Strasbourg 8 January 2015

CDL-PL-PV(2014)004
Bil.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT

(COMMISSION DE VENISE)

101st PLENARY SESSION
Venice, Scuola Grande di San Giovanni Evangelista
Friday, 12 December 2014 –
Saturday, 13 December 2014

101e SESSION PLÉNIÈRE
Venise, Scuola Grande di San Giovanni Evangelista
Vendredi 12 décembre 2014 -
Samedi 13 décembre 2014

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 as it appears in document CDL-PL-OJ(2014)004ann.

2. Communication by the President

Mr Buquicchio informed the Commission about his recent activities, which are listed in document CDL(2014)060.

He welcomed several new members to the Plenary Session of the Venice Commission and informed the participants that an electronic time-keeping device had been introduced on the screens in the Scuola in order to ensure that the time allocated to each intervention was not exceeded.

3. Communication by the Secretariat

Mr Markert informed the participants that the Venice Commission had just received a request from the Ukrainian authorities for an opinion on the draft Law on the judicial system and on the status of judges. In 2010, the Venice Commission had adopted a – quite critical - opinion on the current law and in 2011 a – quite positive – opinion on a draft reform law but the draft Law concerned was never adopted. Mr Markert pointed out that, the new draft Law could only be considered an intermediary step, as the main problems lie with the Constitution. Mr Markert went on to explain that the Venice Commission's opinion on the Law on the High Judicial Council of Ukraine was also critical because this Council's composition did not provide for a majority of judges and its powers to intervene were excessive. It was therefore necessary to reconsider this Law as well. Additional issues derived from the fact that the current Ukrainian judicial system still provided for two levels of cassation instances. This situation was not a viable solution in the long run.

4. Co-operation with the Committee of Ministers

Ambassador Petar Pop-Arsov, Permanent Representative of "the former Yugoslav Republic of Macedonia" to the Council of Europe, underlined the important role the Venice Commission plays in resolving complex issues and stressed the importance of bilateral meetings with permanent representatives as opportunities to exchange valuable information on the activities of the Venice Commission. He said that his country's co-operation with the Venice Commission was constructive and timely. He referred to the recent opinion on draft constitutional amendments adopted for his country (CDL-AD(2014)026) and said that the Deputy Prime Minister had confirmed his readiness to incorporate the Venice Commission's recommendations into the draft.

Ambassador Joseph Filletti, Permanent Representative of Malta to the Council of Europe, thanked the Commission for its work and informed it about the celebrations of the 50th anniversary of Malta's independence.

Ambassador Astrid Emilie Helle, Permanent Representative of Norway to the Council of Europe, stressed the Committee of Ministers' appreciation of the Venice Commission, describing it as a "flagship" of the Council of Europe. She said that Norway would like to ensure that the Venice Commission receives enough funding to carry out its work through the ordinary budget of the Council of Europe and through voluntary contributions. She went on to say that some of the great achievements to which the Venice Commission had contributed included the adoption of Tunisia's Constitution and its swift reaction regarding the situation in Ukraine. Norway was looking forward to seeing how Ukraine would co-operate with the Venice Commission in the future with respect to its new Constitution.

She explained that Norway was celebrating the 200th anniversary of its Constitution this year and that the Constitution had been amended in May in order to strengthen its human rights provisions. A White Paper on human rights was currently being launched by the Ministry of Foreign Affairs of Norway in order to intensify efforts to promote human rights.

5. Co-operation with the Parliamentary Assembly

Mr Jean-Claude Mignon, former President of the Parliamentary Assembly of the Council of Europe, praised the positive co-operation between the Parliamentary Assembly and the Venice Commission. He mentioned the work with Tunisia in particular, where both worked together to address problems and complemented each other's expertise. In the drafting of their Constitution, the Tunisian authorities had taken into consideration the recommendations made by the Venice Commission. This type of support was provided for many other countries and he believed that the co-operation between the Parliamentary Assembly and the Venice Commission was important in providing effective support. Working closely together was all the more important because of budget cuts, but structures such as the Venice Commission needed proper funding because democracy has no price.

Mr Arcadio Diaz Tejera, Member of the Committee on Legal Affairs and Human Rights, informed the Commission about a seminar specifically tailored to parliamentarians on "the role of national parliaments in the implementation of judgments of the European Court of Human Rights". The Committee had also adopted a report in October on witness protection as an indispensable tool in the fight against organised crime and terrorism in Europe.

He then took a moment to pay tribute to the Mr Lluís Maria de Puig, former President of the Parliamentary Assembly of the Council of Europe, who had passed away at this time exactly two years ago.

