



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 23 June/juin 2014

CDL-PL-PV(2014)002
Bil.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT
(COMMISSION DE VENISE)

99th PLENARY SESSION
Venice, Scuola Grande di San Giovanni Evangelista
Friday, 13 June 2014 –
Saturday, 14 June 2014

99^e SESSION PLÉNIÈRE
Venise, Scuola Grande di San Giovanni Evangelista
Vendredi 13 juin 2014 -
Samedi 14 juin 2014

SESSION REPORT
RAPPORT DE SESSION

TABLE OF CONTENTS/TABLE DES MATIERES

1.	Adoption of the Agenda.....	3
2.	Communication by the President.....	3
3.	Communication by the Secretariat.....	3
4.	Co-operation with the Committee of Ministers.....	3
5.	Co-operation with the Parliamentary Assembly.....	4
6.	Co-operation with the Congress of Local and Regional Authorities of the Council of Europe	4
7.	Follow-up to earlier Venice Commission opinions.....	4
	<i>Amicus curiae brief for the Constitutional Court of Georgia on individual application by public broadcasters (CDL-AD(2014)014);.....</i>	<i>4</i>
	<i>Joint Opinion on the draft Electoral Code of Bulgaria (CDL-AD(2014)001)</i>	<i>5</i>
	<i>Joint Opinion on the Law on Amending some legislative acts on the election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine on 24 July 2009 (CDL-AD(2009)040).....</i>	<i>5</i>
8.	Albania.....	5
9.	Ukraine	6
10.	Slovak Republic	7
11.	Russian Federation.....	7
12.	Kyrgyzstan.....	9
	<i>Draft joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft law “on Elections in the Kyrgyz Republic”</i>	<i>9</i>
	<i>Draft opinion on the draft amendments to the constitutional law on the status of judges of Kyrgyzstan.....</i>	<i>10</i>
	<i>Draft opinion on the constitutional law on introducing amendments and additions to the constitutional law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic</i>	<i>10</i>
13.	Tajikistan	11
14.	Armenia.....	11
15.	Azerbaijan	12
16.	Georgia.....	13
17.	Joint Venice Commission-OSCE/ODIHR Guidelines on the legal personality of Religious or Belief Communities.....	14
18.	Report on Freedom of Assembly.....	14
19.	Joint Venice Commission-OSCE/ODIHR Guidelines on Freedom of Association	15
20.	Co-operation with Latin America.....	15
21.	Libya	16
22.	Co-operation with other countries.....	16
	<i>Maroc.....</i>	<i>16</i>
23.	Information on constitutional developments in other countries	16
	<i>Norway.....</i>	<i>16</i>
	<i>Tunisia.....</i>	<i>17</i>
	<i>Turkey.....</i>	<i>17</i>
24.	Report of the meeting of the Council for Democratic Elections (12 June 2014).....	18
25.	Report of the meeting of the Scientific Council (12 June 2014).....	18
26.	Election of a member of the Bureau, the Vice-Chair of the Council for Democratic Elections and the Vice-Chair of the Sub-Commission on Democratic Institutions.....	18
27.	Other business	18
28.	Dates of the next sessions.....	18

1. Adoption of the Agenda

The agenda was adopted as it appears in document CDL-PL-OJ(2014)002ann.

2. Communication by the President

Mr Buquicchio informed the Commission about his recent activities, which are listed in document [CDL\(2014\)035](#).

He further expressed his gratitude for the work of the members of the Venice Commission who have not been reappointed by their governments.

The Commission paid tribute to the late Mr. Jean-Claude Colliard, the member in respect of France and Vice President of the Council for Democratic Elections, by observing a minute's silence.

3. Communication by the Secretariat

Mr Markert invited all interested members to propose their candidacy with a view to the elections which would take place on the second day of the Plenary Session.

He further informed the Commission that upon proposal of the Scientific Council, the Bureau had decided to sign a technical agreement of co-operation between the Venice-Commission and the Russian Institute for Legislation and Comparative Law in order to improve the visibility of the Venice Commission in Russia. The Russian member, Ms Taliya Khabrieva, is the director of this institute.

Finally, he announced that an association of former members and substitute members of the Commission had been created and had been met with support and enthusiasm.

4. Co-operation with the Committee of Ministers

Mr Rudolf Lennkh, Permanent Representative of Austria to the Council of Europe, reported on the Austrian chairmanship of the Committee of Ministers. He stressed particularly the complex issue of Ukraine and the manner in which the Committee of Ministers, under the Austrian chairmanship, had dealt with it. The Committee and the CoE had taken concrete steps: an International Advisory Panel had been set up, an adviser to the Ukrainian Parliament had been dispatched, a tripartite Commission with representatives of the Council of Europe, the Ministry of Justice and the Verkhovna Rada had been set up, the Advisory Committee under the Framework Convention for National Minorities had been activated and the Venice Commission had been involved. The Committee of Ministers had held numerous extraordinary meetings and the Council of Europe had been the first international organisation to take decisions on the conflict concerning Ukraine.

Mr Santiago Oñate Laborde, Permanent Observer of Mexico to the Council of Europe, expressed his gratitude that Mexico is a member of the Venice Commission; this membership was deeply cherished by Mexico. He stressed the importance of the work of the Commission in improving democracy and the rule of law in various countries.

The Commission was further informed that on 11 June 2014 the Committee of Minister had accepted the request of Kosovo to become the 60th member of the Venice Commission and had invited Kosovo to appoint a member and a substitute member to sit on the Commission.

5. Co-operation with the Parliamentary Assembly

Mr Arcadio Diaz Tejera, Member of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, gave an overview of the activities of the Parliamentary Assembly and its relevant committees. In particular, he reported on the activities relating to Ukraine: at the April session the Assembly had suspended the voting rights of the Russian delegation; the rapporteurs for Ukraine from the Monitoring Committee had carried out several fact-finding visits to Ukraine, including during the decisive events on Maidan square; the report on the recent developments in Ukraine had been adopted and the Assembly had participated in the observation of the presidential election.

