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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ADDENDUM

**TO THE DRAFT REPORT
ON THE INDEPENDENCE OF THE JUDICIAL SYSTEM:
PART I: THE INDEPENDENCE OF JUDGES**

**Revised following discussions
at the Sub-Commission on the Judiciary (Venice, 10 December 2010),
by the Plenary Session (Venice, 11-12 December 2009)
and including further proposals made by members**

on the basis of comments by

**Mr Guido NEPPI MODONA (Substitute Member, Italy)
Ms Angelika NUSSBERGER (Substitute Member, Germany)
Mr Hjortur TORFASON (Member, Iceland)
Mr Valery ZORKIN (Member, Russia)**

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31. The position of the Venice Commission (CDL-AD(2007)028) is more nuanced:

“44. In Europe, a variety of different systems for judicial appointments exist and [that] there is not a single model that would apply to all countries.

~~*45. In older democracies, the executive power has sometimes a decisive influence on judicial appointments. Such systems may work well in practice and allow for an independent judiciary because these powers are restrained by legal culture and traditions, which have grown over a long time.*~~

~~*46. New democracies, however, did not yet have a chance to develop these traditions, which can prevent abuse, and therefore, at least in these countries, explicit constitutional and legal provisions are needed as a safeguard to prevent political abuse in the appointment of judges.¹*~~

~~*47. Appointments of judges of ordinary (non-constitutional) courts are not an appropriate subject neither for a decision by the executive, nor² for a vote by Parliament because the danger that political considerations prevail over the objective merits of a candidate cannot be excluded.*~~

~~*48. An appropriate method for guaranteeing judicial independence is the establishment of a judicial council, which should be endowed with constitutional guarantees for its composition, powers and autonomy.*~~

~~*49. Such a Council should have a decisive influence on the appointment and promotion of judges and disciplinary measures against them.*~~

~~*50. A substantial element or a majority of the members of the judicial council should be elected by the Judiciary itself. In order to provide for democratic legitimacy of the Judicial Council, other members should be elected by Parliament among persons with appropriate legal qualifications.”*~~

1. To sum up, it is the Venice Commission’s view that ~~at least in new democracies³~~ it is an indispensable guarantee for the independence of the judiciary that **an independent judicial council have decisive influence on decisions on** the appointment and career of judges. Owing to the richness of legal culture in Europe, which is precious and should be safeguarded, there is no single model which applies to all countries. **While respecting this variety of legal systems, the Venice Commission recommends that states old democracies⁴ which have not yet done so consider the establishment of an independent judicial council or similar body. In all cases the council should have a pluralistic composition with a substantial part, if not the majority, of members being judges.⁵ With the exception of ex-officio members these judges should be elected or appointed⁶ by their peers.**

80. The following standards should be respected by states in order to ensure internal and external judicial independence:

4. It is an indispensable guarantee for the independence of the judiciary that an independent judicial council have decisive influence on decisions on the appointment

¹ [Proposal by Ms. Siljanovska–Davkova].

² [Proposal by Ms. Siljanovska–Davkova].

³ [Proposal by Ms. Siljanovska–Davkova].

⁴ [Proposal by Ms. Siljanovska–Davkova].

⁵ See CDL-AD(2009)028 para. 50.

⁶ [Proposal by Mr. Jowell, already contained in document CDL(2010)006].

and career of judges. While respecting the variety of legal systems existing, the Venice Commission recommends that states ~~old democracies~~⁷ not yet having done so consider the establishment of an independent judicial council. In all cases the council should have a pluralistic composition, with a substantial part [if not the majority] of the members being judges. With the exception of ex-officio members these judges should be elected by their peers.

Appendix

Proposals by Ms Siljanovska–Davkova (14 February 2010)

...

3. The appointment and consultative bodies

31.

45. and 46 . To delete. Why?

Firstly, categories named as “older democracies” and “new democracies” are heterogeneous, not homogeneous entities and sometimes the differences among those within the entity are bigger than between the “first” and the “second” entity.

Secondly, legal culture and tradition are important conditions for democracy, but they do not directly neither prevent nor exclude political abuse in the appointment of judges “per se”. Therefore, constitutional and legal provisions as a safeguard of the objective merits and independence of judges are also needed in older democracies.

Thirdly, there is contradiction between what is said in paragraph 45 and paragraph 47. If in paragraph 47 we say that “the appointments of judges of ordinary courts are not an appropriate subject for vote by Parliament because the danger that the political considerations prevail over the objective merits of a candidate cannot be excluded”, we could not forget that the same, even bigger problem appears with the appointments of the judges influenced by the executive power.

47. To change the sentence as follows: “Appointments of judges of ordinary (non–constitutional) courts are not an appropriate subject neither for executive power, nor for a vote by Parliament.....”

32. To delete the words “in new democracies” in the first sentence and change it as follows: To sum up, it is the Venice Commission’s view that it is an indispensable guarantee...

To delete second sentence, related to “old democracies”. Why?

Because “double language” and “double standards” are inconsistent.

IV Conclusions

79, point 4. To replace “old democracies” in the second sentence by the word “the states”.

...

⁷ [Proposal by Ms. Siljanovska–Davkova].