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

Mr Philippe Receveur, Chair of the Monitoring Committee of the Congress since 15 October 2014, informed the Commission that this Committee had adopted a report on local and regional democracy in Poland. Future work would address Greece and Norway as well as the draft report on "Electoral rolls and voters living abroad".

Mr Alain Delcamp, former Chair of the Group of Independent Experts, the Congress' adviser on constitutional matters, informed the Commission that the Congress was involved in the follow-up in Kyiv to the opinion by the Venice Commission on constitutional reform in Ukraine, to which he had contributed. The coalition agreement, which contained a Chapter on decentralisation, was in line with the recommendations made in this opinion. The Ministry of Justice of Ukraine had started working on the local reorganisation, finance and budget issues, which showed that there was a will to transfer resources. Mr Delcamp was nevertheless aware that obstacles remained with respect to any future amendments to the Constitution that the Ukrainian authorities had been urged to address.

7. Follow-up to earlier Venice Commission opinions

The Commission was informed on follow-up to:

Amicus curiae brief on the Immunity of Judges for the Constitutional Court of Moldova (CDL-AD(2013)008)

The Constitutional Court of Moldova had requested an *amicus curiae* brief relating to a number of provisions removing judges' immunity in case of passive corruption and traffic of influence. The amicus curiae brief stated that, while some states conferred criminal liability on judges as an additional guarantee, there were no internationally recognised norms to this effect. The Moldovan legislation therefore did not seem to contradict international standards.

The Constitutional Court rendered its judgment on 5 September 2014 and partly took the Venice Commission's recommendations into account, finding that judicial independence was not an obstacle to criminal and disciplinary liability established by law. The Court however found shortcomings in the criminal procedure law with respect to procedural actions, in particular the way in which they are carried out, and held that to detain, to bring by force, to arrest and/or search a judge by an investigator without the consent of the Prosecutor General or the Supreme Council of Magistracy, could affect the independence of the judiciary.

Joint Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine (CDL-AD(2013)025)

Mr Markert informed the Commission that the Verkhovna Rada of Ukraine had now adopted the law reforming the prosecution service (see document CDL-REF(2014)047). This adoption was a milestone: in line with the repeated requests made by the Commission over the last 20 years the general supervisory power of the prosecutors had finally been abolished, as envisaged by the 1996 Constitution. The law as adopted contained a number of further improvements with respect to the draft examined by the Commission in 2013, especially with respect to the powers enjoyed by prosecutors when determining whether to intervene in judicial proceedings. Some further improvements could have been made but the most important improvements, especially with respect to the position of the prosecutor general, required amending the Constitution. It was now urgent to amend this chapter of the Constitution since the 2004 amendments to the Constitution provided for the general supervisory power of prosecutors and the law adopted risked being considered unconstitutional.

Opinion on the Draft Law on making changes and additions to the Civil Code (introducing compensation for non-pecuniary damage) of the Republic of Armenia (CDL-AD(2013)037)

Ms Granata-Menghini reminded the Commission that in 2012 the European Court of Human Rights had found that Armenia had infringed Article 13 ECHR on account of the impossibility under domestic law to claim compensation for non-pecuniary damages in relation to Article 3 of Protocol No. 3 and Article 5 § 5 ECHR. The Armenian authorities subsequently drafted amendments to the Civil Code in order to execute these judgments and sought the Venice Commission's assistance. In its opinion of December 2013, the Venice Commission found that the draft amendments were in line with the applicable standards. It also found that they would benefit from additional clarity and made two specific recommendations: to extend the right to seek non pecuniary compensation to spouses and close relatives of the deceased and to add the criterion of "equitableness" to the criteria for assessing non –pecuniary damage. The amendments to the Civil Code of Armenia were adopted on 19 May 2014. Both these recommendations were followed.

Opinion on the Draft Concept Paper on the Constitutional Reforms of the Republic of Armenia (CDL-AD(2014)027)

Mr Markert reminded the Commission that at the last session the Commission had adopted an opinion on the draft concept paper on constitutional reform in Armenia prepared by the expert

Commission for constitutional reform. The draft concept paper had been prepared and improved in co-operation with the Commission and the Commission's opinion had been very positive. The final version of the concept paper (see document CDL-REF(2014)050), took into account comments made in the opinion and had now been submitted to the President of Armenia who had to decide on how to proceed with the reform.

8. Ukraine

Ms Suchocka introduced the opinion on the Law on Government Cleansing ("Lustration Law") of Ukraine, which had been previously examined by the Sub-Commissions on Democratic Institutions and on Fundamental Rights.