6. Co-operation with the Congress of Local and Regional Authorities of the Council of Europe

Mr Lars O. Molin, Chair of the Monitoring Committee of the Congress, informed the Venice Commission about the Committee's activities relating to the latest developments on local and regional democracy in the Republic of Moldova, in Belgium and in Georgia, and on the territorial reform and its impact on the provinces in Italy. Monitoring visits to Poland, Greece, Norway, and France are planned. A post monitoring programme had been agreed upon by the Ukrainian authorities.

Mr Alain Delcamp, former Chair of the Group of Independent Experts, the Congress' adviser on constitutional matters informed the Commission on the preparation of the report on voters abroad. He further reported on the observation by the Congress of the local elections in Ukraine. Finally, Mr Delcamp provided information on the draft report on the eligibility criteria for local and regional elections, whose relevant draft recommendation called on the Committee of Ministers to elaborate a code of good practice on this issue with the assistance of the Venice Commission.

7. Follow-up to earlier Venice Commission opinions

Amicus curiae brief for the Constitutional Court of Georgia on individual application by public broadcasters ([CDL-AD\(2014\)014](#));

On 11 April 2014, the Georgian Constitutional Court ruled that the provisions on the premature termination of the mandate of the members of the Board was unconstitutional and declared the members of the suspended board restored to their function.

The Constitutional Court acknowledged that the Parliament was entitled to reform the provisions related to the appointment of the members of the Public broadcaster, but it also emphasised that this process must not unduly restrict the constitutional rights of the members of the board. The Court concluded that, the board being assigned with an important task of ensuring the independence of the Public broadcaster, its individual members enjoy appropriate constitutional protection and their dismissal on the grounds of reform of the public broadcaster was problematic in view of the institutional independence of this body.

The Court also reported that, as a reaction to its judgment, a rally in front of the building of the Court had been held and the demonstrators had made threatening statements against the Court and attempted to damage its property. The Court asked the Commission to closely monitor the developments surrounding the Court and call upon the domestic authorities to duly investigate and react to acts that infringe upon the independence of the Constitutional Court.

Joint Opinion on the draft Electoral Code of Bulgaria ([CDL-AD\(2014\)001](#))

On 14 March 2014, the National Assembly of Bulgaria informed the Venice Commission and the OSCE/ODIHR that a number of recommendations of the draft Joint Opinion had been taken into consideration in the Election Code adopted by the National Assembly of Bulgaria on 4 March 2014. At the March Plenary Session (21-22 March 2014), the Venice Commission adopted the opinion on the draft code, there being no time to examine the adopted text.

The adopted text could be considered as an improvement. In particular, a number of recommendations of the 2011 joint opinion had been followed by the Bulgarian authorities. For example, there was an improvement in the composition of election commissions, deadlines were clarified, Central Electoral Commission decisions could be appealed to the Supreme Administrative Court, and financial support from the State for independent candidates had been improved.

A number of recommendations remained, however, unaddressed, concerning: specific improvements in the method of allocation of seats for MPs elections; improvement of voter registration procedure and globally reinforcing the accuracy of voter lists; the reduction of restrictions on the voting rights of prisoners; the removal of restrictions on voting for persons with dual citizenship; the improvement of the procedure of complaints and appeals and the effectiveness of this mechanism; the strengthening of the authority of the National Audit Office to check the accuracy of campaign finance reports; and the use of minority languages in the electoral campaign.

Joint Opinion on the Law on Amending some legislative acts on the election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine on 24 July 2009 ([CDL-AD\(2009\)040](#))

The Secretariat informed the Commission about the recent changes in the legislation of Ukraine on presidential elections. The 2009 Joint opinion of the Venice Commission and the OSCE/ODIHR was very critical as to certain aspects of the Law on Presidential elections. Among other important issues, the Commission had recommended to the authorities to review rules on registration of candidates, territorial organisation of electoral administration, to give a wider access to national NGOs to election observation and to improve procedures on vote counting and financing of electoral campaigns.

In an effort to follow the 2009 recommendations and make the Presidential elections more transparent, the Ukrainian legislator introduced a number of important changes to the Law on Presidential elections in March 2014. The new amendments considerably improved several sections of the law, notably by easing the registration requirements for candidates, fixing the borders of electoral districts, limiting the number of electoral commission members, prohibiting the updating of electoral lists on the day of elections and by giving NGOs the possibility to observe elections. Unfortunately, the legislator failed to address the recommendations of the Venice Commission and the OSCE/ODIHR on election campaign funding

The draft opinions on Armenia, Azerbaijan and Kyrgyzstan (draft law on the Constitutional Chamber and draft law on the status of judges), as well as the discussions on Georgia and Ukraine were a follow-up to previous opinions adopted on these countries.

8. Albania

Mr Paczolay presented the draft opinion on the draft amendments to the Civil and Criminal Procedure Codes of Albania. He pointed out that the amendments covered two issues. One

was the punishment of lawyers and prosecutors if they deliberately delayed court proceedings. In principle, states were free to introduce such punishment as long as guarantees of fair trial were met. The second issue concerned the limitation of access to the Supreme Court, which was seriously overburdened with 12,000 pending cases. The draft amendments excluded access to the Supreme Court in certain cases. The right of double degree of jurisdiction of Article 2 of Protocol 7 ECHR was not affected. The changes were minor and the rapporteurs were of the opinion that they might prove to be insufficient as a remedy for reducing the workload of the Supreme Court.

