montenegro, Interpreter

**UKRAINE**

Mr Iuri KLIUCHKOVSKIY, Representative of the President of Ukraine

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Mr Derrick WORSDALE  
Mr Artem AVDEEV  
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