The opinion underlined that a lustration procedure can be compatible with a democratic state governed by the rule of law, despite its political nature, if it is devised and carried out only by legal means, in compliance with the Constitution and taking into account European standards concerning the rule of law and respect for human rights. The Ukrainian Lustration law, however, presented serious shortcomings, notably: it applied to the period of the Soviet communist rule many years after the end of that regime and the enactment of a democratic constitution in Ukraine, without providing cogent reasons justifying the specific threat for democracy which former communists pose nowadays; it applied to the recent period during which Mr Yanukovych was President of Ukraine, which would ultimately amount to questioning the actual functioning of the constitutional and legal framework of Ukraine as a democratic state governed by the rule of law; it did not concern only positions which may genuinely pose a significant danger to human rights or democracy; it presumed guilt on the basis of the mere belonging to a category of public offices; it gave responsibility for carrying out the lustration process to the Ministry of Justice instead of to a specifically created independent commission, with the active involvement of the civil society; it failed to respect the guarantees of a fair trial and to provide for suspension of the administrative decision on lustration until the final judgment; it overlapped with another, recently adopted law on the lustration of judges; it failed to provide that information on the persons subject to lustration measures should only be made public after a final judgment by a court.

Mr Ben Vermeulen, Chair of the Sub-commission on Fundamental Rights, informed the Commission that, while it had not been possible for the rapporteurs to carry out a meaningful visit to Kyiv in October on account of the parliamentary elections, they had met the previous day in Venice with a Ukrainian delegation composed of Mr Pavlo Petrenko, Minister of Justice; Mr Leonid Yemets, Mr Yegor Soboliev and Mr Heorhii Lohvynskyi, MPs as well as Ms Tetiana Kozachenko, Head of the Department for lustration. The Ukrainian delegation had provided several clarifications and arguments; they had acknowledged the need to amend the Lustration law and had sought the assistance of the Venice Commission in order to achieve an effective lustration framework in line with the applicable international standards. The Sub-Commissions and the Enlarged Bureau did not wish to postpone the adoption of the opinion. However, the opinion would be considered an interim one, and the rapporteurs would meet with the Ukrainian authorities in January 2015 in order to discuss the necessary amendments to the Lustration law. A final opinion on the amended law would be submitted to the Plenary in March 2015.

Mr Pavlo Petrenko, Minister of Justice of Ukraine, expressed his appreciation for the Commission's work. He pointed out that his country was in an extremely difficult situation, on account of the occupation of part of its territories, of the terrorist threat and the wide-spread corruption. The Lustration law was a response to a clear and pressing demand of the Ukrainian society. The reform of the judiciary and the other means of fighting corruption had not delivered any significant or fast improvement, so that the level of public trust was very low. The lustration process was absolutely necessary, while it had to strike the right balance between the political and the legal elements. The Ukrainian authorities were willing to avail themselves of the

Commission's expertise in order to amend the Lustration law and improve it so as to obtain an effective mechanism in line with European standards.

Mr Yegor Sobolev, MP, reiterated that the Lustration law would be improved but stressed once again the importance which this process had for Ukrainian society, which demanded as a priority to be delivered from corruption. As suggested by the Venice Commission, consideration would be given to amending the Lustration law to the effect that only people with a KGB past would be subject to lustration (and not also people with a Communist past), that an independent body would be in charge of lustration, that a specific procedure would be devised for judges.

Mr Leonid Yemets confirmed that the Ukrainian side understood the importance of carrying out the lustration process in compliance with European standards and was ready to co-operate with the Venice Commission to this end.

Mr Buquicchio highlighted the need to amend the Lustration law and expressed his appreciation for the constructive attitude of the Ukrainian authorities. The Venice Commission stood ready to assist in the amending phase.

The Commission adopted the interim opinion on the Law on Government Cleansing ("Lustration Law") of Ukraine (CDL-AD(2014)044).

9. Azerbaijan

Ms Bilkova presented the Opinion, previously examined by the Sub-Commissions on Democratic Institutions and on Fundamental Rights. She informed the Commission that, despite the rapporteurs' willingness to hold exchanges with representatives of the authorities and the civil society of Azerbaijan, it had regrettably not been possible to visit Baku.

The amendments introduced to the Law on Non-Governmental Organisations in 2013 and 2014 had failed to address many of the recommendations made by the Venice Commission in 2011. On the contrary, they raised barriers to the establishment of NGOs; introduced additional administrative requirements and increased checks as well as more problematic registration procedures; raised barriers to activities and operations and restricted access to resources. Branches and representations of foreign NGOs had been put into a more disadvantaged position with respect to other NGOs. The Opinion recommended the simplification and decentralisation of the registration process of NGOs, the elimination of blanket restrictions on the registration and operation of branches and representations of foreign NGOs, the revision of the amendments in order to authorise foreign funding of NGOs and the removal of provisions allowing unwarranted interferences into the internal autonomy of NGOs (in particular reporting obligations and state supervision in the internal organisation of NGOs).