Mr Idlir Peçi, Deputy Minister of Justice of Albania, welcomed the opinion and explained that the Supreme Court used general 'unification judgements' in order to be able to settle cases more quickly. However, a limitation of access to the Court was required to reduce the Court's workload. In Albania, lawyers often delayed proceedings by not showing up at hearings and sanctions were required against such behaviour. However, prosecutors would be excluded from the scope of the draft law. In their case, disciplinary measures were more appropriate. This opinion was only the beginning of a much wider reform process for which co-operation with the Venice Commission was sought. The achievements of earlier reforms had been recognised in the EU progress report 2013. The reform process would cover the Constitutional Court, the Supreme Court, the High Council of Justice, the Judicial Conference, the prosecution service, the school of magistrates as well as court administration. All stakeholders should work together in the framework of a parliamentary working group to be established in September. The Venice Commission's input was needed for this process but the Government would remain the Commission's main interlocutor.

While the draft amendments did not apply to cases already pending before the Supreme Court, a discussion ensued on whether removing such cases from the Court would have been a merely procedural issue or an interference with the right of access to court.

The Commission adopted the opinion on the draft amendments to the Civil and Criminal Procedure Codes of Albania ([CDL-AD\(2014\)016](#)).

9. Ukraine

Mr Markert informed the Commission that there had been two exchanges of views between Commission delegations and the Constitutional Commission of the Verkhovna Rada of Ukraine. The first time, on 15 April, the Constitutional Commission had been at the beginning of its work. It had, however, already taken the decision to limit the scope of the current reform to those chapters of the Constitution not requiring a referendum in order to be amended. Moreover, it had been clear that its work would be based to a considerable extent on the earlier opinions of the Venice Commission.

At the second meeting on 27 May the Constitutional Commission had prepared comprehensive proposals for constitutional reform and these proposals were explained to the Venice Commission delegation. However, the Commission had not been able to agree on a single text but had prepared a text with many variants and alternatives. The hope of its members had been that the Venice Commission could assist them in deciding on which variants to choose. During the discussions the representatives of the different political parties, including the opposition Party of Regions, were indeed very constructive and ready to accept Venice Commission recommendations. The newly elected President of Ukraine was, however, of the opinion that the Venice Commission should only be asked to give an opinion on a single text and, following his wishes, the Speaker had withdrawn the initial request to the Venice Commission.

The President indicated subsequently that a revised set of constitutional amendments would be sent to the Venice Commission before the end of June. In this case the opinion of the Commission had to be provided quickly since the Verkhovna Rada had to adopt the amendments in the first reading during its current session. Otherwise the amendments could enter into force only next year.

The Commission authorised the rapporteurs to send their opinion on the amendments to the Constitution of Ukraine on a preliminary basis to the Ukrainian authorities prior to its adoption by the plenary.

10. Slovak Republic

Mr Clayton presented the opinion, which contained the replies to the four questions which the Minister of Justice of the Slovak Republic had put to the Venice Commission. These replies were not based on international standards, as there were none in this field, but on an interpretation of the domestic constitutional and legal provisions against the background of certain general principles. Mr Vermeulen informed the Commission about the discussions held within the Sub-commission on Democratic Institutions which had led to some changes in the text of the opinion.

The opinion stated that the incumbent President of the Republic had the power to appoint three new constitutional judges before the expiry of his term of office but that he did not have to do so and instead had the discretion to leave such appointment to his successor. If the incumbent President nevertheless chose to proceed with the appointment, the incoming President did not have the power either to refuse to administer the oath, or to appoint three different judges, or to reject all the candidates and require the National Council to submit a new list of candidates. The incoming President could not recall from office the President and Vice-President of the Constitutional Court without objective reasons.

The opinion further reiterated, and this point was discussed at length both at the meeting of the Sub-commission and at the Plenary, that the co-ordination between the outgoing and the incoming Presidents needed to be guided by the principle of loyal co-operation among state institutions.

Mr Tomas Borec, Minister of Justice of the Slovak Republic, thanked the Venice Commission for its flexibility and for the timely preparation of the opinion. The questions submitted to the Commission were politically very sensitive in the Slovak Republic, and the Commission's professional and valuable replies would contribute to a cultivated domestic discussion and would assist in defusing the political tensions which surrounded this matter.

The Commission adopted the opinion on the procedure for appointing judges to the Constitutional Court in times of presidential transition in the Slovak Republic ([CDL-AD\(2014\)015](#)).

11. Russian Federation

Mr Paczolay and Mrs Thorgeirsdottir presented the draft opinion, as amended by the Sub-Commission on Democratic Institutions at its meeting on 12 June 2014, on Federal Law no. 121 (Law on Foreign Agents) on Non-commercial Organisations (NCOs) of the Russian Federation and on Federal Law no. 190-fz on making amendments to the Criminal Code (Law on Treason) of the Russian Federation.

This opinion had been requested by the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe on 5 February 2013. The Commission's opinion focused solely on the most problematic provisions of the examined laws. These included: the introduction of the legal status of a "foreign agent"; the definition of "political activities"; the practical implementation of the Law after the introduction of additional reporting requirements, additional inspections and oversight by authorities, a specific system of sanctions and penalties in case of a breach of legislation. Amendments revising the registration process had recently been adopted but were not yet reflected in the draft opinion.

Mr Paczolay and Mrs Thorgeirsdottir pointed out that the opinion recommended abandoning the term "foreign agent" since it stigmatised the NCOs falling under such a definition, tarnishing their reputation and seriously hampering their activities. The text further pointed out that the legitimate aim of ensuring transparency of NCOs receiving funding from abroad could not justify measures which hampered their activities in the field of human rights, democracy and the rule of law. It therefore recommended reconsidering the creation of a special regime as well as the additional legal obligations imposed on the organisations concerned.

