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

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

**98<sup>th</sup> PLENARY SESSION**  
Venice, Scuola Grande di San Giovanni Evangelista  
Friday, 21 March 2014 (9.00 a.m.) -  
Saturday, 22 March 2014 (1.00 p.m.)

**98<sup>e</sup> SESSION PLÉNIÈRE**  
Venise, Scuola Grande di San Giovanni Evangelista  
Vendredi 21 mars 2014 (9h00) -  
Samedi 22 mars 2014 (13h00)

**SESSION REPORT**  
**RAPPORT DE SESSION**

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## 1. Adoption of the Agenda

The agenda was adopted as it appears in document CDL-PL-OJ(2014)001ann.

## 2. Communication by the President

Mr Buquicchio informed the Commission about his recent activities, which are listed in document [CDL\(2014\)011](#).

He further informed the Commission that the new EU framework to strengthen the Rule of Law in the Member States of the EU had been adopted by the European Commission on 11 March 2014. This was a three-stage process, during which it was foreseen that the European Commission could seek also an input from the Venice Commission in order to issue opinions on a possible systemic threat to the rule of law in one of the EU member States.

Finally, Mr Buquicchio welcomed several new members of the Venice Commission.

## 3. Communication by the Secretariat

Mr Markert informed the Commission that the chair of the Sub-Commission on Latin America, Ms Alanis, had been re-appointed by the Mexican authorities, but as substitute member. Given that substitute members may not chair sub-commissions, the previously elected deputy chair of the Sub-Commission, Mr Joaquim Gomes Barbosa (Brazil), would take over the chair. In order to maintain the important link with Mexico, Mr Markert suggested that the new Mexican member, Mr José Luna Ramos, be elected as the new deputy chair of the Sub-Commission. This proposal was accepted by the Commission.

**The Commission took note that Mr Gomes Barbosa had become the new chair of the Sub-Commission on Latin-America and elected Mr Luna Ramos as the deputy chair of the Sub-Commission.**

## 4. Co-operation with the Committee of Ministers

Ambassador Theodora Constantinidou, Permanent Representative of Cyprus to the Council of Europe, stressed how the Venice Commission's success contributes to the increase of the visibility of the work of the whole Council of Europe. She pointed out that the government of Cyprus was striving to find a solution that would lead to the reunification of the island. To this end, there was an on-going between the President of the Republic of Cyprus and the leader of the Turkish Cypriot community dialogue under the auspices of the United Nations.

Ambassador Drahoslav Štefánek, Permanent Representative of the Slovak Republic to the Council of Europe, expressed satisfaction over the role and the authority of the Venice Commission and the fruitful co-operation between the Venice Commission and the Committee of Ministers. With reference to the third Optional Protocol to the Convention on the Rights of the Child, which would enter into force in April 2014, he emphasized the importance of the report on Children's rights in Constitutions, subject to its adoption by the Venice Commission during this plenary session.

Ambassador Manuel Jacoangeli, Permanent Representative of Italy to the Council of Europe, stressed the important role of the Venice Commission as an enlarged agreement, in the promotion of the Neighbourhood Policy of the Council of Europe, notably through co-operation with countries such as Jordan, Libya and Turkmenistan.

He was also proud to announce that the 100<sup>th</sup> session of the Venice Commission would take place in Rome on 10-11 October 2014 and that the Italian President of the Republic would meet 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 relevant Assembly committees. He informed the Venice Commission in particular that the Monitoring Committee had adopted a declaration concerning judicial independence and impartiality following the developments on the judiciary in Turkey.

He also addressed the situation in Ukraine by informing the Venice Commission about, *inter alia*, the adoption by the Assembly of Resolution 1974 (2014) and Recommendation 2035 (2014) on "The functioning of democratic institutions in Ukraine", the adoption by the Monitoring Committee of a declaration to support the territorial integrity of Ukraine, the issuance of a statement by the Legal Affairs Committee condemning the violation of the territorial integrity and sovereignty of Ukraine and the adoption of a declaration by the Standing Committee of the Parliamentary Assembly on the same subject.

## **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 spoke about the Congress' recent activities and the priorities of the work programme for the coming months. He first addressed the political crisis in Ukraine and recalled Recommendation 346 (2013) by the Congress to the Committee of Ministers on regions and territories with special status in Europe, such as the Crimea. As far as Bosnia and Herzegovina was concerned, the political and institutional deadlock persists. However, the second high-level meeting held in the context of the post-monitoring dialogue, proved positive. At the Congress' plenary the following week, a debate was planned, resulting in a vote on a recommendation and a resolution proposing legislative improvements, practical, inter-municipal co-operation and a seminar in Sarajevo in 2014 on the implementation of the Charter in co-operation with grassroots organisations.

Mr O. Molin also informed the Commission about the monitoring reports on Armenia, Sweden, the United Kingdom and the Netherlands which will be considered at the next plenary session and the comparative studies the Congress has commissioned, in particular the one on the "Criteria for standing for local and regional elections."

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

*Opinion on two Sets of draft Amendments to the Constitutional Provisions relating to the Judiciary of Montenegro ([CDL-AD\(2012\)024](#))*

On 31 July 2013 Montenegro adopted constitutional amendments, including on the Prosecutor's Office. In October 2013 the Venice Commission acknowledged that these amendments were largely in line with its previous recommendations, but regretted that it had been decided that all prosecutors would be reappointed. Such reappointment would affect both prosecutors, who had a five-year mandate, and deputy prosecutors, who had life tenure.

Upon the initiative of the European Commission, a meeting was held in Brussels on 11 February 2014 with Deputy Prime Minister Dusko Markovic and his team, representatives of the European Commission as well as Ms Granata-Menghini and Mr Dürr from the Secretariat. As a result of the discussions, the Montenegrin counterparts agreed *inter alia* that state prosecutors would be entitled to complete their five-year mandate, and would, in addition, be entitled to

participate in the elections for managers of prosecution. Deputy prosecutors would be entitled to participate in the elections for state prosecutors under privileged conditions, while internal control and disciplinary and dismissal proceedings would be dissociated from the election procedure.

*Opinion on the Draft Law on the Courts of Bosnia and Herzegovina*  
([CDL-AD\(2013\)015](#))

The Venice Commission adopted an opinion on the draft Law on the Courts of Bosnia and Herzegovina (BiH) at its June 2013 Plenary Session (CDL-AD(2013)015). That draft Law dealt with the courts at the state level of BiH (except for the Constitutional Court) in a single law and introduced a new High Court of BiH that would serve as a second instance court at the state level and receive cases on appeal from the State Court and adjudicate on other matters set out in that draft Law. The provisions on the composition and number of judges (Article 4) and on criminal jurisdiction in that draft Law (Article 15) raised a number of issues that needed to be addressed by the authorities.