The Commission adopted the Opinion on the Law on Non-Governmental Organisations (Public Associations and Funds) of Azerbaijan (CDL-AD(2014)043).

10. Georgia

Ms Thorgeirsdottir introduced the *amicus curiae* brief for the Constitutional Court of Georgia on the question of the defamation of the deceased, with the latest proposals for amendment made by the rapporteurs. She pointed out that under the case-law of the European Court of Human Rights the notion of "private life" under Article 8 ECHR encompassed the respect for the reputation of living persons. As to the reputation of the deceased, the case-law is not

conclusive: States are permitted to give it legal protection, but are not necessarily required to do so (especially in cases of "freedom of speech").

The *amicus curiae* brief outlined three theories justifying defending the reputation of a dead person and presented a comparative outline of the legal situation in common law and in civil law countries. It expressed the view that if it is decided that the "reputation interest" of the deceased is worth protecting, the legislator must define who would have the standing to bring defamation claims. The brief recommended defining a narrow circle of potential plaintiffs in order not to produce a "chilling effect" on freedom of the press, and taking the least intrusive measures. The brief obviously did not enter into the specific case before the Constitutional Court of Georgia; the latter would have to decide on this, applying the test developed in the Court's case-law under Article 10 ECHR.

Mr Papuashvili thanked the Commission for the brief and assured that the Constitutional Court of Georgia would examine it with interest. He also informed that the law at issue in the case pending before the Court had recently been changed, and the impugned provision was no longer in force, which did not, however, preclude the Constitutional Court from deciding the case on the merits.

The Commission adopted the *Amicus Curiae* Brief for the Constitutional Court of Georgia on the question of the defamation of the deceased (CDL-AD(2014)040).

11. Montenegro

Opinion on the draft Laws on Courts and on the Rights and Duties of Judges and on the Judicial Council of Montenegro

The Opinion on the draft Laws on Courts and on the Rights and Duties of Judges and on the Judicial Council of Montenegro had been requested by the Ministry of Justice of Montenegro. The two draft laws were generally written in a clear manner, were of a high quality and aimed at following former Venice Commission recommendations. . Indeed, the drafts were part of the process aimed at the European integration of the country, to establish a modern legal and institutional framework for the operation of the judiciary, in line with the 2013 constitutional amendments and the applicable standards.

Nonetheless, the opinion pointed out that a number of issues could be improved; in particular, the internal independence of judges needed to be better guaranteed by: not submitting them to mandatory instructions of other judges or mandatory legal positions of principle; avoiding granting the Supreme Court the power to supervise the work of the general courts; avoiding authorising supervision of basic courts by higher courts; reviewing courts' presidents' powers to interfere in the cases assigned to the judges. Moreover, the interference of the government in the internal organisation of the courts and its supervisory powers needed to be limited in order to ensure full respect for the external independence of the judiciary and the principle of separation of powers. It was further recommended that the draft Laws should increase clarity concerning the rules on incompatibility, immunity and disciplinary proceedings against judges Finally, concerning the Judicial Council, the rules, grounds and procedure on dismissal and temporary removal of its members needed to be clarified with a view to ensuring the independence and autonomy of the Council.

The Commission adopted the Opinion on the draft Laws on Courts and on the Rights and Duties of Judges and on the Judicial Council of Montenegro (CDL-AD(2014)038).

Opinion on the draft Law on the State Prosecution Office of Montenegro

Mr Neppi Modona indicated that the opinion found that the Draft Law on the State Prosecution Office deserved an overall positive assessment: it was of a high technical quality, in conformity with the Constitution and the applicable standards, and provided a good legal basis for the effective work of the prosecution service. A number of issues were however identified, and recommendations were made in particular to the effect that the scope of the activities of the prosecution service should be limited to the criminal field; the procedures for the proposal and election of the members of thre Prosecutorial Council from among state prosecutors should be improved and simplified; the disciplinary plaintiff and the president of the disciplinary panel should be elected from lawyers outside the prosecution service. Furthermore, the proposed system of supervision by the Justice Ministry needed to be revised so as to give increased credibility and to help guarantee the autonomy of the State prosecution.

The Commission was informed that the draft law under examination had already been amended by the Montenegrin Government and a revised draft was pending before the parliament in an urgent procedure. The Commission thus decided to adopt the opinion as an interim one and, as requested by the Montenegrin authorities and to examine the revised version of the draft law.

