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FINAL REMARKS: THE ROLE OF THE VENICE COMMISSION

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In his opening speech, the President of the Parliamentary Assembly of the Council of Europe commented on the title of this seminar, underlining that democracy is not just an element of the transition but is often the transition itself: "If there is no democracy, there is nowhere to transit". This is indeed true, but it is also true that one cannot have democracy without law: law is not a precondition for democracy, or indeed a facilitating factor in carrying out democracy. Law is democracy. By this, I mean that one cannot have a true democracy without a suitable legal framework providing rules for the correct functioning of democratic institutions. It should also be noted that democracy is only true if the will of the people is properly expressed in the form of law. The adoption of legal form provides a guarantee against the arbitrariness of the exercise of power.

This connection between the concepts of transition, democracy and law offers me a useful starting point for these remarks. I would like to take this opportunity to consider afresh the experiences of democratic transition in Central and Eastern Europe in the light of the role played during the last ten years by the Venice Commission, the European Commission for Democracy through Law. I shall comment on the help given by this body to states in the process of transition and explain why the Commission has not yet terminated its task even if some commentators may think that the period of transition is over and that the Commission must look beyond the traditional borders of Europe in a search for new tasks and commitments.

It is common opinion that the transition from former communist regimes to "new democracies" in Central and Eastern Europe can be described as a peculiar process, which can be compared with previous experiences but has – at the same time – its own distinguishing features. An important contribution from our colleague Luis Lopez Guerra[1] reminds us that the Spanish transition was also characterized by efforts to achieve "a maximum degree of consensus" through negotiations and agreements between the main actors of

1. L.L. Guerra, "The Application of the Spanish Model in the Constitutional Transition in Central and Eastern Europe", *Cardozo Law Journal* 1997 No. 19, 6.

the transition – political parties, trade unions and business associations. Implementation of the agreements required that the main actors in the transition were in control of the bodies of the State which had been entrusted with the task of adopting the necessary constitutional reforms. This internal aspect of the democratic transition is present in the Central and Eastern European states, particularly in those countries where democratic institutions "were gradually introduced without at any time breaking with the formal requisites of current legislation". This includes a large majority of them. The implementation of constitutional reforms agreed by the actors of the transition was not, however, very simple, thanks to the fact that the former "nomenklatura" remained in control of important elements of the decision-making process, civil society was very weak and many former communist practices were still in existence. Internal efforts aimed at the renewal of the state needed major assistance which was eventually offered from abroad. The process with which we are dealing is more complex than the Spanish transition, in that internal developments have required support from external, international sources. These have taken place under the control of various international organizations. The "fall of the wall" suggested that the states concerned were attempting to move from the framework of the Warsaw Pact to the framework established by Western democracies for which there existed individual international institutions. If admitted to these institutions, Central and Eastern European countries could see their new status as members of the Western network of liberal democracies and market economies ratified. In order to achieve such results, the ex-communist states were required to comply with the standards established by those institutions in accepting new members or in offering help and co-operation. There were, therefore, many negotiations and agreements with a view to ensuring fair and correct compliance with such standards by the states concerned. Even the Organization for Security and Co-operation in Europe (OSCE), to which former communist states had adhered in the past, had an important role in the process. It was, however, evident that the main roles of integration were entrusted to the Council of Europe, the European Union and the International Monetary Fund.

This is an interesting element of transition. When the Central and Eastern European states cut their links with the Warsaw Pact, it became clear that there were many concepts and principles which were shared by all Western countries with which they had to comply. These included the notion of a common European constitutional heritage. To some extent, such principles limited the scope of self-determination. It is, however, difficult to compare this situation with that of those states within the framework of the Warsaw Pact, particularly as sovereignty was limited by subordination to the ideolo-

gies, policies and interests of the USSR. States could now accept to be bound by notions of European constitutional heritage because they had freely accepted to become members of this network of Western democracies. Each Western democracy – notwithstanding individual differences and diversities – complies with constitutional principles which form part of European legal heritage: they accepted such principles upon ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Western states comply with such principles on a permanent basis, thus strengthening the links within the European Union and working towards their implementation.

Negotiations and agreements between the states concerned and international organizations could be construed as interferences by the latter in the sovereignty of the former. Such proceedings are, however, the expression of international and European concern for compliance with the notion of European constitutional heritage. Moreover, they do not require that the constitutional choices of the new democracies be completely subordinated to strict guidelines provided by international organizations: rather, the implementation of European constitutional heritage implies respect for state sovereignty, just as the deepening of economic and political integration within the European Union implies respect for the national identity of member states.