In January 2014, the Ministry of Justice of BiH submitted a new draft Law on the Courts of BiH to the Council of Ministers. The EU, with whom the Venice Commission has been working closely in the context of the EU-BiH Structured Dialogue since 2011, had requested the Secretariat to provide brief informal comments on this new draft. These comments stated that although the text was an improvement on the old version, a number of issues pertaining to the composition and number of judges (Article 4) and to the criminal jurisdiction in that draft Law (Article 15) remained problematic.

*Amicus Curiae Brief in the cases of Sejdić and Finci v. Bosnia and Herzegovina*  
([CDL-AD\(2008\)0027](#)).

Ms Granata-Menghini informed the Commission that she had participated in several meetings organised by EU Commissioner for Enlargement and European Neighbourhood Policy Štefan Füle with the leaders of the leading political parties of BiH in order to encourage constitutional amendments which would comply with the judgment of the European Court of Human Rights in the case of *Sejdić and Finci v. Bosnia and Herzegovina*.

Mr Jean-Eric Paquet, Director for Western Balkans in the Directorate for Enlargement of the European Commission informed the Commission about the latest round of talks held in Sarajevo on 18 February, when Commissioner Füle had had to acknowledge the failure by BiH politicians to reach a compromise and had decided to give up trying to encourage them to do so. He had declared that it was now up to the institutions of Bosnia and Herzegovina to take this matter forward.

Ms Granata-Menghini referred to the Resolution of the Committee of Ministers of 6 March 2014, in which the Deputies had deplored that the political leaders of Bosnia and Herzegovina had failed to reach a consensus on the content of the constitutional and legislative amendments aimed at eliminating discrimination based on ethnic affiliation in elections for the Presidency and the House of Peoples of Bosnia and Herzegovina and had noted with grave concern that, as a result of the absence of agreement between the political leaders of Bosnia and Herzegovina, there was a clear and growing risk that the constitutional and legislative context in which the elections will take place will not be in compliance with the European Convention's requirements.

## **8. Tunisie**

M. Mustapha Ben Jaafar, Président de l'Assemblée nationale constituante de la Tunisie, présente à la Commission les grandes lignes des deux ans de travaux préparatoires qui ont aboutis à l'adoption de la nouvelle Constitution de la Tunisie, le 26 janvier 2014. La nouvelle

Constitution se caractérise par la qualité de son contenu, qui a su rassembler 200 voix pour, douze contre et quatre abstentions lors de son adoption par l'Assemblée constituante. Plus de six Commissions multipartites et pas moins de 600 réunions et consultations ont contribué à ce succès. Le chemin n'en a été pas moins long puisqu'il a duré plus de deux ans et marqué d'événements tragiques. Le soutien constant que la Commission de Venise a su apporter à ce processus constitutionnel constitue un élément important pour lequel M. Ben Jaafar remercie encore la Commission de Venise.

La Constitution a su rassembler les principes démocratiques les plus avancés, inclure les principes de libertés fondamentales partagées universellement sans renier pour autant le patrimoine arabo-musulman. M. Ben Jaafar souhaite que cette « Constitution des Libertés » comme elle est dénommée en Tunisie, puisse servir d'exemple pour la région. Le pays, qui traverse une crise économique sévère, doit maintenant s'atteler à la mise en œuvre des principes érigés au niveau constitutionnel; le soutien de la Commission de Venise dans cette nouvelle étape de la construction démocratique sera certainement recherché et apprécié une fois encore.

Plusieurs des membres rapporteurs sur le projet de Constitution soulignent la qualité et l'exemplarité de la coopération qui s'est instaurée avec la Commission, comme leur satisfaction d'avoir pu voir la grande majorité des remarques faites prises en compte dans la version finale du projet de Constitution.

Le Président de la Commission remercie l'Assemblée nationale constituante pour la confiance qu'elle a su accorder à la Commission et réitère l'entière disponibilité de celle-ci dans les étapes à venir.

## **9. Ukraine**

Mr Tuori introduced on behalf of the rapporteurs the draft opinion on the decision to hold the referendum in Crimea. In accordance with the question put by the Secretary General the opinion addressed the constitutionality of the referendum only. It did not deal with international law issues; these were rather covered in the draft opinion on the Russian draft law. The historical background and the assessment of recent events in Kyiv were also outside the scope of the opinion.

In the referendum only two options were provided: Crimea becoming part of Russia or a return to the 1992 Constitution of Crimea. It was not possible to vote for the status quo. The option of Crimea becoming a part of the Russian Federation was clearly unconstitutional. The Ukrainian Constitution strongly emphasised the indivisibility of the country and explicitly described the Autonomous Republic of Crimea as an inseparable part of Ukraine. It prohibited constitutional amendments going against the territorial indivisibility of the country. The option of a return to the 1992 Constitution could also not be part of a binding referendum since the Constitution of Crimea had to be approved by the Verkhovna Rada of Ukraine. By contrast, a consultative referendum on an increased autonomy would have been legally possible. The draft opinion also pointed to numerous violations of European democratic standards with respect to the conditions in which the referendum took place. At the joint meeting of the Sub-Commissions on the Federal and Regional State and on International Law the previous day the draft opinion had been modified but the conclusions remained the same.

Mr Pavlo Petrenko, Minister of Justice of Ukraine, welcomed the draft opinion which was important for Ukraine. The Acting President of Ukraine, the Verkhovna Rada and the Constitutional Court had all established the unconstitutionality of the referendum. The referendum results had been obtained through falsification: additional voters' lists were established without control on the day of the referendum, citizens of another country voted, journalists were attacked and voters intimidated. The referendum took place when foreign forces were present illegally.

Mr Lafitsky, referring to the written comments he had circulated together with Ms Khabrieva, considered that the focus of the opinion was far too narrow. This issue could not be looked at without examining the historical background, the current uncertain situation in Ukraine and the right of peoples to self-determination under international law. He referred to a number of historical events, in particular the illegal transfer of Crimea from Russia to Ukraine in 1954 and referred to numerous precedents of legal secession from a country, starting with the separation of Texas from Mexico in the 19th century and the territory's later integration into the United States. More recently, Bangladesh and Eritrea were recognised as independent states following their secession from another country.

In the discussion support was expressed for the draft and it was emphasised that international law aspects were beyond its scope. Ms Khabrieva disagreed with the draft opinion.