If the above-mentioned specific legal regime was maintained, the power of the authorities, introduced by the latest amendments, to proceed with the registration of a NCO as "foreign agent" without the NCO's consent should be removed. Moreover, the extent and content of the obligations linked with the special status could lead to the illegitimate differential treatment of NCOs and therefore needed to be carefully scrutinised to avoid disproportionately more cumbersome procedures than those to which other NCOs were subjected. The opinion considered that the sanctions foreseen were severe and questioned whether they could be regarded as proportional to the gravity of the presumed offence. The legal status of a "foreign agent" presupposed not only that a NCO received foreign funding but also that it participated in "political activities". This expression was quite broad and vague and its practical interpretation by public authorities had been rather disparate, adding to the uncertainties surrounding the meaning of the term.

With regard to the Law on Treason, which had amended the Criminal Code with a new article prosecuting illegal access to information considered as a state secret as well as existing articles on state treason, espionage and disclosure of state secrets, the opinion considered that the new provisions brought in by the "Law on Treason" were overly broad and vague and could confer unfettered discretion for limiting freedom of expression on those charged with its execution. While the prosecution of high treason and disclosure of state secrets was legitimate, it was considered as imperative that the relevant criminal provisions should be formulated as exactly as possible.

Mr Vyatkin (Member of the State Duma) presented to the Commission the Russian authorities' comments. In their view, the law on foreign agents and the law on treason should have been dealt with separately since they related to completely different matters. The opinion did not take sufficiently into account the principle of non-interference in the internal affairs of other states, it contained some inaccuracies and sometimes used excessive language. The notion of "political activities" could be improved, however. The text of the comments had been distributed among the participants of the session. Mr Vyatkin also made reference to the decision of the Constitutional Court of the Russian Federation and explained that the amendments were meant to adjust the legislation to current needs. The rapporteurs underlined that they had decided to examine the two laws jointly, notably due to their possible cumulative effect.

Mr Gussetti informed the Commission on the impact of the Law on Foreign Agent on non-governmental organisations, such as Golos, which had been receiving financial funding from the European Commission for many years. By no means could these organisations or their

members, be considered by the European Commission as its “agents”, a term which would suppose a relation of authority which in practice did not exist.

Mr Vermeulen, President of the Sub-Commission on Fundamental Rights suggested that the Commission could invite the Rapporteurs to update the opinion in light of the recent amendments to the Law on Treason.

The Commission adopted the opinion on Federal Law N° 121-FZ on non-commercial organisations (“Law on Foreign Agents”, on Federal laws N° 18-FZ and 147-FZ and on Federal law N° 190-FZ on making amendments to the Criminal Code (Law on Treason”) ([CDL-AD\(2014\)025](#)) and gave mandate to the Rapporteurs to supplement it, notably in light of very recent amendments to Law No. 121-FZ.

12. Kyrgyzstan

Draft joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft law “on Elections in the Kyrgyz Republic”

Mr Endzins introduced the draft opinion requested by the Kyrgyz authorities. The whole electoral legislation had now been consolidated into one law, which was a positive step. The same was true about the creation of a permanent Central Electoral Commission (CEC). The most problematic issues related to the provisions which unreasonably restricted the right to vote and candidacy rights, in particular for presidential elections, as well in the case of conviction for a minor offence; the rules enabling unreasonable and excessive control of an elected deputy’s mandate, resulting in a de facto imperative mandate; the parliamentary electoral system, in particular the rules on the allocation of seats to candidates inside a list and the double threshold (5 % nationally and 0,5 % in each constituency), as well as provisions favouring certain candidates inside a list; limitations on the rights to freedom of expression and association that were contrary to international standards and OSCE commitments. Moreover, the provision limiting the share of a party in Parliament was unclear and left too much room for implementation to the Central Electoral Commission; other issues could be reconsidered, such as the rotation of the positions of chairperson and vice-chairperson of the CEC; the reintroduction of the possibility to register on the voting day at the polling station; the rules on early voting, which should be limited in time and open to observation; exceptions to the need for IDs on polling day; the amount of the deposit for local elections; provisions on complaints and appeals.

Mr Danyar Narymbaev, Head of the Presidential Administration of the Kyrgyz Republic, informed the Commission that the draft law was being considered by the Committee on the state system and the constitution. He stated that the list of voters was a major problem and that a special solution would be proposed at the beginning of 2015, excluding *i.a.* emigrants; the absence of requirement of IDs was admissible in places with very few voters, generally known to the members of electoral commissions. In general, the draft law was detailed and aimed at conformity with international standards.

Mr Omurbek Tekebaev, Member of Parliament, co-drafter of the electoral legislation, informed the Commission that the draft law had been presented by some political parties and did not represent the position of the parliamentary majority or of the government. The authorities would take the opinion into consideration.

The Commission adopted the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft law “on Elections in the Kyrgyz Republic” ([CDL-AD\(2014\)019](#)).

Draft opinion on the draft amendments to the constitutional law on the status of judges of Kyrgyzstan

Mr Gumi presented the draft opinion on the draft amendments to the constitutional law on the status of judges of Kyrgyzstan, which had been prepared jointly with the OSCE/ODIHR. The five key recommendations of the opinion were:

- (a) to replace non-compliance with the Code of Honour of Judges as grounds for disciplinary proceedings with clear legislative provisions on such grounds.
- (b) The draft law provided only for admonition and dismissal as disciplinary measures. In order to be able to graduate the range of punishments in proportion to the gravity of the acts, other sanctions should be introduced.
- (c) Rules on the abstention of members of the Council of Judges in cases of conflict of interests should be introduced.
- (d) Judges should be dismissed by the Council of Judges rather than by Parliament upon recommendation of the President of the Republic. However, a constitutional amendment was required for such a change. In the absence of such an amendment, the constitutional law should explicitly provide that a recommendation of the Council is transmitted to the President only after the decision on appeals against the Council's decision.
- (e) The draft constitutional law should contain clearer guarantees for the judges' right to a fair trial in disciplinary proceedings.
- (f) The scope of the grounds for appeal against disciplinary decisions should be broadened to include the review of facts, the taking of evidence and the publicity of the decision should be provided for.