It is for these and other reasons that – when undertaking action on behalf of international institutions, and in particular the Council of Europe – the Venice Commission has always to be very careful in developing its own standards of action. The debate on the actual substance of European constitutional heritage remains open. The choice as to a proper balancing between constitutional principles and distinguishing features of a market economy is unclear, as the notion of a market economy itself requires continuous revision. Differences of opinion exist between European states, European or international organizations and financial or economic international institutions and such differences become more marked when decisions require adoption in co-operation with the United Nations or indeed the United States of America. The Venice Commission is a technical body active under the umbrella of political bodies, such as the Parliamentary Assembly and the Committee of Ministers of the Council of Europe. It cannot make political decisions concerning the interpretation of European constitutional heritage, and in advising political bodies it also has to avoid solutions which, when adopted at an international political level, would imply the nullification of the freedom of choice of the states in question.

The recent case relating to Ukraine, that is the recent conflict between the Head of State and the Parliament, serves as a suitable illustration for this problem. Different international actors offer different interpretations of the

conflict: a former US ambassador in Moscow,[2] emphasized the need to strengthen the executive power in Ukraine in light of the implementation of economic reforms, while the Council of Europe was seriously concerned by the presidential tactic of bypassing Parliament in submitting to the people the decision concerning a constitutional revision. The Parliamentary Assembly of the Council of Europe asked the advice of the Venice Commission, which itself had not previously been in a position to give preference to the adoption in Ukraine of a parliamentary or a presidential system. Prior to this, the Venice Commission had only had the possibility of emphasizing the possible different effects of two alternatives, while calling for strict compliance with the Constitution. The Venice Commission, therefore, refused to draw inspiration from the past referendum called by De Gaulle in 1962 to revise the French Constitution outside constitutional provisions concerning procedure for constitutional amendment.[3]

The example of Ukraine is in fact a good one. It reminds us of the comments made by Carl Schmitt in 1928[4] when he envisaged a revision of the Weimar Constitution of Germany. Schmitt stated that at the end of the First World War, Germany had been obliged to choose the "Western" model of constitutional democracy which, in his opinion, was not at all suited to the needs of integration of German society. This opinion has certainly to be ascribed to the authoritarian tendencies of Schmitt, but in hindsight the article gives us a chance to re-assess the crisis of Weimar Germany. Perhaps, if a revision of the Weimar Constitution had been adopted, which took into consideration the problems of the German society of the 1920s, later developments, favoring the advent of Nazism, could have been avoided. A constitutional decision-making process should therefore have been substituted for a violent accession of an authoritarian political party to power. Similar reasoning should be applied to the case of Ukraine because we are currently in the position of avoiding such a dangerous conclusion of current developments. Even if we could not find authoritarian tendencies in the draft of the Head of State, we should insist upon compliance with the constitutional rules concerning the revision of the Constitution of Ukraine.

In their reports, President Harutunian and Minister Suchocka stressed that transition in Central and Eastern Europe is not yet over. Some constitutional choices made at the beginning of the period of transition probably require revision. This greatly interests the Venice Commission, because we

2. In an article published by the *New York Review of Books* XLVII 3 41, J.F. Matlock, "The Nowhere Nation".
3. G. Burdeau, *Droit Constitutionnel*, Paris 1988, 447-450.
4. Previously appeared in *Die Schildgenossen*; the article was recently published in *Schmitt, Staat, Grossraum, Nomos*, Berlin 1995, and then translated in the Italian journal *Diritto e cultura* 1998 No. 2 by Damiano Nocilla and Markus Nikel.

realize that our standards of action have on one hand to reflect the predominant exigencies of transition, and on the other, to comply with the requirements of the later stages of transition when initial choices have to be analyzed in the light of actual experiences and developments.

The choice of standards of action by international organizations – and, therefore, also of the Venice Commission – in dealing with constitutional problems arising from transition is not an easy task.

Leaving aside the problems of the relations between the Commission and its political "clients", whose political discretion has to be safeguarded, such standards of action have to ensure freedom of choice and scope for discretion to the countries in question. It is inconceivable that our advice would be expressed in the form of "all-or-nothing" rules. This is the main reason why I have chosen to speak about standards of action. By this, I mean standards concerning the relations between the Venice Commission and the state constitutional bodies, on one side, and standards affecting the content of constitutional choices which have to be made on the other.