**The Commission adopted the Opinion on “Whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea’s 1992 Constitution is compatible with constitutional principles” ([CDL-AD\(2014\)002](#)).**

## 10. Russian Federation

Ms Bilkova introduced on behalf of the rapporteurs the draft opinion on the compatibility with international law of the draft Federal Constitutional Law of the Russian Federation on “amending the Federal Constitutional Law on the Procedure of Admission to the Russian Federation and creation of a new subject of the Russian Federation in its Composition”. After the draft opinion had been distributed two weeks before, the rapporteurs had been informed that the draft law had been withdrawn from the parliamentary procedure. For this reason, the Sub-Commissions on the Federal and Regional State and on International law, meeting jointly on 20 March, had decided to submit the opinion to the Plenary for endorsement only and no longer for adoption, which entailed that no substantial changes would be made to the document but that the opinion would nevertheless become public.

This draft law introduced the possibility to admit into the Russian Federation as a new subject, a territory part of another State, following a referendum held in accordance with the procedure of that state or at the request of the local authorities of that territorial entity, without the need for an international treaty with the original territorial state. The opinion examined in detail the relevant principles of international law, notably the customary principle of territorial integrity, from which derived that any cession or acquisition of a territory required the valid consent of both States. In the absence of such consent, the acquisition of a territory amounted to its annexation, contrary to international law. If this was done through military means or by threatening to use military means, an additional breach of the prohibition of the use of force would occur. Self-determination applied to peoples and not to national minorities, and did not entail a right to secession except as a last resort measure in the exceptional circumstances that the respective people's rights had been persistently and massively violated and all other means had failed, and on condition that the secession would be pursued in forms and procedures satisfying international law. Although unilateral declarations of independence by non-state actors were not in breach of international law, a State taking advantage of such declarations and incorporating the relevant territory would violate several principles of international law, notably the non-intervention in domestic affairs and possibly the prohibition of the use of force. Minority protection was the duty of the territorial state, and kin-States did not have any duty nor any right to encourage secession. In conclusion, the Draft law appeared to be in clear violation of several principles of international law.

Mr Dimitry Vyatkin, Deputy Chairman of the Committee on Constitutional Legislation of the Russian State Duma informed the Venice Commission that in an official letter, Mr Vladimir



Pligin, Chairman of that Committee, confirmed that the Draft law had been removed from the agenda of the State Duma.

**The Commission endorsed the Opinion on “Whether draft Federal Constitutional Law No. 46271-6 of the Russian Federation on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation is compatible with international law” ([CDL-AD\(2014\)004](#)) .**

Ms Thorgeirsdottir informed the Commission that the draft opinion on the Federal law No. 7-FZ of 12 January 1996 on non-profit organisations of the Russian Federation, as amended on 11 February 2013, as well as on the Federal law on making amendments to the Criminal Code of the Russian Federation and Article 151 of the Code of Criminal Procedure of the Russian Federation adopted on 23 October 2012, would be presented for adoption at the June Plenary Session.

The Rapporteurs had decided to await the judgment of the Constitutional Court of the Russian Federation on this law. The hearing had taken place on 6 March 2014 and the judgment would be issued shortly.

## **11. Romania**

Mr Bartole presented the draft opinion on the draft law on the review of the Constitution of Romania as amended by the Sub-Commission on Democratic Institutions at its meeting on 20 March 2014. The Opinion had been requested by the Romanian Prime Minister, as part of the assistance provided in the process of constitutional reform launched following the political crisis of Summer 2012. In its 2012 opinion, the Commission had stressed the importance of loyal and constructive co-operation between state institutions and had recommended, in addition to specific legislative changes, clarification and improvement of a number of institutional and other arrangements provided by the Constitution. The draft opinion paid particular attention to the measures taken by the Romanian authorities to implement these recommendations.

The draft opinion welcomed the steps taken to improve a preliminary draft already discussed with the rapporteurs in July 2013, but noted that only a limited part of the 2012 recommendations had been followed, notably: the clarification of the constitutional arrangements on the distribution of powers between the President and the Government in foreign affairs, the introduction of a constitutional basis for the dismissal of the Advocate of the People and, partly, the amendment to the effect that the Parliament would be dismissed if the proposal for the President's revocation were rejected by the population in the subsequent referendum.

However, issues of key importance were still to be addressed. Despite some improvements, a clear option for one particular form of government was still missing and the definition of the respective roles and inter-relations of the main state institutions still lacked clarity. Recommendations aiming at strengthening the independence of the judiciary, in particular of the Superior Council of Magistracy, and the status of prosecutors had not been adequately taken up. The need to streamline the legislative procedure and limit to a minimum the use of government ordinances, as well as the recommendation to transform the procedure on the suspension of the President, if maintained, into a clearly legal responsibility, initiated by Parliament but settled by a court, remained unaddressed.

Further work was therefore needed both as regards the substance, the formulation and the consistency of the constitutional provisions. Particular consideration would have to be given, in this context, to the adequate implementation of the recent decision of the Constitutional Court of Romania.

The draft opinion further recommended a more transparent and inclusive approach in the forthcoming stages of the revision of the Constitution, as a pre-requirement for a successful revision process and the legitimacy of the future text of the Constitution.

Mr Ioan Chelaru, Vice-president of the Romanian Senate and Vice-president of the Romanian Parliament's Joint Committee for the revision of the Constitution, thanked the Venice Commission for its assistance and reiterated the commitment of the Romanian authorities to fully implement its recommendations, as well as the recent decision of the Romanian Constitutional Court, with a view to ensuring that the revised Constitution will be fully in line with European standards and best practices. Mr Chelaru informed the Commission of the decision of the Romanian authorities to pursue the process of improving the draft law through consultations with the various stakeholders concerned.

**The Commission adopted the Opinion on the draft law on the review of the Constitution of Romania ([CDL-AD\(2014\)010](#)).**

## 12. Co-operation with the European Court of Human Rights

Mr Frendo introduced the draft *amicus curiae* brief for the European Court of Human Rights ("the Court") on specific questions concerning parliamentary committees of inquiry (Case of Rywin v. Poland). The applicant before the Court complained that Article 6 ECHR had been violated in a criminal procedure which led to his conviction and was held in parallel with a procedure before a parliamentary committee of investigation.