Further recommendations concerned *inter alia*, the need to provide for clear procedures for bringing about gender equality, which is set out in the draft law only as a general principle. The procedure for choosing civil society candidates for membership in the Disciplinary Commission by drawing of lots should be improved.

The Chairman of the Parliamentary Committee on the Judiciary, Mr Toktogul Tumanov, thanked the Venice Commission for the opinion and pointed out that judicial reform was being carried out on the basis of a 2012 decree of the President of the Kyrgyz Republic, which was valid for five years. This reform programme provided for fundamental changes in the status of judges of the Supreme Court and that of lower courts. The recommendations made in the opinion would be useful for improving the draft constitutional law.

The Commission adopted the opinion on the draft amendments to the constitutional law on the status of judges of Kyrgyzstan ([CDL-AD\(2014\)018](#)).

Draft opinion on the constitutional law on introducing amendments and additions to the constitutional law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic

Ms Ribičič introduced on behalf of the rapporteurs the draft opinion on the constitutional law on introducing amendments and additions to the constitutional law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic. The opinion has been requested by Mr

Mukambet Kasymaliev, Chairperson of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic.

The purpose of the draft amendments was to optimise the work of the Constitutional Chamber and fill gaps in the current constitutional law on the Constitutional Chamber. The Venice Commission was of the opinion that some of the proposed amendments such as, for example, the introduction of internal sessions or the possibility for a party to represent him- or herself in the proceedings before the Constitutional Chamber, would definitely contribute to this purpose. Some of the Commission's recommendations have long-term significance and will gain in importance with the increasing number of cases on which the Court will decide in the future.

The most important and at the same time the most problematic issue seemed to be the proposed procedure according to which the Constitutional Chamber could give an explanation of its decisions after they were handed down. The Commission was of the opinion that this proposed competence should be avoided, because – particularly in the context of new democracies – it could be used to exert dangerous pressure on the Chamber to substantively change a previous judgment. This could seriously undermine the authority of the Chamber and harm the people's trust in the independence of the Chamber.

Mr Mukambet Kasymaliev expressed his gratitude for the draft opinion which was based on the detailed discussions the Venice Commission and the Constitutional Chamber held in Bishkek. He stressed that the Constitutional Chamber had started to work in 2013 and he was convinced that the improved draft law would help to optimise the work of the Chamber.

The Commission adopted the opinion on the draft constitutional law on introducing amendments and additions to the Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic ([CDL-AD\(2014\)020](#)).

13. Tajikistan

Presenting the draft opinion on the draft constitutional law on the Constitutional Court of Tajikistan, Mr Endzins explained that among the major recommendations was the removal of the possibility of terminating the mandate of a judge by transferring him or her to another position. In addition, a decision of the Supreme Court or the Constitutional Court itself should be required before a judge of the Constitutional Court can be dismissed by Parliament or the President of the Republic. Not only citizens but all persons should be able to appeal to the Constitutional Court. The draft opinion also recommended that the immunity of the judges be lifted by the Constitutional Court itself. The possibility for a written procedure should be introduced to avoid an overburdening of the Constitutional Court.

Mr Harutyunyan informed the Commission that he had worked, on a bilateral basis, on an earlier version of the draft law but some of his fundamental recommendations had not been taken into account.

The Commission adopted the opinion on the draft constitutional law on the Constitutional Court of Tajikistan ([CDL-AD\(2014\)017](#)).

14. Armenia

Ms Thomassen introduced on behalf of the rapporteurs the draft opinion on the draft law on introducing amendments and addenda to the Judicial Code of Armenia (term of office of court

presidents). The opinion had been requested by the Speaker of the National Assembly of the Republic of Armenia.

The proposed amendments limit the term of office of court presidents of first instance courts and the courts of appeal to four years. The chairpersons may run for the second term, but the draft law provides a limitation: a judge may not be appointed to the position of a chairperson for more than two consecutive terms. According to the proposed transitional rules, the office of the sitting chairpersons of the courts of first instance and the courts of appeal would be terminated on 1 January 2015.

The opinion addressed the specific questions posed by the Speaker and examined the draft amendments in the light of the principles of judicial independence and of legal certainty. It also gave possible viewpoints with regard to the question whether the proposed amendments were in line with the Constitution of Armenia. The opinion concluded that the limitation of the term of office of court presidents as such is not incompatible with the European standards on judiciary and may even be useful in order to strengthen the internal independence of judges. However, it found that the proposed dismissal of sitting court presidents already on 1 January 2015 is too radical and gives too short notice threatening the principle of legal certainty, independence of the judiciary and the effective administration of justice. It was recommended that the transitional rules be smoother and also, in order to contribute to legal and constitutional clarity, that an amendment to the Constitution on fixed terms of office of court presidents be considered.

Mr Vrezh Gasparyan, Chief Adviser to the President of the National Assembly of the Republic of Armenia, welcomed the draft opinion and found the thorough analysis on the subject particularly useful. He also informed the Commission that at the beginning of June some amendments to the Judicial Code of Armenia had been adopted, but not those on the fixed terms of office of court presidents.

Mr Gaguk Harutyunyan informed the Commission that the Minister of Justice had already agreed to take up the subject of the term of office of court presidents in the pending constitutional reform.

The Commission adopted the Opinion on the draft law on Making Amendments and Supplements to the Judicial Code of the Republic of Armenia (term of office of court presidents) ([CDL-AD\(2014\)021](#)).

