Strasbourg 23 November/novembre 2018

CDL-PL-PV(2018)003
Bil

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT

(COMMISSION DE VENISE)

116th PLENARY SESSION
Venice, Scuola Grande di San Giovanni Evangelista
Friday, 19 October - Saturday, 20 October 2018

116e SESSION PLÉNIÈRE
Venise, Scuola Grande di San Giovanni Evangelista
Vendredi 19 octobre - Samedi 20 octobre 2018

SESSION REPORT/RAPPORT DE SESSION

http://www.venice.coe.int e-mail : venice@coe.int
F-67075 Strasbourg Cedex Tel : + 33 388 41 30 48 Fax : + 33 388 41 37 38.

TABLE OF CONTENTS/TABLE DES MATIERES

1. Adoption of the Agenda

The agenda was adopted without any amendments (CDL-PL-OJ(2018)003ann-rev).

2. Communication by the President

The President welcomed members, special guests and delegations, and informed the Commission about the newly appointed members and substitute members. He also presented his recent activities (CDL(2018)030).

3. Communication from the Enlarged Bureau

The Commission was informed that at its meeting on 18 October 2018, the Enlarged Bureau had decided to submit to the Plenary the Secretariat Memorandum (CDL(2018)032) on the compatibility of the draft Amendments to the Constitutional Provisions on the Judiciary of Serbia with the recommendations contained in the opinion of the Commission adopted in June. The Enlarged Bureau had furthermore been informed of the request by the Armenian authorities, of 15 October 2018, for an opinion on the current electoral reform. As the draft amendments to the Electoral Code were planned to be adopted within two weeks, the Enlarged Bureau had taken the view that there was not enough time for the preparation of an opinion and that instead, a statement by the President on the draft should be adopted during the present session. With respect to Romania, the Enlarged Bureau had been informed that some amendments to the preliminary opinion CDL-PI(2018)007 on three laws on the judiciary proved necessary in light of the recent Government Emergency Ordinance. The Enlarged Bureau had thus decided that the Commission should be invited not only to endorse but to adopt the opinion with some amendments (see under item 11 below).

Finally, the Commission was informed about financial developments. On a positive note, member states and the EU had decided to provide voluntary contributions to the Commission; on the other hand, it was unlikely that the Russian Federation would resume its payments to the Council of Europe and to the Commission. The Parliamentary Assembly, at its October session, had failed to adopt a compromise solution which might have paved the way for the return of the Russian delegation to the Assembly. Bearing in mind that some of the voluntary contributions to the Commission were earmarked, it could be expected that some of the Commission's regular activities would lack the necessary funding in 2019.

4. Communication by the Secretariat

The Secretary of the Commission gave practical information about the session.

5. Co-operation with the Committee of Ministers

Ambassador Răzvan Rusu, Permanent Representative of Romania to the Council of Europe, underlined that the Venice Commission's activities had widened over time – both in terms of subject-matters and geographically –, were largely recognised and particularly relevant today, given the current worrying developments in some member states. The Commission's role as guardian of democracy and the rule of law was highly valued in the Committee of Ministers. Romania had largely benefitted from the Commission's assistance, in particular with respect to the elaboration of the Constitution of 1991 and further fundamental pieces of legislation, and also through several co-operation activities. This had helped Romania to become a committed member of the Council of Europe and finally also to acquire EU and NATO membership. He emphasised that the work was not finished, as realities changed and provided constant challenges.

Ambassador Irakli Giviashvili, Permanent Representative of Georgia to the Council of Europe, thanked the Venice Commission for its significant contributions to the constitutional reform process since Georgia had gained independence. The authorities and the Georgian public at large attached the utmost importance to the Commission's opinion on the recent constitutional amendments. Ambassador Giviashvili welcomed the recent request by the Monitoring Committee of the Parliamentary Assembly to the Venice Commission for an opinion on the draft Law on the Prosecutor's Office (provisions on the Prosecutorial Council) and on the existing Law on the High Judicial Council, scheduled for the December plenary session.

Ambassador Stephan Müller, Permanent Representative of Luxembourg to the Council of Europe highlighted the unique constitutional assistance provided by the Venice Commission and its pioneering role, particularly in the Balkans, and beyond the borders of Europe. The Commission's uniquely broad membership was a clear added value. Luxembourg had recently submitted its fifth request for an opinion (on constitutional reforms) to the Commission: Ambassador Müller stressed that the Commission's assistance was also of high importance for the so-called "old democracies" and invited all the members to seek such assistance.

The President stressed that democracies were never perfect and encouraged member states to request further advice from the Venice Commission. He furthermore drew attention to the fact that the Commission had not only contributed to the democratic development in Eastern European countries and to stability in the Balkan region, but that it also continued to play such a role in other regions such as the Southern Mediterranean.

6. Co-operation with the Parliamentary Assembly

Ms Stella Kyriakides, Former President of the Parliamentary Assembly, reported on the Assembly's June and October. She referred in particular to the Rules Committee's report on credentials and voting which had attracted a lot of attention; indeed the main reason for the Russian authorities not to submit their delegation's credentials to the Assembly for the past two years was the Assembly's possibility to challenge the credentials of a delegation and to deprive its members of their voting rights. The report presented by the Rules Committee was a compromise making these two possibilities more difficult by subjecting the decision to a two-thirds majority; following a lively debate, the rapporteur had proposed to refer the report back to the Committee for further consideration, which meant that it would not be re-submitted to the Assembly before January 2019.

Mr Sergiy Vlasenko, Member of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, informed the Commission about the reports adopted during the June Plenary session. He stressed that the Venice Commission's opinions requested by the Assembly on certain laws restricting NGO activities, in particular in the Russian Federation and Hungary, had been very useful for the preparation of the relevant reports. Mr Vlasenko also mentioned that Mr Martin Kujier had contributed to a hearing on the implementation of judgments of the European Court of Human Rights, stressing the mutual benefits of the co-operation between the Legal Affairs Committee and the Commission. Two new requests for opinion – on Hungary and Malta – had been launched during the Committee's October meeting.

Mr Vlasenko furthermore highlighted the excellent co-operation between the Assembly's Monitoring Committee and the Venice Commission. The Monitoring Committee had in particular largely drawn upon the opinions on Serbia and on the judiciary in Romania, the latter having been requested by the Committee (item 11). The Committee had also requested an opinion on Georgia (item 5).

Finally, Mr Vlasenko informed the Commission that, following an invitation from the Bureau, the Monitoring Committee had launched a reflection on possible reforms to the monitoring

procedure of the Assembly; many members felt that monitoring should be extended to all Council of Europe member states, but the reflection process was still at an early stage.