Sometimes, however, the flexibility of such standards is partially corrected by the fact that the interested States are bound by international conventions or agreements which affect their constitutional choices. In such a case, standards can become stricter than normal. In this respect, consideration should be given to the European Convention for the Protection of Human Rights and Fundamental Freedoms which concerns not only the protection of the subjective positions of the citizens concerned, but also the organization of state powers as far as, for instance, the structure and independence of the judicial branch is at stake. Hanna Suchocka correctly emphasized this point in her report.

Occasionally, international agreements have a more pervasive effect. Professor Sadikovic, of the University of Sarajevo and associate member of the Venice Commission – in his intervention during the Lund Seminar – mentioned the revision of the Constitution of Bosnia and Herzegovina, in that the Republic would like to recover its own sovereignty by establishing a new constitutional order on its own initiative. The state, however, has to deal with obligations flowing from the Washington and Dayton Agreements. The constitutional rules provided for by these agreements affect the adoption of constitutional amendments and are binding, even though it is to be noted that the implementation of the Washington and Dayton Agreements is still under the control of international authorities. It is likely at this stage that the revision of the Constitution of Bosnia and Herzegovina will require the support of the major members of the international community and of the international organizations which are still based in the state. The Constitution of the Republic is only partially effective; therefore its revision – even if it

were adopted according to constitutional rules – could endanger the efforts of the international community aimed at the establishment of peace and order in Bosnia and Herzegovina. If, however, the support of the international community, the territorial entities and the States concerned were to be ensured, the Constitution could be revised. This would not be an exercise of the sovereignty of Bosnia and Herzegovina, and the advice and technical support of the Venice Commission would be greatly appreciated, as recent experience has shown.

The organizers of this seminar submitted to the Rapporteurs a list of issues to be addressed. The list includes two main items: the rule of law and the separation of powers. I would like to read the reports presented by the speakers in the light of these suggestions.

The rule of law is a complex concept. Its content can differ if we look at the German *Rechtsstaat*, at the French *Etat de droit*, or the English Rule of Law.[5] In contemporary legal experience, a common understanding of the rule of law is taking place in the framework of European constitutional heritage. The concept implies some institutional elements, such as the separation of powers between the legislative and judicial authorities of the state and the independence of the judiciary, but also the democratic formation of the legislative bodies of the state, procedural guarantees such as those required by a democratic decision-making process, the protection of some basic rights and fundamental freedoms, and also a number of standards of fairness in the exercise of judicial functions and in the equal implementation of constitutional and legal principles.

As Professor Feldbrugge correctly emphasized, the actual functioning of this design depends on the attitudes of civil society, on the discontinuity (or continuity) of the legacy of the former communist regimes, and on the developments and achievements of education of the social actors according to moral, political and economic theories which are at the basis of the fundamental aims pursued in transition. Such things take time; it would be unthinkable to demand a coherent and complete implementation of the rule of law in but a few years. Professor Maruste informed us that even where – as in Estonia – some structural requirements have been implemented, it is not only new judicial procedural rules that are lacking; the independence of the judiciary has to be refined through the establishment of the High Judicial Council system as applied in many European countries.

The absence of procedural guarantees is of greater concern than the absence of a High Judicial Council body. The establishment of judicial independence through a system of self-government is not possible as long as a majority of the older judges of the communist regime remain in office.

5. J. Chavalier, *L'Etat de droit*, Paris 1994, 11.

They cannot be entrusted with functions concerning, for example, the appointment of new judges, compliance with standards of judicial fairness, implementation of judicial reforms – in other words, functions which directly affect the identity of the new judiciary. It will only be possible to create a body of the state partially elected by the judges and entrusted with judicial self-government when we are convinced that a change of mentality is taking place among the judges.

The standards of constitutional reforms in the judicial field, therefore, require elements of flexibility. At the beginning of the transition period, the appointment of judges could be entrusted to political bodies able to understand the needs of the new constitutional order, even if the requirements of professional skills of the judges have in any case to be satisfied. Only after some years is it be advisable to award judges self-government powers. In the meantime, however, basic human rights have to be guaranteed in the judicial field. The European Convention for the Protection of Human Rights and Fundamental Freedoms offers useful guidelines relating not only to procedural aspects of judicial functions. Ms. Suchocka is right in underlining that Articles 5 and 6 of the Convention also imply the adoption of structural measures. Even if appointments are made by political bodies, the further independence of the judges also has to be ensured. A transitional solution has to be found without necessarily taking recourse to the High Judicial Council system.