The Commission adopted the Interim Opinion on the Draft Law on the State Prosecution Office of Montenegro (CDL-AD(2014)042). In the light of the urgency of the domestic proceedings, authorised the rapporteurs to send the final opinion to the Parliament of Montenegro prior to the March 2015 Plenary Session.

Opinion on the Draft Law on Special State Prosecutor's Office of Montenegro

Mr Hamilton stressed that the opinion welcomed the efforts made by Montenegro to establish a specialised Office for fighting organised crime and high-level corruption, as part of the judicial reform and of the country's commitments related to its European integration process; he underlined the particular challenge facing the Montenegrin authorities in implementing this commitment in the framework provided by the 2013 Constitution and in a manner consistent with the Law on the state prosecution service (see above), while at the same time conferring as much autonomy as is legally possible within the existing system.

The choice had been made to establish the future Office as a specialised body within the existing prosecution system, a system for which the Supreme State Prosecutor bears responsibility and which is subject to his/her control. While a distinct institution or an independent officer outside the existing prosecution framework would have many benefits, this choice is a policy one which belongs to the Montenegrin authorities. However, the opinion recommended maximum precision in determining its powers and mode of operation, in line with the principle of legal certainty and backed up by adequate safeguards against undue interference. In particular, its degree of autonomy and its institutional position within the Prosecution Service needed to be clearly specified; accountability guarantees needed to be introduced; its mandate and the range of offences falling under its jurisdiction needed to be spelled out more clearly; the procedure for the appointment of the Special State Prosecutor needed to be simplified; and more detailed regulations needed to be provided on the work of the special prosecutors.

The possible benefits of merging this law with the one on the Supreme State Prosecutor were also raised.

As for the draft opinion on the state prosecution service (see above), it was proposed to adopt the opinion as an interim one and, as requested by the Montenegrin authorities, to proceed to assess the already revised version of the draft law.

The Commission adopted the Interim Opinion on the Draft Law on Special State Prosecutor's Office of Montenegro (CDL-AD(2014)041). In the light of the urgency of the domestic proceedings, it authorised the rapporteurs to send the final opinion to the Parliament of Montenegro prior to the March 2015 Plenary Session.

12. Joint Guidelines on Freedom of Association by the Venice Commission and the OSCE/ODIHR

Ms. Thorgeirsdóttir stressed that the joint preparation of these guidelines had started in 2013, through several working meetings as well as consultation meetings with the civil society. The Guidelines, as agreed by the Sub-Commission on Fundamental Rights, consisted of three main Sections, on the general framework of the right to freedom of association and the applicable international standards, on the guiding principles of the right to freedom of association and on the interpretative notes that elaborate on and detail the guiding principles.

Ms. Alice Thomas, Head of the OSCE/ODIHR's Legislative Support Unit, underlined that the Guidelines responded *inter alia* to a pressing request from the civil society. She also stressed that other organisations such as the United Nations Special Rapporteur on Freedom of Association and the International Labour Organisation had been consulted.

The Commission adopted the Joint Guidelines of the Venice Commission and the OSCE/ODIHR on Freedom of Association (CDL-AD(2014)046).

13. Co-operation with the European Network of Councils for the Judiciary (ENCJ)

The Commission held an exchange of views with Mr Geoffrey Vos, President of the European Network of Councils for the Judiciary. Mr Vos described the composition and mandate of the ENCJ, and its recent activities, in particular last year's project on accountability and independence of the judiciary. This project involved the development of indicators and their application; its preliminary results showed that a judiciary which refuses to be accountable loses legitimacy and public respect. Independence should be earned, and although formal safeguards are important, efficiency and public trust are crucial. Mr Vos further stressed the necessity of educating judges. He also praised the synergy effect between the work of the Venice Commission and the ENCJ and gave several examples of such work (Albania, Ukraine, and Bosnia and Herzegovina).

14. Republic of Moldova

Mr Kang introduced the *amicus curiae* brief for the Constitutional Court of the Republic of Moldova on certain provisions of the Law on professional integrity testing (anti-corruption law) concerning, in particular, Constitutional Court and ordinary court judges. The Court had sought *amicus curiae* advice "based on international practices and tools for combating corruption and taking into account the principles governing the rule of law" on whether the control and evaluation of the integrity of ordinary court and constitutional court judges attributed to a body that is controlled by the executive was in line with the principles of the separation of powers and the rule of law; and whether an integrity test applied to judges by a body of the executive was in line with the right to respect for private and family life (Article 8 ECHR).