The Commission was further informed that the preparation of the concept paper for the constitutional reform in Armenia was progressing and was being debated publicly. After the public discussion phase, the concept paper would be finalised and subsequently sent to the Venice Commission for its opinion, to be adopted in October 2014.

15. Azerbaijan

Mr Scholsem presented the draft joint opinion prepared by the Venice Commission and the Directorate General of Democracy (DGII), at the request of the Presidential Administration of the Republic of Azerbaijan, on draft amendments to the law on the Status of Municipalities of Azerbaijan. Mr Scholsem pointed out that the draft law under consideration was a revised version of a previous draft which had already been examined by the Commission in 2009. In 2009, the Commission also expressed concerns with regard to the constitutional provisions pertaining to local self-government in its Opinion on the amendments to the Constitution of Azerbaijan.

While the aim of strengthening the accountability of local elected councils and their members was welcomed, the proposed amendments submitted for consideration, allowing pre-term dismissal of local elected bodies based on an expediency assessment, as well as dismissal - and temporary suspension - of local councillors in case of repeated absence, raised serious issues of compatibility with the European Charter of Local Self-Government.

It was particularly worrying that, despite previous criticism, and notwithstanding recent recommendations of the Congress of Local and Regional Authorities of Europe, regulations potentially affecting the very existence of certain local elected bodies had been proposed. To address these concerns in line with the applicable standards, the authorities of Azerbaijan were invited to: review the procedure for dismissing local councillors in case of repeated absence and withdraw the amendment allowing their temporary suspension; make the reporting procedure more precise; and review the supervision system allowing pre-term dismissal of local authorities if their activity report is assessed as inadequate.

Mr Kamran Bayramov, Director of the Unit for the Work of the Municipalities, Department of Work with Regional and Local Self-Government Authorities of the Presidential Administration of the Republic of Azerbaijan, thanked the Commission and the Directorate General of Democracy for their comments and, while expressing the authorities' readiness to review certain provisions of the draft law, provided information aimed at clarifying the approach underlying the proposed systems of reporting by and supervision of local authorities.

Mr Alain Delcamp, former Chair of the Group of Independent Experts of the Congress and the Congress' adviser on constitutional matters, welcomed the references made by the draft opinion to the Congress' recommendations and stressed that the conclusions and recommendations therein were fully in accordance with the Congress' approach to the issues raised by the draft law.

The Venice Commission adopted the Joint opinion of the Venice Commission and the Directorate General of Democracy (DGII) on the revised draft law making amendment to the law "on the Status of Municipalities" of the Republic of Azerbaijan (CDL-AD (2014) 022).

16. Georgia

Ms Tinatin Khidasheli, member of the State Constitutional Commission of Georgia, informed the Commission that diverse issues were being examined by the State Constitutional Commission, such as: the balance between the rights and duties of the President, the Government and the Parliament, the constitutional review process, the unicameral/bicameral character of the Parliament, the issue of self-governance and the constitutional status of autonomous regions, whether or not the jury trial system should be preserved in the Constitution.

Heated debates had taken place, in particular, on the election system of the President (popular election or not), on the status of the prosecutor's office, which had been modified several times in the past, and on the creation of an independent investigative committee to look into allegations of abuse by law enforcement agencies.

Ms Khidasheli also informed that the State Constitutional Commission would terminate its work towards the end of 2014 and not in September 2014 as it had initially been planned.

17. Joint Venice Commission-OSCE/ODIHR Guidelines on the legal personality of Religious or Belief Communities

The OSCE/ODIHR secretariat informed the Commission on the process of drafting of the Guidelines on the Legal Personality of Religious or Belief Communities. They underlined that the current guidelines were the result of extensive consultations with civil society and governmental officials and that four roundtable events had been held to obtain feedback on previous draft versions of the document, including Kiev (September 2013), Warsaw (September 2013), Astana (October 2013) and Brussels (October 2013), bringing together over 90 participants from different backgrounds.

Mr. Ben Vermeulen, rapporteur, explained that since the adoption of the 2004 Guidelines for Review of Legislation pertaining to Religion or Belief, other regional and universal international human rights bodies had provided a range of further statements, opinions and judgments on the issue of registration and recognition of religious and belief communities. The current guidelines aimed at elaborating on these issues and supplementing the 2004 Guidelines, which would, however, remain valid in their entirety. Mr Vermeulen subsequently presented the main issues dealt with in the new Guidelines, in particular concerning the access to legal personality and the registration of religious and belief communities and informed that the document provides examples of good practices from different states on those issues.

The Venice Commission adopted the Joint Venice Commission–OSCE/ODIHR Guidelines on the legal personality of Religious or Belief Communities ([CDL-AD \(2014\) 023](#)).

18. Report on Freedom of Assembly

Ms Peters presented the Comparative Study on National Legislation on Freedom of Peaceful Assembly drawn up by the Max Planck Institute at the request of the Venice Commission. Ms Peters reminded the Commission that, following a first presentation of the study at the Commission's 98th Plenary Session in March 2014, all Commission members had been invited to comment on the study. The contributions received had been either integrated into the study or, for those concerning countries which were not part of its initial selection, added to it as additional case studies.

The study had also been prepared as an input to the ongoing process of revision, by the Venice Commission and the OSCE/ODIHR, of their joint guidelines on freedom of peaceful assembly, in the light of the most recent developments in the field, including new issues such as the use of social media in the organisation of protests (flashmobs), the concept of the organiser of demonstrations, the "occupy" movements, and the organisation of assemblies on private property.