The Court put the following questions to the Commission:

1. *In case of the discovery – in the course of proceedings conducted by a parliamentary committee of inquiry – of elements which would suggest that a criminal offence has been committed, what would be the proper course of action?*
2. *In the hypothetical situation that the proceedings conducted by a parliamentary committee of inquiry should concern activities of a person not performing any official duties as a part of public authority, to what extent and at what stage should those proceedings be open to the public?*

The Venice Commission limited its analysis to these two questions, and did not address the specific case itself, or the interpretation of the European Convention on Human Rights.

The opinion defined the Parliamentary committees of inquiry as an instrument of what is usually referred to as the "control", "supervisory" or "oversight" function of parliament, the essence of which is to oversee and scrutinise the work of the executive branch. Most member countries have such committees, which are essentially of a political nature. An on-going criminal prosecution does not prevent them from acting and their proceedings are public in general. Their main purpose is not and should not be to search for offences.

With reference to question 1, the opinion retained, amongst best practices, the need for co-operation and exchange of evidence between the parliamentary committee of investigation and the public prosecutor; in particular, the committee had to inform the public prosecutor, and it had to hand over to the prosecuting authorities the relevant information and documentation, to the extent that it was allowed to do so under national law.

On question 2, the opinion underlined the importance of publicity, but considered it legitimate to hold *in camera* sessions, in particular to protect the fundamental right to private and family life. Persons entrusted with public authority should be prepared to accept a higher degree of openness and transparency than private individuals.

**The Commission adopted the *amicus curiae* brief for the European Court of Human Rights on specific questions concerning parliamentary committees of inquiry (Case of Rywin v. Poland) ([CDL-AD\(2014\)013](#)).**

### **13. Report on the scope and lifting of Parliamentary Immunities**

Mr Sejersted introduced the draft report on the scope and lifting of parliamentary immunities. The text had been quite heavily revised after the last session; it took in particular account of the rules of the European Parliament and of the Parliamentary Assembly of the Council of Europe, which might be considered as reflecting a consensus. The basic normative position of the Venice Commission was that national rules on parliamentary immunity should be seen as legitimate only in so far as they may be justified with reference to overriding public requirements. They should not extend beyond what is proportional and necessary in a democratic society.

The report made a clear distinction between non-liability (additional freedom of speech for parliamentarians) and inviolability (protection of parliamentarians against arrest and prosecution). It was favourable to non-liability, but quite critical of inviolability and insisted on the possibility of lifting it in order to prevent abuses, in particular if the parliamentarian was caught *in flagrante delicto*, in case of alleged offences of a particularly serious nature or when the request concerned a criminal conduct which was not strictly related to the performance of parliamentary functions. This was fully in line with the concern expressed by the Secretary General when he had requested the Venice Commission to carry out a report on this matter. Member states were invited to assess their current regime of parliamentary immunities in order to ensure full conformity with the rule of law.

**The Commission adopted the report on the scope and lifting of parliamentary immunities ([CDL-AD\(2014\)011](#)).**

### **14. Report on Children's rights in Constitutions**

Ms Thorgeirsdottir presented the draft report on Children's rights in Constitutions. Several amendments had been discussed at the Sub-Commission on Fundamental Rights at its meeting on 20 March 2014.

The report had been prepared as the Commission's contribution to the Council of Europe Strategy for the Rights of the Child (2012 -2015). The Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Assembly, which would also be contributing a report to the Council of Europe's strategy, had requested the Commission to analyse "How can children's rights be included in national constitutions with a view to thus promoting their effective implementation". The UN Convention on the Rights of the Child (ratified by 193 States), which has given children international recognition as legal rights holders and drawn attention to the new threats to the wellbeing of children, which had emerged since its adoption, served as a basis for the analysis.

After a brief presentation of the guiding principles of the UN Convention on the Rights of the Child, the study contained two main parts: first the ins and outs of constitutional protection through international law, followed by an analysis of the national constitutional provisions of protection of children's rights. The analysis of constitutions revealed that there is clearly no single way to express children's rights in national constitutions which, taken as a whole, often use multiple approaches to give children's rights the highest protection. The study identified significant examples of good practices in the constitutional protection of children's rights and in their enforcement.

The Report also indicated two sets of recommendations. First, it recommended, as an underlying approach to the protection of children's rights, that children be addressed as rights holders and not merely as actors who need protection and that the best interest of the child be a primary consideration in devising and implementing legislation. The second set of recommendations focused more on the enforcement of children's rights. The study concluded with a general statement on the positive obligations of States.

Mrs Anne Lindboe, Children's Ombudsman of Norway, thanked the Commission for this study which would constitute an important tool for the promotion of children's rights in Europe.

Ambassador Drahoslav Štefánek, Permanent Representative of Slovakia to the Council of Europe, welcomed the conclusions of the study, which contributed positively to the protection of children's rights and of their best interests.

**The Venice Commission adopted the Study on "The protection of children's rights: international standards and domestic constitutions" ([CDL-AD \(2014\) 005](#)).**

## 15. Albania

Mr Bartole informed the Commission that on 18 and 19 February 2014 a delegation of the Venice Commission, composed of Mr Paczolay and himself accompanied by Mr Dürr had visited Tirana and held meetings with the Minister of Justice, the President of the Supreme Court, the Deputy Head of the High Council of Justice, the Prosecutor General, the Secretary General of the President's Office, the Union of Judges and the Chair of the Bar Association. This visit had taken place in the framework of a request for assistance in the reform of the Judiciary by the Minister of Justice. The scope of the reform included the constitutional and legal positions of the High (supreme) Court, of the High Council of Justice (including judicial appointments and discipline), the prosecution system (prosecutorial council) and the Constitutional Court.

Several proposals had been discussed during the meetings: a constitutional amendment, which would bring the High Court under the umbrella of the High Council of Justice: its judges would no longer be elected by Parliament with a simple majority for renewable nine year mandates. The non-judicial members of the High Council of Justice should be elected by a qualified majority in Parliament and higher qualifications for membership should be required. The High Court should become a real cassation court only and should no longer examine facts. The overlapping of the judicial inspection systems by the Minister of Justice and the High Council of Justice should also be addressed. The Ministry had announced a strategy paper on these issues for which it sought input from the rapporteurs.

In this wider framework, the Commission had received a first request for an opinion on draft amendments to the criminal and civil procedure codes, which (a) would reduce the workload of the High Court which had a very high backlog of cases and (b) which would enable lawyers who do not show up at court hearings to be sanctioned. The Bar Association had informed the delegation that often lawyers did not come to court hearings because they were blackmailed by their clients. This opinion should be adopted at the June session.