The brief welcomed the efforts made by states to fight corruption, but underlined that they should neither jeopardise the stability of democratic institutions nor weaken the independence and impartiality of the judiciary. Setting up a truly independent anti-corruption agency was generally encouraged for the purpose of effectively fighting corruption, however, the National Anti-Corruption Centre (NAC) and the Information and Security Service's (ISS) status needed to be more clearly defined so as not to raise any doubt whatsoever with respect to their autonomy. This Law therefore had the potential of negatively interfering with the principle of judicial independence, the separation of powers and the rule of law. It provided that testers systematically act as "agents provocateurs". Dismissal was mandatory on the basis of the tester's reports that a bribe had been accepted. In order not to disclose the identity of the tester, the dismissed person could not examine him or her as a witness in the appeal against the dismissal. Although protection against the disproportionate application of surveillance measures is guaranteed by Article 8 ECHR, the Law made audio/video recording of testing mandatory. This could constitute an intrusion into the private life of a judge. The use of such means by the NAC (or ISS) without any counterbalancing checks could pose a threat to judicial independence and may be wrongly used as an instrument to discipline judges (the Venice Commission was not aware of any information regarding the existence of such counterbalancing checks). The state was under the obligation to provide the necessary safeguards in order to avoid abuse of such measures.

The rapporteurs informed the Commission that the amicus curiae brief had taken into account the need to address corruption in Moldova and the information received from the Moldovan authorities, notably from the NAC. It had addressed the latter's claim that the Law was not applicable to judges. However, since the request made a clear reference to this Law's application to judges and due to the fact that the constitutional complaint presupposed this Law's application to judges, the *amicus curiae* brief took these positions as a starting point.

The Commission adopted the *amicus curiae* brief on certain provisions of the Law on professional integrity testing (anti-corruption law) of the Republic of Moldova (CDL-AD(2014)039).

15. Co-operation with other countries

Albania

The Commission was informed of the most recent developments related to the planned reform of the judiciary in Albania. In January 2014, the Venice Commission's assistance had been requested in this connection, and a first series of exchanges with the Albanian authorities on the key areas of the reform had taken place in February 2014. In June 2014, the Commission had adopted an Opinion on draft amendments to the Criminal and Civil Procedure Codes.

A wider and more thorough judicial reform was nonetheless necessary to address the serious problems facing the Albanian judicial system, which suffers from inefficiency, political influence and corruption at all levels. This should involve both reviewing the operation of the institutions of the judiciary - the Constitutional Court and the Supreme Court, the High Judicial Council, the Council of Prosecutors, and the judicial education system, in accordance with the applicable standards and best practices.

Though in principle there seemed to be a real political will for such reform, the situation was complicated politically and it seemed difficult for the Albanian political forces and for the various institutions involved to find a consensus on the modalities for carrying out the main

elements of the reform. The withdrawal of the opposition from the parliamentary work further complicated the process. The Commission was informed in this context that the amendments to the Law of the Judicial Council adopted in July 2014, sent back by the President of Albania, had been upheld by the Parliament. The President had subsequently challenged their constitutionality before the Constitutional Court.

The members were also informed that Venice Commission representatives had taken part in a series of meetings, held in October 2014 in Tirana, on the options for the reform of the judiciary. The importance of the Commission's involvement in this process had been emphasised both by the Albanian authorities and by the representatives of the participating international organisations.

16. Information on constitutional developments in other countries

Kazakhstan

Mr Rakhmet Mukashev, Chairman of the Committee on the Legislation and Judicial and legal reform of the Majilis of Kazakhstan Parliament (the lower house), informed the Commission about the liberalisation of criminal law and procedure, notably the moratorium on the death penalty which has applied for over ten years in Kazakhstan, the introduction of judicial authorisation of pre-trial detention instead of authorisation by the prosecution , the introduction of new immunities for lawyers including the effective prohibition of wiretapping and other surveillance measures in relation to lawyers. Mr Mukashev also said that the de-bureaucratisation of the judicial system had been achieved through the strengthening of the legal mechanisms of mediation, the introduction of simplified judicial proceedings, the development of electronic workflow and hearings through video-conference systems etc. He finally thanked Commission for its valuable contribution to the development of democracy.

Romanie

M. Augustin Zegrean, Président de la Cour Constitutionnelle de la Roumanie a informé la Commission des derniers développements survenus en Roumanie dans la sphère de la justice constitutionnelle, mais aussi concernant les défis de l'application des nouveaux codes pénal et de procédure pénale et les clarifications fournies par la Cour Constitutionnelle dans ce contexte.