Following a brief presentation of the selection of topics of comparison and of the criteria taken into account to choose representative countries for the analysis, the study contains two main parts: a comprehensive overview of the legislative situation in the investigated countries - with a special regard to the above-mentioned new questions, followed by the comparison of the selected national legislations. Both the case studies and the comparison focus on four main topics: constitutional and statutory guarantees including relevant case-law; legally provided restrictions; procedural issues; implementation. The study also includes interpretations by national courts and the European Court of Human Rights. Issues of implementation as well as instances of administrative, mostly police practice, are included in order to provide for a topical and comprehensive overview of the situation in a given country.

The study notes that most of the investigated countries have faced difficulties in respecting and protecting the freedom of peaceful assembly, including in addressing new challenges that have emerged in this field, and have in some cases been criticized by the European Court of Human Rights. The study concludes however that, overall, there are only a few states which are less in line with the applicable standards.

The Venice Commission endorsed the Comparative Study on National Legislation on Freedom of Peaceful Assembly ([CDL-AD \(2014\) 024](#)).

19. Joint Venice Commission-OSCE/ODIHR Guidelines on Freedom of Association

The Secretariat informed the Plenary on progress of work in the preparation of joint Venice Commission-OSCE/ODIHR Guidelines on Freedom of Association.

In November 2013, the Venice Commission and the OSCE/ODIHR started preparing joint Guidelines on Freedom of Association. A joint expert working group had been formed to prepare the Guidelines, involving three members of the Venice Commission and three ODIHR experts. The expert working group had already held three meetings, in Paris (November 2013), in Florence (March 2014) and in Warsaw (May 2014). It was planned to have the final version of the draft Guidelines ready for adoption at the December plenary session.

20. Co-operation with Latin America

The President informed the Commission on the results of the International conference "The constitutional protection of economic and social rights in times of economic crisis. What role for the judges?" as well as on the meeting of the Sub-Commission on Latin America which had taken place in Ouro Preto, Brazil on 5-6 May 2014 (see document [CDL-LA-PV\(2014\)001](#)).

The event in Ouro Preto had been organised by the Supreme Court of Brazil, together with the Venice Commission. In addition to several members of the Venice Commission and experts from different regions, including Central, Southern and Eastern Europe and North Africa, the event brought together experts from the European Court of Human Rights, judges from the Inter-American Court of Human Rights, as well as members of the European Social Charter and the United Nations Committee on Economic, Social and Cultural Rights. The conference participants further included judges from 12 countries in Latin America, including Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Nicaragua, Peru, Uruguay and Venezuela.

The decision to hold the seminar had been taken at the meeting of the Sub-Commission on Latin America, held in Mexico in October 2013. Among the issues addressed during the course of the meeting in Ouro Preto, the transversal effects of the economic crisis in many different regions emerged as a promising starting point for an analysis of the crisis' impact on fundamental rights and, more precisely, on the protection of economic, social and cultural rights. Drawing on the foregoing considerations, and against the backdrop of an ever-increasing need to share scarce resources, the aim of the meeting was to provide an opportunity for shared reflection on the impact of the economic crisis on fundamental rights and the role of judges as guarantors of such rights.

The meeting of the Sub-Commission on Latin America which took place on 6 May was also attended by representatives from the Latin American countries which are not members of the Commission. The agenda of the meeting included such issues as the follow-up given to the previous opinions of the Venice Commission, the road-map for the activities in Latin America in 2015-2016 and the creation of a network of experts, which could intervene when a country

requested a study or an exchange of views on a specific topic. The President of the Sub-Commission, Mr Joaquim Gomes Barbosa, also announced that the Supreme Court of Brazil was ready to create a permanent secretariat of the Sub-Commission.

Both events proved that a growing number of Latin American countries were interested in regular contacts with the Venice Commission. Countries such as Costa Rica and Colombia were even considering the possibility of applying for a full membership. Since most of the countries interested in co-operation with the Commission were represented in Brazil by their Constitutional and Supreme courts, the President of the Venice Commission encouraged them to become members of the World Conference on Constitutional Justice as a first step and to send their representatives to its next meeting in Seoul.

21. Libya

The President recalled his visit to Libya in January 2014. He reminded the participants that following the exchanges of views held in Tripoli between the Venice Commission delegation and the authorities it had been decided to explore the possibility of co-operation on constitutional reform in Libya. Unfortunately, the security situation in the country had seriously deteriorated since February 2014 and the Constitution Drafting Assembly (CDA) had difficulties in carrying out its duties. Mr. Buquicchio expressed his hope that after the legislative elections scheduled for 25 June, the political situation would become more stable and the Venice Commission would have an opportunity to provide assistance to the CDA.

22. Co-operation with other countries

Maroc

La Commission est informée de la transmission au Ministre de la Justice du Royaume du Maroc de deux avis informels réalisés sur la base de commentaires de Mme Banic et de M. Neppi Modona et d'experts de la Commission européenne pour l'efficacité de la justice (CEPEJ) et du Conseil consultatif de juges européens (CCJE). Ces avis ont porté sur deux projets de lois organiques : le statut des juges du Maroc et le Conseil supérieur du pouvoir judiciaire du Maroc.

M. Menouni se félicite de l'excellente coopération qui s'est mise en place avec les autorités du Maroc depuis la réforme constitutionnelle. Il remercie le Secrétariat et les membres impliqués dans ces activités pour les efforts déployés en ce sens.

23. Information on constitutional developments in other countries

Norway

Mr Helgesen informed the Commission about recent constitutional development in Norway. He explained that, although the Norwegian Constitution of 1814 was the oldest constitution in Europe, it was a modern constitution with a liberal character. However, in particular the Human Rights catalogue in the constitution appeared to be outdated and the Constitution needed to be amended in order to include provisions concerning for example socio-economic rights, the children rights etc. Mr Helgesen emphasised that the current discussion did not relate to the factual situation of the protection of human rights in Norway, but to bringing the text of the Constitution up to date with contemporary requirements. Two important amendments to the Constitution had been adopted in May 2014: the language of the Constitution had been modernised and a whole new chapter of human rights introduced.