In a discussion of the implementation of the European Convention, the efficiency of the judiciary is a factor also at stake. In a period of transition, when judicial reforms are adopted, efficient functioning of the judicial bodies cannot necessarily be guaranteed. Does this have to be postponed to a later stage? It is a difficult task to come to a satisfactory arrangement, and all reports cite evidence of partial dissatisfaction with the new bodies – better than the old communist models, but not always in the position of complying with the more modern hopes and desires of the citizens. The take-off of transition implies many promises which cannot necessarily be immediately satisfied.

In advising the new democracies, international institutions, including the Venice Commission, have to keep in mind such aspects relating to the transition period while avoiding a maximalist approach. Time is required for the establishment of the new institutions and the evolution of a new mentality among all those concerned.

When I spoke about the institutional arrangements aimed at establishing the independence of the judiciary, I accepted the idea that the High Judicial Council system is a more refined solution than the arrangements adopted in this field in some European states, such as Germany, Austria or Switzerland.

This is not, however, to imply that international organizations should have the power to suggest to the new democracies that the High Judicial Council system should be adopted, without leaving states the choice of an alternative. International organizations should be more concerned with the concept of judicial independence – organizations should emphasize its significance and ensure its effectiveness. As far as such institutional solutions are at stake, states must still retain the scope of discretion to be able to choose arrangements suitable for both constitutional traditions of the pre-communist period, and those of European constitutional heritage.

It is my opinion that a similar attitude has to be adopted with regard to the choice of form of government. It is extremely difficult to suggest a preference for parliamentary, presidential and semi-presidential governments. The main purpose of such a choice should be a solution which will guarantee a democratic decision-making process and parliamentary control of the executive, or at least a fair separation of powers and a balance between the powers of the executive and the Parliament.

We could, for example, share the opinion that a direct election of the Head of State is not a solution best fitted to the requirements of democratic establishment in modern pluralist societies. We also, however, have to understand and accept the justifications occasionally submitted by Central and Eastern European countries in adopting other solutions such as the desire of the people to have a role in choosing the Head of State, emphasis on the unity of the State and a reduction in the impact of the political parties on elections. On the other hand, such a solution could more reflect authoritarian tendencies of government which are, indeed, present in the historical traditions of some countries – the States of the Commonwealth of Independent States for instance – and could favor an evolution of new authoritarian tendencies in such new democracies under the cover of the need to strengthen executive powers.

While there is no justification for contesting the legitimacy of the choice of the direct election of a Head of State, it might be advisable to emphasize the importance of parliamentary control of the executive and of a fair balance of powers between the Parliament and the executive. A frequent preference for semi-presidential government in new democracies can be explained by the fact that it ensures parliamentary control of the executive which cannot be easily implemented in a presidential system.

It is true that a form of semi-presidential government encourages the danger of a possible "cohabitation", but a further potential danger of such a system is that of adopting not only a semi-presidential, but also a parliamentary government in a period of transition. It is well known, for example, that President Havel strongly supported the adoption of the proportional electoral

system for the parliamentary elections to adopt the nation's first post-communist constitution. The choice was correct: the deliberation of a new constitution has to encompass each political position present in the relevant society. It would be unfair to concentrate all powers of decision in the hands of a parliamentary majority elected according to a non-proportional system. It is also true that the direct election of a Head of State by the people in a period of transition could emphasize any rifts present in a society when both unity of the people and peaceful "cohabitation" of all political parties are sought after. The concentration of supreme representation of the nation in one person elected without general parliamentary agreement (in parliamentary governments, the Head of State tends to be elected by the Parliament under the system of special qualified majorities) can endanger the credibility of the institutions of the State at the particularly delicate time of the adoption of a new constitution. A parliamentary election for the Head of State would, therefore, be advisable.

This is merely a suggestion which merits argument. At this stage of the transition process in Central and Eastern Europe, however, further, newer problems are also emerging. Serhiy Holovaty presented us with the case of Ukraine, where the Head of State, taking advantage of his dissatisfaction with the current constitution, submitted a proposal for the revision of relevant aspects of the form of governance. I have previously emphasized the fact that such a project does not deserve international support because it aims to bypass the procedure for constitutional revision as provided for by the Constitution. Furthermore, the content of such a proposal cannot easily be accepted on the basis of general shared constitutional standards.