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

Mr Leen Verbeek, Chair of the Congress Monitoring Committee, informed the Commission about the recently approved reports and recommendations on Slovenia, Georgia and Lithuania, on the prospected reports on Poland and the Republic of Moldova and about the planned monitoring missions in the Russian Federation and in Bosnia and Herzegovina.

Mr Verbeek mentioned in particular that in Poland, the systematic rejection by the Constitutional Court of all the complaints submitted in the past few years by local authorities carried serious risks of violation of Article 11 of the Charter (the right of recourse to an – effective – judicial remedy). In the draft report, the rapporteurs proposed to urge the Polish authorities to follow the relevant recommendations by the Venice Commission on the judiciary in Poland.

8. Follow-up to earlier Venice Commission opinions

The Commission was informed on follow-up to:

Armenia - Opinion on the draft Constitutional Law on the Constitutional Court

(CDL-AD(2017)011**)**

The need to adopt a new law on the Constitutional Court of Armenia was a result of the adoption of the new Constitution. In its opinion adopted in June 2018 the Venice Commission welcomed the draft Law as a positive step in ensuring the Constitutional Court of Armenia's role as an effective guardian of the Constitution, while making a number of recommendations to further improve the text. On 27 January 2018, the Armenian President enacted the constitutional law on the Constitutional Court.

As recommended by the opinion the adopted law limits the immunity of judges of the Constitutional Court to acts committed in the exercise of their functions and reduces the powers of the President of the Constitutional Court by removing his competence to adopt the rules of procedure of the Court. As recommended, the adopted law provides that the decisions of the Constitutional Court enter into force with their publication on the web-site of the Court.

The opinion recommended setting out in a clear manner the procedure for the appointment of the judges of the Constitutional Court, at least by reference to the relevant provisions of the Rules of Procedure of Parliament. While the draft law made a general reference to the Rules of Procedure of Parliament, the adopted law refers in general to the Constitution and legislation. However, the adopted text establishes that the Court's President has to inform the other state bodies about an upcoming vacancy six months before the end of the mandate of the judge.

Armenia - Joint Opinion on the draft Law on Referendum (CDL-AD(2017)029)

The Constitutional Law on Referendum was adopted by the Parliament on March 23, 2018 and had been in force since April 9, 2018. A number of key recommendations of the joint opinion had been followed, at least partially, concerning: the need for a clear and not misleading question; the provision of objective information (more precisely, explanatory reports from both the "yes" and "no" sides, albeit to the polling stations and not to voters); the clarification of the rules on the collection of signatures. The adopted law also follows other recommendations of the joint opinion: it provides for the duty of neutrality of administrative authorities, by prohibiting public sector employees from taking part in campaigns; it provides for the formation of precinct electoral commissions with representation of the referendum proposal's supporters and

opponents; it makes observation by NGOs easier by extending it to those created six months rather than one year before the elections. Some key recommendations have however not yet been followed, concerning: the need for clearly addressing the unity of content of the referendum proposal; the need for ensuring the review of draft popular initiatives by the Constitutional Court before and not after additional signatures have been collected; allowing more than one structure for the "yes" and "no" votes, respectively.

République de Moldova – Avis sur le projet d'amendements à l'article 37 de la loi sur l'Avocat du Peuple – Dispositions financières (CDL-AD(2017)032)

La Commission avait adopté, en décembre 2017, un avis rédigé sur la base des commentaires de Mme Err et de M. Sorensen, sur un projet d'amendements à l'article 37 de la Loi sur l'Avocat du Peuple. Le projet d'amendement portait atteinte à l'indépendance budgétaire de l'institution et la Commission en avait recommandé le retrait.

L'article 37 a depuis été modifié par une loi spécifique qui prévoit que l'institution bénéficie d'un budget indépendant dans les limites fixées par la loi de finances annuelle.
La loi sur les finances publiques a également été modifiée. Elle prévoit que les budgets des instances indépendantes sont élaborés par les instances indépendantes elles-mêmes, après un accord consultatif du Ministère des Finances, et sont par la suite présentés au gouvernement, qui les introduit dans la loi de finances annuelle. L'autorité indépendante peut présenter au Parlement, si nécessaire, ses objections au projet de budget présenté par le Gouvernement.

En ce sens, l'avis et les recommandations de de la Commission de Venise ont été pleinement suivis.

Montenegro - Opinion on the draft Law on amendments to the Law on the Judicial Council and Judges (CDL-AD(2018)015);

In June 2018 the Commission adopted an opinion on proposed changes to the law on the Judicial Council and Judges of Montenegro. The opinion related to the difficulty of achieving the constitutionally required a two-thirds majority in electing the four lay members of the Judicial Council in a situation where the opposition boycotted parliament. In the opinion, the Commission stressed the need to provide for anti-deadlock mechanisms in respect of elections with a qualified majority of safeguard institutions. In line with common practice in similar situations in Europe, the Commission recommended providing that the sitting lay members of the Judicial Council would sit on the new Council pending the appointment of the new one. These acting functions would not represent a new mandate. A temporary President of the Judicial Council could be elected. The procedure for the election of the lay members could be changed so as to remove the need to elect all four members simultaneously.

On 26 June 2018, the parliament of Montenegro adopted the amendments, following the Commission's recommendations. Thanks to the anti-deadlock mechanism now contained in the law, the new Judicial Council started to function on 4 July 2018.

Serbia - Opinion on the draft amendments to the constitutional provisions on the judiciary (CDL-AD(2018)011)

In its opinion adopted in June the Venice Commission welcomed the intention of the Serbian authorities to revise the chapter of the Constitution on the judiciary, which had been criticised by the Venice Commission in the past, but addressed a considerable number of recommendations to the authorities for further improving the text. The main recommendations concerned the composition of the High Judicial and the High Prosecutorial Council, the dissolution of the High Judicial Council, the grounds for the dismissal of judges,

the methods for ensuring the uniform application of laws and the need to remove the links between parliament and public prosecutors and deputy public prosecutors.

Following this opinion the Ministry of Justice prepared a first revised version of the amendments in September and, following public discussions in Serbia and contacts with the Secretariat, submitted to the Commission on 12 October a second revised version of the amendments. The Secretariat prepared a memorandum, analysing in detail the compatibility of the draft amendments with the Commission's recommendations. The memorandum showed that the new version of the amendments complied not only with the main but also the other recommendations contained in the opinion. The text still had to be discussed and adopted by parliament.

The Commission took note of the Secretariat memorandum on the compatibility of the draft amendments to the Constitution of Serbia with the opinion of the Venice Commission (CDL-AD(2018)023).