M. Zegrean a également fait référence aux élections présidentielles tenues en novembre 2014, dont le résultat a été validé par la Cour Constitutionnelle, et a rappelé les disfonctionnements liées à l'organisation et au déroulement du scrutin présidentiel à l'étranger, où un nombre considérable de citoyens roumains ont rencontré des difficultés dans l'exercice de leur droit de vote. Il a souligné que des initiatives ont déjà été lancées dans le pays pour éviter de telles situations à l'avenir, notamment en introduisant le vote électronique ou par correspondance.
La Commission a été par ailleurs informée que, si depuis l'adoption de son avis sur le projet d'amendement de la Constitution roumaine en mars 2014 il n'y avait pas eu de progrès sur ce dossier, suite aux élections présidentielles, les autorités on fait connaitre leur volonté de reprendre les travaux de révision de la Constitution, se fondant sur les recommandations contenues dans l'avis de la Commission et celles, largement similaires, formulées par la Cour constitutionnelle roumaine

United Kingdom

Mr Clayton provided an overview of the recent constitutional developments in the United Kingdom, notably the referendum in Scotland and the Conservative Party's proposals with respect to human rights. He explained that devolution had been gathering force in the UK for some time and that the referendum in Scotland this year would have had immense implications

for the rest of the UK and its current centralised structure had it enabled Scottish independence. The issue of devolution was exacerbated across the UK by the Government promising more autonomy for Scotland in the run up to the referendum, including budget-making powers. This led to pressure for other regions to ask for the same type of autonomy.

As regards human rights, Mr Clayton explained that the Conservative Party published its proposals for changing Britain's human rights laws, entitled "Protecting human rights in the UK", which is likely to have an effect on the elections in May 2015. This paper contains two proposals that the Party would take forward if it were to form the next Government: (1) replace the Human Rights Act (which had been described as a constitutional statute) with a British Bill of Rights to reflect a more British focus and (2) negotiate some discretion to allow the UK not to implement European Court of Human Rights judgments despite Article 46 ECHR obligations. Mr Clayton explained that this reflected a longstanding opposition in the UK to the prison vote case decided in 2005 (Hirst v. UK). The suggestion put forward was that unless such an arrangement was negotiated, the UK would denounce the ECHR.

Mr Clayton suggested that this reflected the more general alienation of some member states with the European Court of Human Rights, a development that should be addressed by, for instance, setting up a working party to determine whether the Venice Commission had a role to play and what steps could be taken.

Discussions followed on how this matter might be dealt with, including the possibility of holding a UniDem seminar on this issue in Oslo and organising international conferences on the matter as well as encouraging dialogue between the European Court of Human Rights and national courts, notably constitutional and supreme courts.

Mr Boillat pointed out that judgments by the European Court of Human Rights were binding on member states under Article 46.1 ECHR. A protocol ratified by all member states would be required in order to amend that Article. It was impossible to be a member of the Council of Europe without being a party to the ECHR. The question of whether a state could remain a member of the EU without being a member of the Council of Europe/ECHR was implicitly covered by Article 6 of the Lisbon Treaty, which refers to the European Court of Human Rights.

17. Co-operation with the International Ombudsman Institute

Mr Rafael Ribo, Chairman of the European Chapter of the International Ombudsman Institute (with which the Commission had signed a co-operation agreement in 2011) stressed with concern that there had been several cases of suppression of Ombudsman institutions in recent years and referred to a tendency to propose to Parliaments the suppression of monitoring institutions, such as Ombudsman, alleging budgetary constraints. Mr Ribo called for co-ordinated efforts in order to counter this tendency.

Ms Err further pointed to the fact that Ombudsman institutions are getting new competencies, such as: OPCAT, control on private enterprises, access to information, anti-discrimination and LGTBI issues, including in the framework of recent EU regulations on alternative dispute resolution (ADR) and online dispute resolution (ODR).

The Commission decided to launch a study on the current state of the activities of Ombudsman institutions, the challenges currently facing these institutions, as well as future prospects regarding their scope of action, their operating conditions and their impact. Through their joint effort, the Venice Commission and the IOI could offer common grounds for new law definitions and regulations in the field.

18. Election of the Co-Chair of the Joint Council on Constitutional Justice and of the Chair of the Sub-Commission on Latin America

Mr Grabenwarter informed the Commission that he had resigned from his position as member of the Venice Commission. Consequently, the position of Chair of the Joint Council on Constitutional Justice was vacant. He proposed, in agreement with the Enlarged Bureau, Mr Il-won Kang, member in respect of the Republic of Korea, for this position.

The Commission elected Mr Il-won Kang as Chair of the Joint Council on Constitutional Justice until December 2015.

Mr Markert informed the Commission that following the resignation of Mr Barbosa as member in respect of Brazil, the position of Chair of the Sub-Commission on Latin America was vacant. The Enlarged Bureau proposed Mr Enrique Lewandowski, new member in respect of Brazil, for this position.