Certainly, the suggestion to strip the members of the Parliament of their immunity does not comply with the principles of general constitutional law as far as it is aimed at depriving the state legislative body of a guarantee of its freedom in the face of other state powers. Moreover, provisions for a presidential dissolution of Parliament in the event that a vote of no-confidence is expressed in an all-Ukrainian referendum would imply an extension of the role of the President through the establishment of a direct relation between the people and the Head of State, contrary to that between the people and the Parliament. The Presidency could, therefore, become the center of power: the disruption of the balance between President and Parliament would strengthen the personalization of power and the authoritarian tendencies of the Ukrainian government through a confrontation between two different state bodies, of which it is only Parliament which really deserves to be qualified as a representative institution of all political groups present in society.

Such remarks do not obviously permit us to bypass the real problem of an effective economic policy which is required in the transition to a market economy. Mr. Holovaty told us that the President has adopted many decrees which have created parallel legislation alongside numerous statutes already in force. The Constitution actually entrusts the President with the task of issuing decrees dealing with economic matters not regulated by law, but he has himself enlarged the scope of his interventions. As a matter of fact, defining economic matters or issues is not an easy question: arbitrary constructions are possible, for instance a great deal of private law and all commercial law is connected with the establishment of the market economy. The powers of the President should, therefore, be counterbalanced by a system of effective parliamentary control. If the best solution – the adoption of presidential decrees in the framework of previous legislation – is not possible as the previous legislation was insufficiently updated, the executive could be permitted to adopt decrees which should be submitted for parliamentary approval by a fixed deadline. If the Parliament fails to approve the proposals, they should lose their legal effects. Another solution might be that Parliament could in advance provide general guidelines concerning the adoption of presidential decrees.

This is an example of the arrangements which are possible by substituting formal and procedural guarantees for substantive guarantees offered by previous legislation when such legislation is lacking.

The Venice Commission has dedicated a great deal of attention to the establishment and functioning of the constitutional courts in the new democracies of Central and Eastern Europe.

Constitutional courts play an essential role in guaranteeing compliance with the procedural and substantial rules of constitutions. Their existence is therefore an important step towards the establishment of the rule of law in the period of transition. As Hans Kelsen underlined in his contribution to the European theory of judicial review of legislation, the appointment of the judges of constitutional courts could imply the intervention of state political bodies.[6] According to Kelsen, the appointment of judges does not present the institutional and practical difficulties which are connected with the establishment of a new judiciary, and it allows for the formation of a membership attentive to the new constitutional exigencies of the transition. These features can explain the political agreement reached in Poland in the 1980s for the creation of a Constitutional Tribunal which – in some way – paved the way for the transition. But the result of such a novelty cannot be satisfactory if the independence of the Court is not guaranteed: it is not only a problem of the status of judges, it is also a problem of a balanced distribution of the powers

6. H. Kelsen, *La giustizia costituzionale*, Milano 1981, 176.

in the nomination and appointment of judges. If these powers are concentrated in one body of the state (for instance the President, without the advice or the control of Parliament), the constitutional court will not be completely independent, because it is solely the expression of the will of the Head of State. Even when the power to appoint judges is given to more than one state body, the position of the court will be dependent on one body only if this body has full control over the other bodies concerned, and specific rules concerning professional skills and independent status of the judges are lacking.

When we speak of constitutional courts, we have to keep in mind two caveats. First of all, we should avoid substituting the constitutional court for ordinary and special judges when constitutional cases are not at stake. It is inconceivable that a constitutional court can replace other judges when the judiciary is not functioning particularly well, or even badly. It is not possible to transform each major legal conflict into a constitutional case: the scope of the functions of the constitutional courts has to be kept separate from that of the functions of the judiciary. As long as we extend the competence of a constitutional court outside of the context of traditional constitutional matters, the institution will lose authority and credibility. My guess is that some proposals submitted by President Haratunian deserve to be dealt with very carefully and without maximalist attitudes.