9. Albania

Mr Pinelli welcomed the draft, which was intended at implementing the Constitution by introducing the legislative initiative of citizens. It was in line with international standards, in particular the 2008 Venice Commission report on legislative initiative. The three main issues were: the need to distinguish between initiative and petition, which had been clearly defined by the Albanian Constitution as two different instruments, in order to avoid circumventing the constitutional requirement of 20,000 signatures through the use of a petition; the need to take into account the constitutional requirement that any legislative proposal should be accompanied by a report justifying financial expenses and an opinion of the Council of Ministers; more importantly, the need to simplify the procedure to avoid giving the national authorities the discretionary power of checking the process and in particular of supervising the organisational committee. It was thus recommended to amend a number of provisions, and in particular to require the registration of the initiative committee before the collection of signatures rather than afterwards, giving no discretion to the Central Electoral Commission in this registration, and to provide the initiative groups with the right to organise the collection of signatures as freely as possible.

Ms Vasilika Hysi, Vice President of the Parliament of Albania, stressed that this opinion had been requested by the speaker of Parliament; this draft law had been prepared by experts and the civil society. She agreed with most of the recommendations in the draft opinion. The Speaker had recently requested another opinion on the draft law on the vetting of politicians.

Mr Walecki stated the draft law was very welcome and in line with the Constitution and international commitments. He stressed that loopholes should be removed in order to avoid unclear funding. It was particularly important that the adoption of the law resulted in a broad consensus after extensive consultation during the whole drafting process, in order to increase confidence.

Ms Hysi informed the Commission that for each draft legislative initiative of MPs or citizens there was an obligation to send a request to the Committee of Ministers and to wait 30 days for a reply, in accordance with the Constitution and the Code of conduct for MPs.

The Commission adopted the Joint Opinion by the Venice Commission and the OSCE/ODIHR on the draft law on the legislative initiative of citizens in Albania (CDL-AD(2018)026), previously adopted by the Council for Democratic Elections on 18 October 2018.)

10. Armenia

Mr Ararat Mirzoyan, First Deputy Prime Minister of Armenia, informed the Commission that the parliamentary factions had supported a new government with the clear mandate to organise snap elections with a revised electoral code within one year, in order for the elected assembly to genuinely represent the people. The Prime Minister had resigned and it had been agreed among the parliamentary factions not to present another candidate to replace him, so that parliament would be dissolved and elections would be organised in December. A working commission on electoral legislation had been created and included representatives of the government, civil society, NGOs and experts; it had proceeded to extensive consultations. Parliamentary factions had also submitted their proposals to this commission. Most proposals had been endorsed in the draft adopted by the government. The government had prepared a concept paper including short- and long-term proposals for amendments. This implied suppressing the district lists with preference vote; reducing the threshold and no longer limiting the number of parties in coalitions; more rights for observers and more transparency; more access to media with increased free airtime. On 19 October the Commission on state, legal affairs and human rights of the National Assembly had adopted the draft. The procedure for amendment was admittedly quick but Armenia was in a unique situation where delay could jeopardise the expression of the people's will and the prospects of an economic recovery. Mr Mirzoyan expected an active co-operation of international partners and in particular the Venice Commission, in order to establish and maintain the Rule of Law.

Mr Buquicchio referred to the discussion held in the morning with Mr Mirzoyan; he had welcomed several improvements in the draft but had raised the issue of the stability of the electoral law, which was enshrined in the Code of Good Practice in Electoral Matters adopted by the Venice Commission, the Parliamentary Assembly and the Congress, and supported by the Committee of Ministers. He stated that this issue would be less relevant should all political parties agree on the course of action proposed by the government. Armenia was in a special situation needing a stable parliament reflecting the current political situation. There was no time for a formal opinion and he was sure that international observers such as the Parliamentary Assembly and the OSCE/ODIHR would be invited to observe the next parliamentary elections.

Mr Harutyunyan reminded the Commission that Article 89 of the Armenian Constitution provided for the guarantee of a stable majority in parliament; since there was no stable majority, there was no other choice than to conduct new parliamentary elections; the electoral code had to be amended since it had led to a parliament which did not represent the will of the people.

11. Kazakhstan

Ms Khabrieva introduced the Draft Opinion on the draft Administrative procedure and justice code of Kazakhstan, requested by Mr Marat Beketayev, Minister of Justice of the Republic of Kazakhstan.

The proposed Draft Code was a very detailed and complex document and the rapporteurs had limited themselves to providing comments and some recommendations in the light of the rule of law principle. The drafters had adopted a very unusual approach by incorporating both administrative procedures and administrative court proceedings into a single legal act. The Code provided an extensive list of definitions and principles applicable in administrative procedures and judicial proceedings, however in some of the provisions there was confusion between principles and procedural rules. The rapporteurs were of the opinion that it would be better to include the procedural rules in the respective articles of the Code. Based on earlier Venice Commission recommendations the role of the prosecutors in the administrative procedures and process needed to be reconsidered, limiting their intervention to exceptional cases clearly indicated in specific articles of the text.

Ms Khabrieva pointed out that the rapporteurs agreed that the provisions on administrative discretion should be reviewed and clarified in order to avoid misinterpretation in the future application of the Code. The rules on the participation of witnesses and experts in administrative proceedings as well as the provisions on the suspension of an administrative act pending the adoption of an appropriate decision also had to be clarified.

Mr Hoffman-Riem proposed to underline in the text of the opinion that due to significant differences in principles governing the administrative procedure and administrative court proceedings, a more appropriate solution would be to regulate them in separate legal acts.

Mr Marat Beketayev, Minister of Justice of the Republic of Kazakhstan, thanked the rapporteurs for their work and for the open and constructive dialogue with the authorities during the preparation of the draft opinion. He reaffirmed Kazakhstan's commitment to democratic reforms and underlined the importance of the 2017 constitutional amendments, which had been the subject of a specific Venice Commission opinion. According to Mr Beketayev, the adoption of the "Strategy Kazakhstan 2050" gave an additional impulse to the improvement of administrative justice and the efficiency of public institutions in Kazakhstan. The development of the draft Administrative Procedure Code, as well as other reforms implemented in Kazakhstan, demonstrated Kazakhstan's commitment to the principle of the rule of law. Mr Beketayev said that the recommendations of the Venice Commission's opinion on the draft Administrative procedure and justice code were greatly appreciated by the authorities and would undoubtedly help to improve the text.

The Commission adopted the opinion on the Administrative procedure and justice code of Kazakhstan (CDL-AD(2018)020).