**The Commission invited the rapporteurs to transmit to the Albanian authorities a preliminary memorandum setting out the issues discussed at the meetings in Tirana.**

## 16. Armenia

### *Joint Opinion on the draft Law on making amendments and supplements to the judicial code (evaluation system for judges) of Armenia*

Mr Hamilton informed the Commission that the Minister for Justice of Armenia had requested an opinion on the draft Law amending and supplementing the Judicial Code of Armenia. It was a predominantly technical opinion dealing with the introduction of a system for the evaluation of judges. The opinion's criticisms related more to international best practices than to international standards. However, the Venice Commission's delegation that went to Yerevan for this opinion had discovered that there was a surprising practice that had developed in Armenia whereby lower courts' judges sought instructions from upper courts' judges before rendering their judgments. The opinion therefore emphasised the importance of the independence of the judiciary including the independence of individual judges from other judges.

Mr Grigori Muradyan, acting in his capacity as First Deputy Minister for Justice of Armenia and not as substitute member for Armenia, informed the Venice Commission that the Ministry of Justice had introduced a project for the reform of the judiciary in 2012 in order to increase the independence of judges. He thanked the Venice Commission for the in-depth discussions that had taken place the day before this Plenary Session on the draft Law on the judicial code.

**The Venice Commission adopted the Joint Opinion on the draft Law on making amendments and supplements to the judicial code (evaluation system for judges) of Armenia ([CDL-AD\(2014\)007](#)).**

### *Discussions on the reform of the Constitution of Armenia: results of the visit to Yerevan in February 2014 and of the meeting held in Venice on 20 March 2014*

Mr Grigor Muradyan, acting in his capacity as the First Deputy Minister of Justice of the Republic of Armenia, informed the Commission that the Professional Commission for Constitutional Reforms (PCCR) set up by decree of the President of Armenia and responsible for drafting the concept for amending the Constitution had met with a group of experts of the Venice Commission twice: in February 2014 in Yerevan, when the issues of the guarantee of the principle of the rule of law, electoral systems, referendums as well as the independence of the Judiciary were discussed, and on 20 March 2014 in Venice when the form of government was the main subject of discussion.

The draft concept on the reform of the Constitution was partially ready. There was consensus in the PCCR on a number of points but the form of the government continues to be debated. He further explained that the draft concept would be submitted to the President and subsequently to the public for debate; the President of the Republic would then adopt the concept, probably in the Autumn. The draft constitution will be submitted to the Venice Commission for opinion.

## 17. Bosnia and Herzegovina

Ms Bilkova informed the Commission that the Minister for Justice of Bosnia and Herzegovina (BiH) had requested an opinion on the draft Law on the High Judicial and Prosecutorial Council (HJPC) of BiH. The opinion took into account the amendments suggested by the Ministry of Justice of BiH and by the EU, with whom the Venice Commission had co-operated in the context of the EU-BiH Structured Dialogue. The HJPC was established in 2004 by a law made possible by a Transfer Agreement concluded by the two Entities, the Federation and Republika Srpska. But the HJPC did not have an explicit constitutional basis



and the Venice Commission had consistently expressed the view that such a basis would facilitate the role of the HJPC as the guarantor of the independence of the judiciary.

The establishment of the HJPC and its work was welcomed by both the Venice Commission and the EU. But a number of reservations had been made over the years against the HJPC, and this draft Law was an attempt to address them. Problematic issues included aspects of the composition of the HJPC (absence of members of the professional community, the obligatory ethnic composition); the election process of the members; whether there is a possibility for unsuccessful applicants to appeal to a court of law and the need to clarify the assessment criteria for judges and prosecutors.

The HJPC was a well-functioning institution and it would be a step backwards to introduce political aspects to the appointment process of HJPC members. It was clear that the HJPC was and remained a single structure, as provided for under the Transfer Agreement, while it now had two sub-councils, one for judges and one for prosecutors, which the Venice Commission welcomed.

Mr Srdjan Radulj, Deputy Minister for Justice of BiH, thanked the rapporteurs for taking into account a number of the remarks made by the Ministry. He confirmed that the long-standing application of the 2004 Law on the HJPC brought to light a number of deficiencies that the draft Law endeavoured to address. He assured the Commission that although the HJPC had no constitutional basis, this draft Law would not lower the HJPC's importance. The aim was to create an impartial and accountable judiciary in the country.

Mr Jean-Eric Paquet, Director, Directorate General of Enlargement, European Commission, stated that the Venice Commission had provided a number of important contributions to the ongoing reform efforts of the BiH Judiciary, which is closely monitored by the European Commission within the framework of the EU-BiH Structured Dialogue on Justice. He said that this opinion dealt with another sensitive area of the reform, notably the institutional development of the HJPC; that it provided for clear terms of reference for BiH practitioners and political leaders alike. He added that after the social unrest in BiH, the commitment on the judiciary would remain a top priority for the European Commission and that this would be supplemented by a new clear priority on anti-corruption policies, prevention of conflict of interest, anti-discrimination policies and measures to strengthen the integrity, accountability and efficiency of police forces - in the form of a broadened Structured Dialogue on the Rule of Law.

**The Commission adopted the Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina ([CDL-AD\(2014\)008](#)).**

## **18. Bulgaria**

Mr Kask introduced the draft opinion on the draft election code, requested by the Deputy Speaker of the Parliament, which had been transmitted to the Bulgarian authorities in February 2014. Following the discussions in parliament and despite a presidential veto based on the argument that the bill would not "achieve a sustainable solution to fully reflect public expectations", the National Assembly adopted the Election Code on 4 March. The National Assembly had provided the Venice Commission with comments on the draft opinion on 14 March. Based on these comments, several amendments had been proposed to the joint opinion.

Overall, the draft code could be considered as an improvement. The electoral system had been modified, while it remained a proportional one. Most of political parties seemed to agree on the allocation of seats and this was welcome.

A number of recommendations of the 2011 joint opinion had been taken into consideration and had been followed by the Bulgarian authorities. For example, there was an improvement in the composition of election commissions, deadlines were clarified, CEC decisions could be appealed to the Supreme Administrative Courts, etc. However, certain recommendations regrettably remained unaddressed, such as those on voters' registration and electoral rolls, the need to reduce the limits on electoral rights of people with dual citizenship, the regulation of the procedure for e-voting, as well as those changes which did not require a change in the Constitution, such as the use of minority languages, the accuracy of campaign finance reforms, or a better balance in the membership in the CEC.

Ms Tatyana Burudjeva, MP and Deputy Head of the Delegation of the Bulgarian National Assembly to the OSCE Parliamentary Assembly, as well as member of the *ad hoc* parliamentary Committee which had prepared the draft Election Code, stated that the new adopted Code had taken on board most of the recommendations outlined in the joint opinion, although certain issues remained problematic, such as the question of the electoral rolls and Bulgarian citizens residing abroad. Ms Burudjeva thanked the Venice Commission for its co-operation.