The Commission elected Mr Enrique Lewandowski as Chair of the Sub-Commission on Latin America until December 2015.

19. Report of the meeting of the Sub-Commission on Working Methods (11 December 2014)

Mr Sorensen, Chairman of the Sub-Commission on Working Methods, presented the results of the meeting of the Sub-Commission. He referred in the first place to some changes in the working practice of the Commission which had already been introduced. These changes were presented in detail by Ms Granata-Menghini; she mentioned in particular the electronic time-keeping device; the minutes of the meetings of the Sub-commission on Working methods and of the Scientific Council; the inclusion in the session report under a specific heading "Communications by the Enlarged Bureau" of the latter's decisions which need to be communicated to the Commission.

Ms Granata-Menghini further explained that increased attention would be paid to the question of the follow-up given by states to the Commission's recommendations. Information on follow-up would be systematically sought by the Secretariat through formal channels (the national authorities) and informal ones (CoE field offices, members, other contacts), and put before the Commission. The final text of constitutions and legislation on which the Commission prepared an opinion would be requested from the authorities and, as far as possible, circulated and posted on the Commission's website. Importantly, in order to facilitate the assessment of whether the Commission's recommendations have had a meaningful impact on the final text as adopted by the national authorities, in the conclusions of the opinions generally the main (three to five) recommendations would be explicitly spelt out.

The Commission supported these changes; several participants welcomed in particular the new proposals concerning follow-up.

Mr Sorensen further informed the Commission that the Sub-Commission proposed amending the Rules of Procedure. It was proposed in the first place to introduce a new article 6.1bis reading as follows:

> *"The elections will be prepared by a "Committee of wise persons" elected by the Commission, on the proposal of the Enlarged Bureau, at the Plenary Session preceding the one at which elections must take place. Every member may put forward his or her*

candidature for any vacant position to the wise persons. The lists of candidates for each vacant position shall be communicated by the Committee of Wise Persons to the Commission at the beginning of the Plenary Session at which the elections must take place."

Mr Sorensen pointed out that this new provision concerning elections, if adopted, would apply to the upcoming elections of December 2015.

The Sub-Commission also proposed to modify Article 8 as follows:

"1 The agenda shall be adopted at the beginning of each session on the basis of a draft prepared by the Secretariat taking into account possible proposals by members and, where appropriate, in accordance with the instructions of the Bureau. The agenda shall be annexed to the letters of convocation.
2. If appropriate, the rapporteurs on an opinion being prepared will be given the opportunity to make effective representation to the Bureau, prior to the Secretariat finalising the draft agenda.
3. If no consensus is reached, the issue of the inclusion of the draft opinion in the agenda shall be put before the Plenary Session for decision."

The Commission adopted the proposed amendments to the Rules of Procedure (CDL-AD(2014)045). See CDL-PV-WM(2004)01

Mr Helgesen informed the Commission about the decision by Mr Sorensen to step down from his position as Chairman of the Sub-Commission on Working Methods and on behalf of the Commission thanked him for his excellent contribution.

20. Report of the meeting of the Scientific Council (11 December 2014)

Mr Helgesen, President of the Scientific Council, informed the Commission that the working group on the Rule of Law had held a joint meeting with the members of the Scientific Council about the preparation of this checklist. They had agreed that despite the complex nature of this exercise, it was worth proceeding with the preparation of this document. It would fulfil a growing need for greater clarity on the content on the rule of law and could be particularly useful with respect to the EU rule of law framework. The working group would continue its work and the Scientific Council would follow it with the greatest interest.

The Scientific Council had also expressed its support for the organisation, in co-operation with IACL and International IDEA, of a round table on External Constitutional Advice to be held in Venice on 21 October 2015 and for the organisation of a conference on the conflicts between the European Court of Human Rights and national authorities, to be held in Norway in Autumn 2015 with the support of the Oslo Centre on Human Rights and possibly of the Ministry of Foreign Affairs of Norway. (See CDL-PV-SC(2014)001)

21. Information on the Association of former Venice Commission members

Ms Granata-Menghini informed the Commission that, following an idea of President Buquicchio, numerous former members and substitute members of the Commission had supported the idea of creating an Association of former Venice Commission members with the aim of contributing, through its members' personal experience and the collective reflection , to the promotion of democracy through law; of promoting and reinforcing contacts and co-operation between its members in the spirit of the aims of the Venice Commission; of maintaining close links to the

Venice Commission. The constitutive meeting of the Association would take place in Venice later that day. All former members and substitute members were invited to join this Association.

22. Dates of the next sessions

The schedule of sessions for 2015 was confirmed as follows:

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

Link to the list of participants