12. Maroc

M. Mohamed Auajjar, Ministre de la Justice et des Libertés du Maroc, tient en premier lieu à témoigner de la qualité de l'expertise que la Commission a su offrir dans le secteur de la justice depuis l'adoption de la nouvelle constitution de 2011. Ce texte a fait sien les normes et standards internationaux d'édification d'un état de droit et a prévu un nouveau pouvoir dans l'histoire constitutionnelle du Maroc, à savoir un pouvoir judiciaire indépendant des pouvoirs exécutif et législatif. Le Ministère de la Justice a mis en œuvre ces nouvelles dispositions constitutionnelles à travers l'élaboration des projets de lois organiques relatifs au Conseil supérieur du pouvoir judiciaire (CSPJ) et au Statut des magistrats pour lesquels la Commission en coopération avec la CEPEJ avaient apporté leur expertise.

La mise en œuvre de ces lois constitue maintenant la priorité du Ministère et de nombreux moyens sont déployés afin de faciliter cette phase de transition et d'accompagner l'installation du nouveau CSPJ. Le Maroc a fait aussi le choix de l'indépendance du Ministère public vis-à-vis du pouvoir exécutif, matérialisé par une loi spéciale qui régit le transfert de compétence du Ministre de la Justice au nouveau président du Ministère public, à savoir le Procureur général du Roi près la Cour de cassation. Afin d'accompagner ces réformes, le Ministère est soucieux d'échanger et de partager les meilleures pratiques lors de Conférences Internationales de Marrakech sur la justice, la prochaine portera sur « La transformation digitale et la justice ouverte » et aura lieu du 20 au 24 octobre 2019.

La coopération entre le Ministère et la Commission se prolonge par l'assistance de la Commission dans l'élaboration du projet de loi organique relatif à l'exception d'inconstitutionnalité. A cet effet, un échange de vues entre des membres de la Commission et le Ministère de la Justice a eu lieu le 17 septembre 2018, à Rabat. Enfin le Ministre rappelle que le statut d'observateur auprès de la CEPEJ, acquis en 2013, permet au Maroc de participer à l'exercice d'évaluation 2016-2018 des systèmes judiciaires et de bénéficier dans ce cadre d'une assistance concrète qui vient s'ajouter à celle de la Commission.

Mme Cartabia informe les Commission de la réunion du 17 septembre 2018 relative au projet de loi relatif à l'exception d'inconstitutionnalité à laquelle ont participé MM. Mathieu, Velaers ainsi que Mme Lottin membre du Conseil constitutionnel français. La réunion a été particulièrement riche et pleine d'enseignements pour tous les intervenants. Les débats ont tourné autour de deux questions principales : le filtrage et la question des effets dans le temps des décisions d'une Cour constitutionnelle. M. Mathieu confirme la qualité des échanges de vues et l'entière disponibilité évoquée par Mme Cartabia afin de maintenir le dialogue entre la Commission et le Ministère sur ce sujet.

M. Auajjar mentionne le projet d'organiser une Conférence à l'attention des avocats afin de les sensibiliser sur la question du filtre ainsi que du besoin de formation de juristes qui seront détachés auprès de la Cour constitutionnelle pour traiter les affaires issues de l'exception d'inconstitutionnalité.

M. Buquicchio félicite le Maroc pour la réforme constitutionnelle entreprise en 2011 et pour sa mise en œuvre qui constitue maintenant le second défi, après l'approbation d'une Constitution reflétant les grands principes démocratiques d'une constitution moderne. Il confirme l'entière disponibilité de la Commission à accompagner le Maroc dans cette nouvelle étape.

13. Republic of Moldova

Ms McMorrow explained that the opinion on Law no. 120 on preventing and combating terrorism had been requested by the Ministry of Justice of the Republic of Moldova. So far, the practical implementation of the law had not given rise to any known major controversies. However, there was a risk that the powers given by the law to the Security and Intelligence Service (the SIS) may be interpreted broadly and misused. In particular, it was not clear how Law no. 120 correlates with the existing legal regime which governs criminal investigations and special investigative activities. It is not recommended to give the Speaker of Parliament the power to co-ordinate anti-terrorist activities; at the same time, parliamentary control of the SIS operations should be efficient, independent and evidence-based. The extraordinary powers given to the SIS by the law during a terrorist crisis should be limited in time and in geographical scope; the triggering and, *a fortiori*, the extension of the regime of the counter-terrorist operation should be subjected to an effective parliamentary control. The use of lethal force which resulted in the loss of life or limb during anti-terrorist operations should be subject to an independent and effective investigation.

In the ensuing discussion, it was underlined that the general supervision by Parliament should go together with the parliamentary control of the specific actions of the SIS. It is more appropriate for a minister to trigger the anti-terrorist operation. Also, there should be a line between "anti-terrorist" operation and a general state of emergency.

Mr Gheorghe Racovita, Head of the Cabinet of the Director of the SIS, and Ms Ludmila Schendra, expert from the SIS, assured the Commission that the Moldovan authorities would take into serious consideration the recommendations in the opinion. Parliamentary control over the activities of the SIS is now exercised by a parliamentary sub-committee, which includes some independent MPs and representatives of the opposition. Some of the recommendations contained in the draft opinion - for example, regarding the expert oversight of the SIS – are part of the draft Security and Information Strategy, to be considered by Parliament. Where the activities of the SIS are related to the prosecution of specific crimes, procedures under the Code of Criminal Procedure apply.

The Commission adopted the opinion on the Law on preventing and combating terrorism of the Republic of Moldova (CDL-AD(2018)024).

14. Romania

This opinion on three draft laws amending existing laws on the status of judges and prosecutors, on the judicial organisation and on the Superior Council of Magistracy had been requested by both the President of Romania and the Monitoring Committee of the Parliamentary Assembly. In light of the urgency, at its June plenary session, the Commission authorised the rapporteurs to prepare a preliminary opinion, which was published and sent to the Romanian authorities in July 2018, after consulting the Bureau and the chair of the Sub-Commission on the Judiciary.

According to the Romanian authorities, the reform process was necessary and had been undertaken in order to provide answers to existing problems and needs of the judicial system and to adapt it to new social realities. It would strengthen the independence of judges, by separating judges' and prosecutors' careers, and also increase the efficiency and accountability of the judiciary; some of the changes were needed in order to implement a number of decisions of the Constitutional Court.

The legislative process had taken place in a context marked by a tense political climate, strongly impacted by the results of the country's efforts to fight corruption. Criticised for being excessively fast and lacking inclusiveness and transparency, this process proved to be very divisive for the Romanian society.

Mr Tuori explained that the preliminary opinion had acknowledged and welcomed some proposed positive changes. At the same time it highlighted important new features which seen alone, but especially taking into account their cumulative effect, in the complex political context prevailing in Romania, were likely to undermine the independence of Romanian judges and prosecutors, the public confidence in the judiciary, as well as the country's fight against corruption. These features included in particular a new system for the appointment and dismissal of Chief prosecutors and the role of the Ministry of Justice therein, the limitation of freedom of expression of magistrates, the new provisions dealing with magistrates' liability and the new Section for investigating offences of magistrates, as well as the arrangements weakening the role of the Superior Council of Magistracy, as the guarantor of the independence of the judiciary. Specific recommendations had been made in respect of these aspects.