Tunisia

Mr. Rafâa Ben Achour informed the Commission on recent constitutional developments in Tunisia. He focused on two issues which were related to the process of implementation of the new Constitution – the adoption of the new electoral law and the establishment of the Provisional Instance of constitutional control.

The Constitution of Tunisia has several articles on the right to vote and on the electoral process (for example, Article 34 and Articles 53 – 56). The adoption of the new electoral law had been one of the priority tasks of the National Constituent Assembly since the Constitution explicitly provided that presidential and parliamentary elections had to be organised before the end of 2014. The new electoral law was adopted on 1 May and promulgated on 20 May 2014 thus meeting this requirement.

Mr. Ben Achour drew the Commission's attention to several provisions of the new law that he considered to be problematic. Among other issues he pointed out the exclusion of the members of armed and police forces from the electoral process, the 5% threshold combined with additional requirements, the proposed system of assistance to illiterate voters and the electoral deposit.

The speaker regretted that the Provisional Instance of constitutional control, which had received five complaints concerning the new electoral law, did not declare unconstitutional the deprivation of the military and police personnel of their right to vote.

As to the Provisional Instance of constitutional control, M. Ben Achour explained that this was a temporary body. The law on the new Constitutional Court foreseen in the new Constitution should be adopted by the new parliament. At present, appeals can be lodged by the President, the Head of Government, the Speaker of the parliament or by 30 MPs. The Instance had already taken decisions on 5 cases.

Turkey

Mr Buquicchio informed the Commission on recent constitutional developments in Turkey. He underlined the importance of two recent judgments given by the Turkish Constitutional Court having ruled unconstitutional the ban on Twitter in Turkey as well as amendments to the Law on the High Judicial Council. He stated that, following those rulings, the Constitutional Court had been harshly criticized by public officials. Mr Buquicchio reminded that Courts in general, including the Constitutional Court, are not exempt from criticism, but that excessive criticism by public officials could undermine the independence of the Constitutional Court. Mr. Buquicchio also informed the Commission about his meeting in Strasbourg with the new Minister of Justice of Turkey, Mr. Bozdağ, who had assured him that the new amendments which would be introduced following the annulment judgment of the Constitutional Court would be in line with international standards.

Mr Buquicchio also underlined the need for a new Constitution in Turkey, which should protect the individuals rather than the state. He regretted that the Reconciliation commission tasked with the preparation of a new Constitution could not find a consensus on many issues that should be dealt with in the Constitution and had been repealed. However, according to the Turkish Minister of Justice, the constitutional process would be reinitiated.

Mr Osman Can, the new Turkish member of the Venice Commission, also emphasised the need for a new Turkish Constitution and informed that there were several drafts which could be taken into account in the work for a new constitution.

24. Report of the meeting of the Council for Democratic Elections (12 June 2014)

The President of the Council informed the Commission on the results and conclusions of the meeting held on 12 June 2014. The Council had adopted the opinion on the Electoral Code of Kyrgyzstan, the report on voting from abroad and decided to prepare a report on methods of designation of candidates by political parties as well as a second one on open and closed lists and the right to stand for elections.

25. Report of the meeting of the Scientific Council (12 June 2014)

Mr Helgesen informed the Commission that the Scientific Council was working on the preparation of the conference on "transparency and the rule of law as preconditions of equitable and sustainable development" (Rome, 9 October 2014) and on the conference on "The impact of constitutional processes on post-soviet transformation" (Yerevan, November 2014).

Mr Helgesen further informed the Commission that at the meeting of 12 June the future composition of the Scientific Council had been decided as follows: the President and Vice-Presidents of the Commission, the Chairs of the Sub-Commissions and those members or substitute members who chair Research Institutes on constitutional or international law.

The Venice Commission agreed to the composition of the Scientific Council as proposed by its Chair.

26. Election of a member of the Bureau, the Vice-Chair of the Council for Democratic Elections and the Vice-Chair of the Sub-Commission on Democratic Institutions

The Commission elected: Ms Jasna Omejec (Croatia) as member of the Bureau; Mr Oliver Kask (Estonia) as Vice-Chair of the Council for Democratic Elections and Mr Michael Frendo (Malta) as Vice-Chair of the Sub-Commission on Democratic Institutions.

27. Other business

The dates of the Commission's 100th Session were confirmed as 10-11 October 2014 in Rome at the invitation of the Italian Minister of Foreign Affairs. This important event will take place on the premises of the Ministry of Foreign Affairs and will be opened by Italian and international personalities. Members were reminded to make early reservations for hotels as October is the high season in Rome and to take note of the list of recommended hotels circulated by the Secretariat. Transport will be organised from recommended hotels on meeting days.

The Commission was further informed on the 4th Intercultural Workshop for Democracy on "Administrative transparency and the Rule of Law as pre-conditions of equitable and sustainable development", which will also take place in Rome on 9 October 2014 and in which representatives of Arab countries will be invited to participate. All members were invited to participate in this workshop.

28. Dates of the next sessions

100 th Plenary Session	10-11 October 2014 (Rome)
101 st Plenary Session	12-13 December 2014

Sub-Commission meetings as well as the meetings of the Council for Democratic Elections will take place on the day before the Plenary Sessions. Please note that In October the Council for Democratic Elections will not meet.

The Commission confirmed the schedule of sessions for 2015 as follows:

102 nd Plenary Session	20-21 March 2015
103 rd Plenary Session	19-20 June 2015
104 th Plenary Session	23-24 October 2015
105 th Plenary Session	18-19 December 2015

Sub-Commission meetings as well as meetings of the Council for Democratic Elections will take place on the day before the Plenary Sessions.

[Link to the list of participants](#)