**The Commission adopted the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft Election Code of Bulgaria ([CDL-AD\(2014\)001](#)) .**

## 19. Georgia

Mr Hoffmann-Riem introduced the draft *amicus curiae* brief on individual access of public broadcasters to the Constitutional Court, prepared at the request of the Constitutional Court of Georgia. The request, related to a case pending before the Court, concerned in particular the right of members of the Board of Trustees of the Georgian public broadcaster to lodge an application before the Constitutional Court claiming an unjustified interference with their right to freedom of expression. The case had been introduced by the current members of the "Board of Trustees" of the Georgian Public Broadcaster, whose office had been prematurely terminated as a result of the entry into force of a reform of the Georgian Law on Broadcasting.

In its request, the Georgian Constitutional Court had raised three questions: whether the Public Broadcaster has the right to freedom of expression; whether the termination of the office of its current members may amount to the infringement of the constitutionally protected rights of the Public Broadcaster and/or its right to freedom of expression; whether a citizen has the right to argue before the Constitutional Court or relevant judicial body for the protection of his/her right to receive information in cases when the state interferes with the independence of Public Broadcaster.

The *amicus curiae* brief, without analysing the particular case pending before the Constitutional Court, provided the Constitutional Court with relevant elements of international and national comparative law, proceeding to an analysis of the case-law of the ECtHR concerning the admissibility of complaints by public broadcasters or by members of a board of such a broadcaster, consolidated by one example of comparative constitutional case-law from Germany. It belonged to the Constitutional Court to draw conclusions from this material and to decide, in the light of the specific aspects of the concrete case at issue, on whether or not the complaints were admissible.

During the ensuing discussion, the excellent co-operation between the Venice Commission and the Constitutional Court of Georgia was underlined by the President of the Commission. In this context, Mr Papuashvili, President of the Constitutional Court and member in respect of Georgia, expressed his gratitude for the Commission's readiness to address the request

of the Constitutional Court in an extremely short time and reiterated the importance of the assistance of the Venice Commission for the Georgian Court.

**The Commission adopted the *amicus curiae* brief on individual access of public broadcasters to the Constitutional Court of Georgia ([CDL-AD\(2014\)014](#)).**

## 20. Republic of Moldova

*Joint Opinion by the Venice Commission and the OSCE/ODIHR on the draft Law amending the electoral legislation of Moldova*

In November 2013, the Speaker of the Parliament of Moldova, Mr Igor Corman, requested the Venice Commission to comment on a draft proposal to reform the electoral legislation of Moldova. The proposed reform was not yet an official draft, as it had not been registered with the parliament.

Mr Gonzalez Oropeza introduced the opinion and pointed out that the draft intended to replace the existing proportional electoral system with a mixed parallel electoral system, under which members of parliament would be elected through single-mandate constituencies and party lists in a nationwide proportional constituency. While the choice of an electoral system was a sovereign decision of a State, the proposed amendments in the draft submitted for consideration, which changed the proportional system into a mixed system within a year of parliamentary elections, raised serious concerns. There had not yet been a discussion with all electoral stakeholders in Moldova to achieve the consensus necessary for such a radical reform. If achieving better accountability of the political institutions towards the citizens is a key goal in Moldova, it would require adopting pending draft legislation, rather than launching a new comprehensive electoral reform. Moreover, a clearer methodology for the delimitation of constituencies and further provisions on the representation of Transnistria and of Moldovan citizens living abroad should be included. Finally, the timing did not suit the reform, as the basic elements of the electoral system should not be changed within a year of an election.

Mr Andrian Candu, Deputy Speaker of the Parliament of Moldova, welcomed the opinion and stated that it would be used to improve the draft. The change in the system was necessary to reduce the important gap existing between the politicians and the population in Moldova and, if Transnistria could be represented in the Moldovan parliament, this would reduce tension and improve the situation. The draft would be further revised in order to incorporate clearer criteria concerning the delimitation of constituencies. The pending draft legislation to improve the monitoring on funding of political parties and electoral campaigns would also be adopted soon.

**The Commission adopted the Joint Opinion by the Venice Commission and the OSCE/ODIHR on the draft law amending the electoral legislation of Moldova ([CDL-AD\(2014\)003](#)).**

*Joint Opinion by the Venice Commission and the Human Rights Directorate of the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending and supplementing certain legislative acts, promoted by the intelligence and security service of the Republic of Moldova*

Mr Cameron explained that the draft law under consideration amended two other laws, the Law on the Service and the Law on Special Investigative Activity. The Council of Europe and the Venice Commission had carried out previous relevant expert assessments, but had not worked on the 2012 Investigation Law. The background for the preparation of this draft law was the



judgment of the European Court of Human Rights in the case of *Iordachi and Others v. Moldova* of 14 September 2009.

The draft law aimed at regulating a number of special investigative activities outside criminal law through the establishment of a concept of security mandate under the supervision of a judge. This was a legitimate choice. Certain matters nevertheless deserved further consideration, notably the provision of a four-hour timeframe for deciding requests for security mandates and the effects of security measures not only on the targets of these measures but also on third parties.

**The Commission adopted the Joint Opinion by the Venice Commission and the Human Rights Directorate of the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending and supplementing certain legislative acts, promoted by the intelligence and security service of the republic of Moldova ([CDL-AD\(2014\)009](#)).**

*Joint opinion by the Venice Commission, the Human Rights Directorate of the Directorate General of Human Rights and Rule of Law and the OSCE/ODIHR on the draft law on disciplinary liability of judges of the Republic of Moldova*

Ms Suchocka informed the Commission that the Minister of Justice of the Republic of Moldova had requested an opinion on the draft Law on disciplinary liability of judges. Many of the provisions included in the draft Law were in line with European and OSCE standards: the draft Law did not contain controversial issues but rather points which should be clarified, in particular concerning the grounds for disciplinary liability. The main discussions focused on the role of the disciplinary board and the procedure before it and the draft opinion recommended, *inter alia*, strengthening the role of the inspector-judges. The procedure before the Superior Council of Magistrates should be further detailed and a clear provision that would prevent the same member of the Superior Council of Magistrates from engaging in all the consecutive steps of the disciplinary proceedings should be added. Ms Suchocka concluded that there was an obvious need for this law in Moldova and that the draft was moving in the right direction.