The Commission was informed that all three draft laws had in the meantime entered into force. Moreover, a recent government emergency ordinance established the framework for the new Section for investigating criminal offences within the judiciary, which the preliminary opinion considered problematic for the independence of the judiciary. Through a further emergency ordinance, the entry into force of the early retirement scheme for magistrates was postponed to 1 January 2020, which was a welcome step. The Commission did not examine other parts of this ordinance and reserved its position in this respect.

Mr Florin Iordache, Chair of the Joint Special Parliamentary Commission for amending the Judicial Laws, explained a number of the amendments introduced to the previous framework and provided clarification on several aspects criticised in the preliminary opinion, in particular the issue of the hierarchical control of prosecutors. He informed the Commission that some of the recommendations contained in the Preliminary Opinion had been addressed by the government emergency ordinance and that further issues raised by the Commission will be considered at a later stage.

Several amendments to the preliminary opinion were made in order to reflect the above developments and clarifications.

The Commission adopted the Opinion on the on draft amendments to Law No. 303/2004 on the statute of judges and prosecutors, Law No. 304/2004 on judicial organization, and Law No. 317/2004 on the Superior Council for Magistracy (CDL-AD(2018)017).

Mr Kuijer explained that the Commission had been requested by the Monitoring Committee of the Parliamentary Assembly to assess draft amendments to the Romanian Criminal and Criminal Procedure Codes, already adopted by the Romanian Parliament and in the meantime challenged before the Constitutional Court.

According to the comments submitted by the Romanian authorities, the amendments responded to the necessity to bring the Romanian legislation in line with a number of decisions of the Constitutional Court and EU Directives; the necessity to revise the current criminal codes had not been disputed in the country.

The draft opinion however noted that some amendments go far beyond the requirements resulting from the case law of the Constitutional Court or the country's international obligations and expressed concern that the difficulties experienced by legal practitioners with existing criminal codes will only worsen if the amendments enter into force. Some amendments (such as those related to abuse of office) would seriously impair the effectiveness of the efforts to eradicate corruption in Romania, and their potential impact appeared to be even wider. They - and in particular the amendments to the criminal procedure code - could significantly impact the criminal justice system and its effective and efficient operation as such.

Mr Kuijer further stressed that the opinion was atypical in that it did not denounce an infringement of the rights of the defence, but rather a risk for the overall effectiveness of the criminal justice system, which also came under the responsibility of the state, especially as concerns serious forms of crime. It also found particularly problematic that over 300 amendments, amounting to a comprehensive reform of two cardinal codes, were adopted in a legislative process which was excessively fast and which lacked transparency. As for the judicial laws, the process had proven to be very divisive for the Romanian society.

In light of the above, the Romanian authorities were invited to conduct an overall re-assessment of the amendments, through a comprehensive and effective consultation process, in order to come up with a coherent legislative proposal, benefiting from broad support within the Romanian society, and taking fully into account the applicable standards. A number of more specific recommendations were made in relation to some proposed amendments. These included, for the Criminal Procedure Code, the rules on communication concerning on-going criminal investigations, starting a criminal investigation, evidentiary thresholds and the inability to use certain forms of evidence, and the right to be informed of and participate in all prosecution acts, as well the final and transitional provisions reconsidered. As regards the Criminal Code, specific recommendations were made with regard to provisions regulating corruption-related offences (bribery, influence trading and buying, embezzlement and abuse of service), as well as those on the statute of limitations, false testimony and compromising the interests of justice, extended confiscation, the definition of public servant and ancillary penalties. The Commission was also informed that a recent Constitutional Court decision had already declared unconstitutional over 60 amendments to the Criminal Code, and that the Court was also expected to adopt a decision on the constitutionality of the amendments to the Criminal procedure Code having been challenged before it.

While providing additional explanations concerning the necessity and purpose of the proposed amendments, Mr Florin Iordache, Chair of the Joint Special Parliamentary Commission in charge of amending the criminal codes, assured the plenary of the

importance attached by the Romanian authorities to the Venice Commission's opinion and of their intention to improve the two amending laws in the light of the Venice Commission's recommendation and taking duly into account the relevant decisions of the Romanian Constitutional Court.

The Commission adopted the Opinion on amendments to the criminal code and the criminal procedure code previously adopted by the Sub-Commissions on the Judiciary and on Fundamental Rights on 18 October 2018 (CDL-AD(2018)021).

15. "The former Yugoslav Republic of Macedonia"

Mr Barrett explained that this opinion, requested by the Ministry of Justice, was the latest in a series of opinions on the judiciary of "the former Yugoslav Republic of Macedonia", following the one adopted in December 2017. The most recent round of amendments (of May 2018) could be assessed positively. However, there had been many legislative interventions over the past several years and it appeared useful at this stage to monitor for a few years how the system operates in practice. In 2017, the Council for the Determination of Facts had been abolished, and all disciplinary proceedings regarding judges were now concentrated within the Judicial Council. It was reasonable to make a distinction between the inquiry stage and the adjudicative stage in disciplinary proceedings within the Judicial Council. A two-thirds majority required to take decisions on disciplinary matters may sometimes lead to stalemates. There was a certain ambiguity regarding the jurisdiction and powers of the Appeals Council. The performance evaluation system was too detailed and too mechanical in its layout. The case-law of the ECtHR is a source of law for the judges in this country, which was positive, but the failure to interpret the case-law correctly, or a finding, by the ECtHR, of a violation of the Convention in a case handled by a judge should not be a ground for a disciplinary liability.

Ms Renata Deskoska, Minister of Justice, informed the Commission that the Ministry of Justice wa already working on the amendments to the legislation at issue, which would take into account the recommendations of the opinion. The purpose of the reform was to address the concerns over the situation within the judiciary of "the Yugoslav Republic of Macedonia" expressed in the EU "Priebe report". The last round of amendments was based on Council of Europe standards (CCJE, the Committee of Ministers, the ECtHR etc.). The reform of the judiciary would be finalised with a third package of the amendments which will incorporate the recommendations of the opinion and also regulate new areas (in particular it will reform the appointment/promotion criteria and procedures). The grounds for disciplinary liability would be reformulated and the filtering function of the inquiry commission of the Judicial Council specified.

The Commission adopted the opinion on the Law amending the Law on the Judicial Council and on the Law amending the Law on Courts of "the former Yugoslav Republic of Macedonia" (CDL-AD(2018)022).