On the other hand, I believe that the American constitutional literature which is now extensively read in Europe, particularly by the drafters of new constitutions, is especially interesting and indeed offers useful suggestions for the interpretation of a written constitution, yet it can also represent a dangerous influence if we want to look at the concept of European judicial review of legislation in an operational perspective. By this, I mean that we should, for instance, avoid determining for the constitutional court a substitute role as constitutional legislator if a revision of the constitution is required. The pages written by some American scholars on the role of the Warren Supreme Court in the transformation of the American legal system are indeed fascinating, but the new European courts do not have the traditional authority of the American Supreme Court and thus have to avoid any temptation of taking on such a political role. They have to leave space for the political decision-making process and avoid giving the impression that they share the political functions of the politically elected bodies of the state. If they want to learn from the American experience, they have at least to stick to the minimalist suggestions of the recent Supreme Court as they are interpreted by Sunstein.[7] Instead of taking on the functions of Parliament, courts have to open the way to political decisions and when both controversial and hard constitutional cases or difficult constitutional reforms are on the

7. C. Sunstein, *One Case at a Time*, Cambridge/London 1999.

agenda of a state, they have to favor the democratic deliberative decision-making process, particularly when there are different choices which can be made. Only when a case has a clear and evident solution dependent on internationally shared standards which can be directly applied in the internal legal order of the state concerned can a constitutional court of Central and Eastern Europe adopt a politically relevant decision, even if its decision looks to be an important and decisive step on the path of constitutional reforms. Recent decisions by some constitutional courts concerning the death penalty are good examples of fair and correct intervention of constitutional justice in the implementation of a constitution which does not replace democratic deliberation of state political bodies. Instead, a constitutional court is no longer the least dangerous branch of the state (according to the definition of the Federalist Papers recalled by Alexander Bickel) if without a constitutional warrant it reduces the scope of the freedom of choice reserved for Parliament by the constitution.

In dealing with constitutional innovations or reforms in Central and Eastern Europe countries, international organizations – and, therefore, also the Venice Commission – have to make delicate and careful choices in selecting the standards of action which are most suitable for the differing cases at stake.

Standards can differ according to the different stages of the transition: the take-off of the transition of a post-communist state to democracy can require, for instance, a strict interpretation of the proposals concerning the implementation of basic human rights and fundamental freedoms, while allowing a more relaxed attitude towards the institutional arrangements which require time-consuming efforts for the implementation of the new constitutional principles. On the other hand, the participation of all relevant political groups and effective parliamentary control of the executive should be guaranteed.

In the further stages of the transition, a state deserves more freedom of choice and discretion on the basis of the result it secured, while the requests need to be more exacting with regard to the aims and purposes which have to be pursued.

The process of transition certainly can develop in different ways: in some countries it can require a shorter period of time than in others. This point is emphasized in the reports of Mr. Gross – a member of the Swiss Parliament and of the Parliamentary Assembly of the Council of Europe – and Mr. Holovaty. Sometimes formally exhaustive results can be less satisfying than substantial novelties which do not have a similar formal appearance: all of us remember that Hungary and Poland were admitted to the Council of Europe even without having formally adopted a new and complete constitution, while Bulgaria and Romania had to wait longer to join, notwithstanding the fact that new constitutions were already in place. A state can comply with the

yardstick of European constitutional heritage even if it has only partially amended its previous constitution but introduced important reforms in the day-by-day practice of government through ordinary legislation or adhesion to important international agreements.

Ukraine offers us an example of the difficulties that a country in transition can meet in obtaining the status of a mature democracy. It adopted its new constitution in June 1996, but the implementation of many constitutional provisions is lacking. The executive is, therefore, trying to overcome the difficulties of the transition through authoritarian measures and blaming Parliament for delays. Perhaps it is indeed true that a lot of the incumbent members of the Parliament are connected with the old communist nomenklatura, but evidence has to be provided to show that authoritarian measures are the best solution to promote the advent of new and genuinely democratic political parties. On the other hand, international organizations have to favor the establishment of a fair and mature democracy and encourage entrusting to the people concerned an electoral choice between different political alternatives.

This does not mean that the international institutions have to give abstract suggestions more concerned with the general principles of democratic theory than with the concrete political, social and economic aspects of the interested states. Advice has to be given taking into consideration the factual elements of experience. Perhaps the Venice Commission might have given the impression that sometimes its opinions were not really rooted in a complete knowledge of the actual situation of the country dealt with, but it is well known that the Commission is frequently called to give advice without having the chance of incorporating data from fact-finding missions, whether undertaken by itself or others. In the exercise of its mandate, the Commission has to avoid putting itself in the position of working in an abstract dimension: legal modesty, not legal hubris has, therefore, to be its main standard of action.