**The Commission adopted the Opinion on the draft law on disciplinary liability of judges of the Republic of Moldova ([CDL-AD\(2014\)006](#)).**

## 21. Working Methods

Mr Sorensen, Chair of the Sub-commission on Working Methods, informed the Commission about a meeting of the working group on 21 February in Vienna at which several items had been discussed, including: the agenda of the Plenary, notably the procedure to be followed in case there was disagreement about whether to include a specific item: it was considered that if no consensus is reached, not even with the Bureau, as a last resort measure the majority of the rapporteurs could refer the issue to the Plenary; the question of follow-up to the Commission's opinions: it was considered that a more systematic procedure should be followed in order to show the Commission's interest in follow-up and to enable the Commission to assess its own effectiveness and concrete proposals would be made shortly to this effect.

Ms Sorensen stressed that it was understood that the Commission's interest in follow-up should not be understood as, nor become a procedure of monitoring, as the Commission's opinions are only advisory and non-binding. The working group had further expressed the view that the opinions should not unduly expand to elaborate general principles. The question of elections to the Commission's formal positions had also been discussed and it had been agreed that a more formal and transparent procedure should be drawn up for future elections.

Mr Sorensen announced that concrete operational proposals would now be prepared by the Secretariat in view of the next meeting of the Sub Commission on Working Methods.

## 22. Kosovo\*

Mr Sorensen introduced the draft opinion prepared at the request of the EU Special Representative in Kosovo\*, with the amendments agreed by the Sub-Commission on fundamental rights.

The 2007 basic law on freedom of religion of Kosovo\* while providing guarantees for the right to freedom of conscience and religion for all residents regardless of their religious conviction, did not provide for any legal mechanism allowing religious groups to register and obtain legal personality. This had become an increasing problem for the religious communities, faced with practical difficulties such as owning and registering property and vehicles, opening bank accounts and paying taxes on employees' salaries.

The opinion examined the proposed registration scheme based on a two-tier registration system. While five religious communities (the Islamic Community of Kosovo\*, the Serbian Orthodox Church, the Catholic Church, the Jewish Community and the Evangelical Protestant Church), which are deemed to constitute the historical, cultural and social heritage of the country, would be automatically registered, other more recent religious communities could obtain legal status through a registration procedure, provided that they met a number of conditions set forth by the draft law.

The opinion welcomed the draft law but recommended a number of improvements

In particular, the opinion recommended, in order to avoid a discriminatory approach, that the authorities should ensure that, in addition to the five religious communities listed in the draft law, all the other established religious groups which form part of the historical, cultural and social heritage of Kosovo\* be included in the list of automatically registered communities.

Certain critical remarks and related recommendations concern the conditions for registration, including: the requirements for religious communities to be organised on a clear, hierarchical basis and to have "their statute/regulation", as preconditions for being registered, the - too vague - requirement for the purpose or practices of the religious community "not to be in contradiction with the inter-religious tolerance and the Constitution of the Republic of Kosovo\*", and the requirement for religious communities to inform the authorities of their participation in organisations or conferences abroad as representatives of Kosovo\*. The draft opinion also stressed that registration should not be compulsory and that its legal consequences, including with regard to financial aspects, should be clearly specified by the law.

During the subsequent discussion, Mr Paasivirta, the representative of the European Commission, thanked the Venice Commission for this opinion and expressed the willingness of the European Commission to continue to co-operate with the Venice Commission in respect of Kosovo\*, including on other areas of importance for the respect of the democratic principles and of the rule of law.

**The Commission adopted the Opinion on the draft law amending the law on freedom of religion in Kosovo\* ([CDL-AD\(2014\)012](#)).**

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\* All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

### **23. Report on Freedom of Assembly**

Ms Peters introduced the Comparative Study on Freedom of Assembly Legislation drawn up by the Max Planck Institute as part of their co-operation with the Venice Commission. The study was also a contribution to the ongoing work of the Venice Commission and the OSCE/ODIHR on the revision of the Joint Guidelines on Freedom of Peaceful Assembly (first published in 2007, revised in 2010).

The study aimed at providing a comprehensive overview of the legislative situation in a number of selected countries, with special regard to novel questions such as flashmobs, the increased role of social networks etc.). One further aim was to assess whether there are significant differences among the legislation of the Venice Commission's member States as regards the conformity of their legislation on freedom of peaceful assembly with the relevant international standards.

In view of the endorsement of the study by the Commission at its June session, the members were invited to provide the Secretariat with any additional/up-dated information and/or clarification that they might consider useful in respect of the legislation on freedom of assembly in their country.

### **24. Co-operation with other countries**

#### *Kazakhstan*

Mr Kairat Mami, Chairman of the Supreme Court of the Republic of Kazakhstan, informed the Commission on the complex process of change taking place in Kazakhstan, both political and legal. The Constitution had been changed three times since it was first adopted and the challenges ahead were still important: the evolution towards a more stable democracy, the strengthening of the political system and the stability of the State government. The system of checks and balances had been improved with the last constitutional reform, which significantly increased the powers of the Parliament, specifically of the Senate, and this had had an impact on the procedure of no-confidence voting against a government, increasing stability. The reform of the local self-government had also achieved a better balance and, as part of a systematic approach to implement legal changes, new Civil and Criminal Codes would be adopted soon. The authorities of Kazakhstan thanked the Venice Commission for the constant help and support in the constitutional development of the country.

Mr Esanu asked for some clarification concerning the existence or not of the imperative mandate. The reply was that, if one of the Members of Parliament is expelled from his or her political party, then he or she would be deprived of his/her mandate.

#### *Libya*

Mr Buquicchio informed the Commission that on 7 and 8 January 2014, he had travelled to Libya, together with Mr Frendo and Mr Ben Achour, to meet most of the main authorities of the country, such as the Head of State, the Chairpersons of many different Parliamentary Committees, as well as the Minister of Justice and the President of the Supreme Court. There had been long discussions and exchanges on constitutional issues and on the national Congress of Libya. However, unfortunately, due to the worsening of the political and security situation in the country, including the resignation of the Prime Minister, the constituent assembly had not been able to start its work. The co-operation with Libya was therefore on standby, but the Venice Commission, in co-operation with the European Union and the United Nations, would be ready to continue assisting the authorities as soon as the substantial work could start again.