16. Tunisie

M. Velaers introduit l'avis sur le projet de Loi organique relatif à l'organisation des partis politiques et à leur financement, demandé par le Ministre de la Relation avec les Instances Constitutionnelles et la Société Civile et des Droits de l'Homme. Il rappelle que suite à la révolution de 2011, une nouvelle Constitution et une nouvelle législation sur les partis politiques ont été introduites qui reflétaient un esprit libéral et ont favorisé la création d'un grand nombre de partis politiques (actuellement il en existe plus de 200, dont 19 sont actuellement représentés au Parlement). Si ce développement n'est pas un problème en soi, il semble qu'un certain nombre de partis ont des problèmes de gouvernance ; il semble également y avoir un large consensus que la transparence du financement des partis doit être renforcée. Le projet

de loi vise à améliorer la transparence des partis politiques en général et de leur financement en particulier. Il met en place une plateforme électronique pour la gestion des dossiers des partis politiques, et il prévoit l'introduction d'un financement public annuel des partis politiques. M. Velaers souligne que de telles mesures sont en principe en harmonie avec les normes internationales pertinentes, et que le projet de loi est dans l'ensemble clairement rédigé et conforme au mandat constitutionnel de légiférer en la matière.

Cela dit, quelques amendements sont recommandés pour assurer le bon équilibre entre la liberté d'association dont jouissent les partis politiques et leurs membres, d'une part, et les restrictions et le contrôle nécessaires, d'autre part. En particulier, il est conseillé de faire référence, dans le projet de loi, à la liberté non seulement de constituer des partis politiques, mais aussi d'y adhérer et d'y exercer des activités, et d'ajouter le principe de proportionnalité et de nécessité dans une société démocratique par rapport aux restrictions permises de cette liberté ; d'introduire de plus brefs délais pour statuer sur les demandes d'enregistrement des partis politiques, et sur les recours contre les refus d'enregistrement ; d'assurer que l'identité des donateurs ne soit pas portée à la connaissance du public, mais uniquement de l'organe de contrôle, en cas de petits dons clairement définis ; de faire en sorte que la modalité de calcul de la prime et le nombre de voix à obtenir pour l'exigibilité du financement public annuel par les partis politiques non représentés au Parlement soient définis dans la loi elle-même ; de renforcer le dispositif de contrôle financier des partis politiques ; et de réviser le dispositif de sanctions, notamment de limiter encore plus le champ d'application de la dissolution de partis politiques et de repenser les compétences pour imposer des sanctions aux partis.

M. Marcin Walecki, chef du Département de la démocratisation de l'OSCE/BIDDH, salue le présent avis et ses recommandations qui sont en ligne avec les conclusions de l'avis de l'OSCE/BIDDH de 2012 sur la législation régissant les partis politiques, actuellement en vigueur ; ce dernier avis avait bénéficié de contributions de deux membres de la Commission de Venise. M. Walecki propose deux amendements au projet d'avis visant à améliorer encore plus la transparence, qui sont acceptés par la Commission. M. Luc Van den Brande, Membre du Comité des régions et Président de la CIVEX, fait référence aux travaux pertinents de l'Assemblée Parlementaire, notamment au rapport de la Commission des questions politiques de 2007 qui était à l'origine du Code de bonne conduite en matière de partis politiques de 2009. Ce dernier, qui est cité dans le présent avis, souligne la nécessité d'assurer la transparence, le contrôle indépendant et un régime de sanctions efficaces ; il est louable que le projet de loi de Tunisie ainsi que l'avis de la Commission répondent à cette nécessité.

La Commission adopte l'avis sur le projet de Loi organique relatif à l'organisation des partis politiques et à leur financement (CDL-AD(2018)025), préalablement examiné par la sous-commission sur le bassin méditerranéen le 18 octobre 2018.

17. Uzbekistan

Mr Vilanova Trias reminded the Commission that the request came from the Central Election Commission of Uzbekistan. To date, Uzbekistan has several separate electoral laws for organising different types of elections. Uzbekistan is thus responding to a long-term recommendation by international observers to codify its electoral texts. However, Mr Vilanova Trias pointed out that many improvements of the text were recommended, concerning *inter alia*: the lack of effective provisions on certain fundamental freedoms, in particular campaigning; the need to supplement the text concerning the fight against the misuse of administrative resources; the need to review the provisions restricting the voting rights of different categories of electors; the need to strengthen the independence of election commissions.

The representative of the OSCE/ODIHR underlined the good co-operation with the Uzbek authorities throughout this reform process. He added that the draft Election Code would be

adopted at the end of 2018. The next parliamentary elections would be held under the aegis of the new Election Code at the end of December 2019.

The Commission then held an exchange of views with Mr Mirza-Ulugbek E. Abdusalomov, President of the Central Election Commission. Mr Abdusalomov thanked the rapporteurs and more generally the Venice Commission and the OSCE/ODIHR for the very good co-operation concerning this electoral reform. He informed the Commission that the recommendations made in the opinion would be taken into consideration to a large extent. He also underlined that the Commission was invited to participate in an international conference dedicated to the on-going electoral reform, which would take place on 16-17 November in Bukhara.

The Commission adopted the Joint Opinion by the Venice Commission and the OSCE/ODIHR on the draft election code of Uzbekistan (CDL-AD(2018)027), previously adopted by the Council for Democratic Elections on 18 October 2018.

18. Information on constitutional developments in other countries

Brazil

Mr José Antonio Dias Toffoli, President of the Federal Supreme Court of Brazil, informed the Commission about the recent constitutional developments in his country. In 2018 Brazil celebrated the 30th anniversary of its 1988 Constitution. The inclusive process of its adoption and the level of protection it gave to individual rights was so important that this text was often referred to as the "Citizens' constitution". It had helped to ensure the longest period of democratic development in Brazil's history. Among other things the Constitution provided the basis for an independent judiciary. The Federal Supreme Court had been created in 1990 and since its establishment had played an important role in protecting the democratic principles enshrined in the Constitution. The Brazilian judiciary benefited from one of the most comprehensive structures in the world. Since 2001, sessions of the Supreme Court could be followed by anyone directly on the radio, TV and internet.

In recent years Brazil had gone through a difficult period of political crisis; however the Constitution and the solidity of institutions it established had helped the country to face different challenges. On 28 October 2018, 200 million Brazilian voters would be called to vote in the second round of the general election. Mr Toffoli expressed his hope that this historic election would help to guarantee the democratic stability of Brazil.

Mexico

Ms Otálora Malassis informed the Commission about the 1 July general elections in Mexico. Mexicans had had to elect a new president, members of the federal parliament, as well as 18 229 officials in 30 federal entities. For the first time in Mexican history there had been two independent presidential candidates. These elections represented a major challenge for the electoral administration of the country. More than 1 million citizens had been called to work in polling stations and other electoral management bodies.

In the presidential elections, the winner, Mr Andrés Manuel Lopez Obrador, obtained 53.2% of the votes. His political party obtained more than 50% of the mandates in the parliament and won all elections in the Federal entities. This election was also a historical one in terms of parity and the representation of ethnic minorities – 49% of newly elected members of the Senate were women and 13 mandates were reserved for representatives of indigenous communities.

The Federal Electoral Tribunal examined 15 000 election-related applications. Most appeals were lodged by individuals, candidates and political parties challenging the constitutionality and

legality of decisions of electoral management bodies. One of the important decisions taken by the Tribunal concerned the right of citizens who had not been born in Mexico to run for mayors and in local elections.

Peru

Mr Sardon informed the Commission on the process of constitutional reform in Peru initiated by President Martin Vizcarra on 28 July 2018. This reform concerned mainly four issues: the power of the National Justice Board to elect, confirm in their powers or dismiss judges; the establishment of a bicameral parliament (100 MPs and 30 senators); prohibition of the immediate re-election of MPs and new rules on the financing of political parties. The proposed amendments also included a re-definition of relations between the executive and the parliament, notably through restricting the issues that could be subjected to a vote of confidence. The parliament had approved the text in the first reading and on 9 December a referendum on this issue would be held.

19. Exchange of views with the UN Special Adviser on the Prevention of Genocide

Mr Adama Dieng, United Nations Special Adviser on the Prevention of Genocide, thanked the Venice Commission for facilitating this exchange of views and praised the quality of the legal and constitutional advice the Commission provided to so many countries, well beyond Europe. He shared concerns related to his mandate on the prevention of atrocity crimes, i.e. genocide, war crimes, ethnic cleansing and crimes against humanity. Notably, he referred to the global trend, including in Europe, that people are being persecuted because of their ethnicity, religion, culture or physical characteristics – and that cynical politicians encourage xenophobia and discrimination against minority groups to gain or retain political power. He noted that reports of verbal and physical attacks towards migrants and refugees were no longer isolated incidents, and that ultranationalist resurgence was legitimising hatred, racism and violence, coupled with defamation campaigns against civil society organisations.

Addressing the above concerns required co-ordinated action on four fronts, on which his Office and the Commission could work together: strengthening the protection of vulnerable populations, including ethnic and religious minorities (e.g. through constitutional reform, or the consideration of stronger legal protections and the strengthening of democratic institutions with oversight responsibilities); ensuring that state institutions respect the rule of law and the most basic human rights principles, and that they are transparent and accountable; ensuring a strong, diverse and robust civil society, including pluralistic media; and providing education aimed at promoting tolerance and an understanding of the value of diversity.

Mr Dieng's Office had provided an instrument entitled "Framework of Analysis for Atrocity Crimes", focussing on prevention.The Venice Commission's work was instrumental to human rights in all its member states, and Mr Dieng was committed to supporting it in whichever way this could be most useful.

20. Co-operation with other countries

Bosnia and Herzegovina

Mr Garrone informed the Commission that no tangible progress had been made in the electoral reform process in Bosnia and Herzegovina, although the direct elections had taken place on 7 October. The election law of Bosnia and Herzegovina provided that the election of delegates to the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina shall take place no later than one month after the validation of the results; this validation had to take place within 30 days after the elections were held. Hence not much time remained, while the rules on the allocation of seats by canton and constituent people had not yet been adopted. There was a power of the Central Election Commission in this field, but the whole situation was unclear. The

case concerning the constitutionality of the provision of the Constitution of the Federation of Bosnia and Herzegovina on the minimal representation of each constituent people in each canton in the House of Peoples of the Federation (the *Kristo* case) was still pending before the Constitutional Court of Bosnia and Herzegovina. On the other hand, the issue of the vital national interest concerning the draft (Federation) law on electoral constituencies and the number of mandates of the Parliament of the Federation of Bosnia and Herzegovina had been sent to the Constitutional Court of the Federation.

Canada

Mr Stéphane Dion, Ambassador of Canada to Germany and Special Envoy to the European Union and Europe, expressed appreciation for the work of the Venice Commission. He stressed that Canada and the Venice Commission share essentially the same values and goals. The legal system of Canada is rooted at the same time in the common-law and the civil-law legal traditions. Canada has a rich history of federal multi-level government, and of protecting and promoting the rights of the ethnic and linguistic minorities. The quality of Canadian constitutional law experts is well known internationally. Canada's experience is thus highly relevant to the work of the Commission, and vice versa.

Mr Warren Newman, Senior General Counsel, Constitutional, Administrative and International Law Section, Department of Justice, noted that Canada's legal system is built upon a combination of the British model of parliamentary sovereignty and limited monarchy, on the one side, and of the American tradition of checks and balances, based on a written bill of rights and the judicial review of constitutionality of laws, on the other. The case-law of the Supreme Court of Canada represents an orderly and stable body of human rights law. Canadian society adheres to the values of the rule of law, responsible government and independent judiciary. There is a strong tradition of legal constitutionalism, and also of political constitutionalism, the latter concerned with the legitimacy of political decision-making. Canada's enduring experience with democracy is also of great value. At the same time, democracy, as stressed by the Supreme Court of Canada, cannot exist without the rule of law and cannot be reduced to pure majoritarianism. That Canadian legal tradition may prove useful for the Commission's future work.

21. Developments in the case-law of the European Court of Human Rights

Ms Granata-Menghini explained the main three manners of interaction between the Venice Commission and the European Court of Human Rights: through the systematic use by the Commission of the case-law of the Court; through third party interventions (six to date) and through references by the Court to Venice Commission material (guidelines, reports, opinions) in its decisions and judgments (140 judgments, of which some 30 were Grand Chamber ones, and some 25 decisions). References to the Venice Commission's work concerned on the one hand the Commission's codification of standards (especially in areas where no hard law exists, such as in elections) and country-specific opinions on the other hand. The latter were used by the Court insofar as the Commission's analysis of the constitutional situation of a given country was concerned, but also, increasingly, as concerns the Commission's assessment of the compatibility of a given constitution or piece of legislation with European standards and notably the ECHR.

Ms Granata-Menghini stressed that this interaction was mutually beneficial. In particular, the Commission's authority came to be reinforced when the Court agreed with its assessments, while the Court through the Commission's opinions gained access to comparative material, but also to an analysis of the arguments and views of the opposition and the civil society.

Ms Granata-Menghini intended to publish a paper with the detailed analysis of this matter.

22. Report of the meeting of the Council for Democratic Elections (18 October 2018)

Mr Kask informed the Commission that the secretariat had noticed a few divergences between the French and the English versions of the Codes of Good Practice in Electoral Matters and on Referendums. The English version would therefore be adapted to the original French one.