### *Maroc*

Le secrétariat informe la Commission de la coopération avec le Maroc, qui s'est mise en place dans le domaine de l'égalité et la non-discrimination au moment de la mise en œuvre de la nouvelle Constitution en 2011. Dernièrement, un nouveau volet de coopération s'est développé dans le cadre du pouvoir judiciaire. Le ministère de la Justice a demandé au Conseil de l'Europe l'analyse de deux lois : la loi sur le conseil supérieur de la magistrature et la loi sur le statut des juges. La Commission de Venise et la CEPEJ, qui sont les organes du Conseil qui travaillent le plus dans ce domaine, ont organisé deux réunions. La première a eu lieu à Rabat le 10 janvier 2014, où les experts ont rencontré les autorités compétentes, ainsi que des magistrats. Le 6 février 2014, la deuxième réunion a eu lieu à Paris, avec des échanges de vue très intéressants et bien accueillis par les autorités marocaines. M. Neppi Modona et Mme Banic soulignent que la coopération a pris la forme d'avis informels, actuellement en préparation ; et malgré l'absence de demande formelle, elle a été très positive, la plupart des observations transmises ayant été suivies dans les nouveaux projets de lois. La Constitution constituant une excellente base dans le domaine judiciaire, les échanges se sont avérés très fructueux.

## **25. Information on constitutional developments in other countries**

### *Turkey*

M. Markert pointed out that, following the 2010 constitutional referendum, the Venice Commission had given a positive opinion on the revised law on the High Council of Judges and Prosecutors prepared to implement the respective provisions of the revised Constitution. It had underlined that, while the Minister of Justice remained chair of the Council, he or she had mainly formal tasks. Unfortunately a new law on the High Council had now been adopted. Its main effect was a strengthening of the powers of the Minister as chair of the High Council to the detriment of the powers of the Council and its subordinate bodies. This threatened the ability of the Council to fulfil its main task of protecting the independence of the judiciary from interference by the executive. The constitutionality of the new law was now being reviewed by the Constitutional Court.

Mr Buquicchio reminded that, as President of the Commission, he had made a statement warning against the adoption and implementation of the new law before its full compatibility with the Turkish Constitution and European standards had been established. He would continue to make statements whenever this seemed necessary to protect the independence of a constitutional court.

In the ensuing discussion concern was expressed about these developments in Turkey and the fact that implementation of the law had already started, with many persons in important positions having been replaced by the Minister. A decision by the Constitutional Court annulling the law or parts of it therefore risked coming too late.

## **26. Co-operation with the Bingham Centre for the Rule of Law**

Sir Jeffrey Jowell, President of the Bingham Centre and former member of the Commission, informed the Commission about the activities of his Centre, which promoted the rule of law *inter alia* in Bahrain, Myanmar and Nepal. In its activities, the Centre regularly referred to Venice Commission documents. The Venice Commission's report on the rule of law had taken up many elements of Lord Bingham's definition of this topic. This report had become a success and was frequently cited by the EU and the United Nations. Mr Jowell proposed to work with the Commission on the update of the rule of law checklist, which was annexed to the report, and on a study on judges in transitional societies, which would examine vetting procedures but also the inclusion of foreign judges.

In the discussion it was pointed out that the Commission's report usefully combined elements of the *Rechtsstaat* principle with the rule of law principle. The co-operation with the Bingham Centre should take place in the framework of the newly established Sub-Commission on the Rule of Law, which was open to all members and which would keep the Scientific Council abreast of its work.

#### **27. Report of the meeting of the Council for Democratic Elections (20 March 2014)**

Mr Kask informed the Commission on the meeting of the Council for Democratic Elections, at which Mr Gross had been re-elected as President. The opinions on the Electoral Code of Bulgaria and on the electoral legislation of the Republic of Moldova were adopted at this meeting and all the different activities developed in the electoral field were discussed, such as the participation in conferences in Austria (on the follow-up of the Council of Europe recommendation on e-voting), Georgia (post-electoral conference) or Romania (women in politics) and the assistance given to the PACE in observation of elections missions (to Serbia). Future activities, such as the assistance to the observation of elections in "the former Yugoslav Republic of Macedonia" and Ukraine, as well as the organisation of the 11<sup>th</sup> EMB Conference in Helsinki were also discussed. The Congress of local and regional authorities of the Council of Europe, the OSCE/ODIHR and the EU were also present at this meeting and informed the Council about their co-operation with the Venice Commission.

#### **28. Report of the meeting of the Sub-Commission on Fundamental Rights (20 March 2014)**

The Commission was informed of the results and conclusions of the meeting held on 20 March 2014. In addition to discussing the draft report on Children's rights in Constitutions and the draft *amicus curiae* brief for the European Court of Human Rights on specific questions concerning parliamentary investigation committees, the Sub-Commission had held a preliminary discussion on the draft revised joint Guidelines on Freedom of Religion prepared by the Venice Commission and the OSCE/ODIHR, which would be presented for adoption at the June 2014 Plenary Session. In this connection, Commission members were invited to send to the secretariat, before the end of April 2014, any proposals for improvement to the draft, including additional information and/or up-dates on national rules and practice in the field of freedom of religion.

#### **29. Adoption of the annual report of activities 2013**

The Commission adopted the draft annual report of activities 2013.

#### **30. Other Business**

##### **Criminal prosecution against the members of the Constitutional Court of Ukraine**

Mr Esanu informed the Commission that following the change of Government in Ukraine, the Verkhovna Rada had dismissed its quota of the judges of the Constitutional Court and called for the dismissal of judges appointed by the President and the Congress of Judges because of their 'violation of oath' relating to judgments adopted in 2010 and 2013. The Prosecutor's Office had started preliminary investigations against the judges. While the 2010 judgment re-establishing the 2004 Constitution had been criticised by the Venice Commission, judges should not be held criminally liable for their decisions. He asked the Commission to authorise its President to follow the situation closely and to react in defence of the Court as was usual in similar situations.

The session chair, Vice-President Tanchev, agreed that criminal charges were inadmissible and pointed out that the Commission had indeed acted in a similar situation on behalf of the judges of the Constitutional Court of Kyrgyzstan who had been subject to criminal prosecution

for judgements made. It was the Commission's standard practice that its President made statements or took other action to defend the independence of Constitutional Courts and this did not require special authorisation from the plenary session of the Commission.

**The Commission asked its President to follow closely the possible investigations of the Constitutional Court of Ukraine, and to take measures in support of the Constitutional Court where appropriate.**

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

The schedule of the upcoming Plenary Sessions will be as follows:

99 <sup>th</sup> Plenary Session	13-14 June 2014, in Venice
100 <sup>th</sup> Plenary Session	10-11 October 2014, <b>in Rome</b>
101 <sup>st</sup> Plenary Session	12-13 December 2014, in Venice

[Link to the list of participants](#)