The Commission took note that the English version of some provisions of the Code of Good Practice on Referendums and of the Code of Good Practice in Electoral Matters would be aligned to the French version.

The Council had taken note of past activities, including the legal assistance by the Venice Commission to election observation missions of the Parliamentary Assembly in Turkey, Bosnia and Herzegovina and "the former Yugoslav Republic of Macedonia" (referendum). An observation mission would be organised soon in Georgia. The Venice Commission had taken part in workshops in Ukraine and in the Western Balkans, the ACEEEO conference in Vilnius as well as high-level conferences in Brussels on "Election interference in the digital age – building resilience to cyber-enabled threats" and "The future of international election observation", both with more than 100 participants. An opinion on the amendments to the electoral legislation of Turkey would be submitted for adoption in December.

23. Report of the meeting of the Sub-Commission on the Mediterranean Basin (18 October 2018)

Mr Medelci informed the Commission that the Sub Commission held an exchange of views on the draft opinion on the draft institutional law of Tunisia on the organisation of political parties and their funding. It also took note of the results and conclusions of the UniDem-Med Seminar "Transformation and innovation in the senior Civil Service: challenges and opportunities" held in Tunis from 24 to 27 September 2018 and of the Second International Conference of the Arab Union of Administrative Judiciary on "Voting In Elections and Referendums - Right and Duty" which had taken place in Cairo from 8 to 9 October 2018. The Sub-Commission was also informed about the on-going co-operation with the EU Delegation and UNSMIL on electoral legislation in Libya; co-operation with Morocco on the referral of cases to the constitutional court by the ordinary judiciary and about the up-coming 6th Intercultural Workshop on Democracy on independent institutions that would take place in Tunis from 13 to 14 November 2018.

There was a growing interest from the countries of the Southern Mediterranean to co-operate with the Venice Commission and the Sub-Commission was pleased that the new projects financed by the EU, such as the South Programme III or projects focusing on the reform of the judiciary and on the independent institutions in Tunisia enabled the Commission's assistance to the countries of the region to be further developed. The Sub-Commission also expressed its gratitude to countries such as Italy and Malta for making voluntary contributions for co-operation with the Southern Mediterranean. Mr Medelci concluded his presentation by inviting members from European countries to participate more actively in the work of the Sub-Commission on the Mediterranean Basin.

24. Report of the meeting of the Sub-Commission on Working methods (18 October 2018)

Mr Barrett explained that the Sub Commission had endorsed the proposal of the working group to define in more detail the procedure for the preparation of urgent opinions (previously referred to as "preliminary opinions"). The proposal aimed at ensuring a larger involvement of Commission members (in addition to the rapporteurs, the members of the Bureau and all chairs and vice-chairs of the Sub Commissions) in a sort of vetting process, so as to give these

opinions a higher degree of representation. Urgent opinions would have a lesser precedential value and the Commission would be free to revisit issues contained therein.

The Commission adopted the revised version of article 14a of the Rules of Procedure (CDL-AD(2018)018), and endorsed the Protocol on the preparation of urgent opinions (CDL-AD(2018)019), previously adopted by the Sub Commission on Working Methods on 18 October 2018.

25. Other business

The Venice principles

Mr Helgesen informed on progress on the drafting of the Principles on the protection and promotion of the Ombudsman Institution ("the Venice Principles" (CDL (2018)025) by Ms Err, Mr Hirschfeldt, Mr Sorensen, and Mr Igli Totozani (Former Ombudsman of Albania). The Working Group had met on 17 October in order to discuss the latest comments received on the draft. In this second round of the consultation process, which had been launched last Spring, the Working group received useful comments from the Steering Committee on Human Rights of the Council of Europe (CDDH) and from the International Ombudsman Institute (IOI). This consultation process was to be followed by an oral consultation meeting with all stakeholders, on 31 October 2018, in Paris.

With regard to the content of the draft, Mr Helgesen pointed out that "the Venice Principles" are meant to be short, concise in order to be implemented easily and to become an international text of references with regard to the Ombudsman Institution. While it was difficult to cope with the very diverse models and constitutional frameworks of this institution, the Working Group, with the help of the stakeholders concerned, had managed to identify the main features of the institution and hence to draft a text which could be used by the governments, NGOs, the institutions themselves and by international organisations in order to strengthen and develop the Ombudsman institutions.

Ms Ohms, on behalf of the CDDH, thanked the Commission for this important initiative and for having consulted the CDDH in a very constructive dialog so far.

Some members made comments notably with regard to the nomination of the Ombudsman and the relation between the Ombudsman and the judiciary.

L'état de droit et le rôle des avocats

Mr Correia intervient sur la question de l'indépendance et des immunités propres aux avocats et relève que les textes internationaux traitant de la profession d'avocat et du fonctionnement des barreaux sont épars et pas nécessairement cohérents. Il relève la nécessité de mener une étude au sein des Etats membres de la Commission de Venise afin d'étudier le niveau de protection et les immunités propres à la profession d'avocat.

La Commission décide de lancer une étude sur les normes de l'Etat de droit applicables au Barreau.

Miscellaneous

Mr Diak informed the Commission about the recent constitutional developments in Palestine,[1] notably concerning the reinforcement of the independence of the Judiciary, the right to access information, arbitration, women's empowerment and children's rights.

M. Kovler informe la Commission que se tiendra à Moscou les 7 et 8 décembre un congrès de droit comparé. Différentes publications concernant la Commission de Venise vont bientôt paraître, notamment un ouvrage sur la Commission de Venise comme sujet de l'interprétation du droit et un autre sur la Commission de Venise et le pouvoir judiciaire. M. Kovler rappelle que l'ensemble des avis de la Commission de Venise sont traduits en russe par l'Institut de la législation et du droit comparé et sont librement accessibles sur le site de l'Institut.

Mme Granata-Menghini lance un appel à contributions à un ouvrage qui sera publié en 2020 à l'occasion des 30 ans de la Commission de Venise et qui recueillera les contributions de membres, d'anciens membres et de parties prenantes ayant interagi avec la Commission de Venise.

26. Dates of the next sessions

The final session of 2018 was confirmed as follows:

117th Plenary Session	14-15 December 2018

The schedule of sessions for 2019 was confirmed as follows:

118th Plenary Session	15-16 March 2019
119th Plenary Session	21-22 June 2019
120th Plenary Session	11-12 October 2019
121st Plenary Session	6-7 December 2019

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

Link to the list of participants

[1] This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of Council of Europe member States on this issue. / Cette dénomination ne saurait être interprétée comme une reconnaissance d'un État de Palestine et est sans préjudice de la position de chaque État membre du Conseil de l'Europe sur cette question.