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(VENICE COMMISSION)

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(COMMISSION DE VENISE)

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103e SESSION PLÉNIÈRE
Venise, Scuola Grande di San Giovanni Evangelista
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SESSION REPORT
RAPPORT DE SESSION

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1. Adoption of the Agenda

The agenda was adopted as it appears in document

2. Communication by the President

Mr Buquicchio welcomed the special guests and delegations attending the Plenary Session. He recalled that, on 10 May 2015, the Commission had celebrated 25 years of fruitful activity, marked by an increasing impact on the development and consolidation of democracy and the rule of law in the Member states of the Council of Europe and beyond. He stressed that this success was notably due to the efforts and constant commitment, all along its route, of the Commission's members and its secretariat.

The President also informed the Commission about his recent activities, which are listed in document CDL(2015)026.

3. Communication from the Enlarged Bureau

The Commission was informed of that on 18 June 2015, following information of concern received from judges and prosecutors from Turkey about several cases of alleged serious interference with their work in politically sensitive cases, the Enlarged Bureau had decided to propose the Commission to consider adopting a declaration on interference with judicial independence in Turkey. (see item 19 below)

4. Coopération avec le Comité des Ministres

L'Ambassadeur Almir Šahović, Représentant Permanent de la Bosnie-Herzégovine auprès du Conseil de l'Europe, Président des Délégués des Ministres, félicite les membres pour le 25e anniversaire de la Commission, pour la haute qualité des travaux de cette dernière et son rayonnement allant au-delà des frontières des Etats membres du Conseil de l'Europe. Il souligne l'importance qu'attache le Comité des Ministres à la coopération avec la Commission et les assure la Commission de tout le soutien du Comité des Ministres.

Le Président rappelle la coopération de longue date avec la Bosnie-Herzégovine et exprime au nom de la Commission l'espoir que ce pays pourra surmonter dans un avenir proche les difficultés auxquelles il a continué à faire face et avancer dans la voie de la démocratie et de l'Etat de droit.

L'Ambassadeur Dirk van Eeckhout, Représentant Permanent de la Belgique auprès du Conseil de l'Europe, souligne la haute réputation de la Commission de Venise, ayant contribué d'une manière substantielle à faire reconnaître l'importance du droit constitutionnel en tant qu'élément central des fondements de l'Etat. La contribution de la Commission à cette reconnaissance est d'autant plus appréciable que ses activités et les échanges que celle-ci rend possible réunissent à ce jour, autour d'exigences et critères de qualité et de valeurs partagées, des représentants de 60 pays.

Le Président Buquicchio, se référant à la coopération de la Commission avec la Belqique, rappelle l'avis adopté en 2012 par cette dernière sur des questions liées à la procédure de révision de la Constitution belge, questions d'une importance cruciale dans les efforts visant à résoudre la crise gouvernementale et politique que traversait à ce moment-là le pays.

5. Co-operation with the Parliamentary Assembly

Mr McNamara, member of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, provided an update of the activities of the Assembly, and of its Legal

Affairs and Human Rights Committee and Monitoring Committee, which are of relevance for the Venice Commission.

Particular mention was made of the Assembly's recent recommendation on mass surveillance (Recommendation 2067 (2015)) and the related report, recalling the findings of the Venice Commission report on the Democratic Oversight of the Security Services adopted by the Venice Commission at its 102nd session. In its report, the Assembly emphasises that parliaments should play a major role in monitoring, scrutinising and controlling national security services and armed forces.

The President recalled that the co-operation with the Parliamentary Assembly was particularly valued by the Commission, given that the Assembly makes it possible for it in many cases to provide opinions on important issues in many states.

6. Coopération avec le Congrès des pouvoirs locaux et régionaux du Conseil de l'Europe

M. Andreas Kiefer, Secrétaire General du Congrès procède à une rapide rétrospective sur les dernières années de coopération entre le Congrès et la Commission et esquisse les perspectives de cette coopération pour les années à venir.

M. Kiefer note que la coopération s'est intensifiée au cours des dernières années et s'est développée vers un partenariat axé sur la reconnaissance de la dimension constitutionnelle de la démocratie locale et régionale, comme cela a été le cas comme dans le cadre des travaux sur la révision de la Constitution de l'Ukraine. M. Kiefer souligne que pour le futur la coopération devrait s'articuler notamment autour de cette reconnaissance, dans un effort commun visant à la faire transposer dans la réalité institutionnelle des Etats.

Le Président se félicite à son tour de la coopération développée avec le Congrès et remarque l'excellent travail accompli conjointement dans le cadre du dossier relatif à la décentralisation en Ukraine, dossier qui sera traité plus en détail dans le cadre de la présente session de la Commission.

7. Follow-up to earlier Venice Commission opinions

Amicus Curiae Brief for the Constitutional Court of Moldova on certain provisions of the law on professional integrity testing (CDL-AD(2014)039)

Mr Dürr informed the Commission that in its judgement of 16 April 2015, the Constitutional Court of Moldova had extensively referred to the *amicus curiae* brief. The Court had found the law constitutional, with the exception, however, of some important provisions. Integrity testing could thus be applied to all professional categories of public officials if certain procedural safeguards were in place. The Court had found unconstitutional notably: the unlimited discretion in choosing the persons to be tested, the automatic dismissal of officials who accepted even minor bribes; the assessment of functional behaviour in addition to corruptibility; the absence of a judicial warrant for audio and video recording and the insufficient independence of the testing agency. Currently, the Ministry of Justice is preparing a new draft, which should remedy these issues.

Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova (CDL-AD(2015)005);

The Commission was informed that on 21 April 2015, at the invitation of the Ministry of Justice, a delegation had participated in a round table dedicated to the presentation and

discussion of the action taken to improve the draft Law, before its submission to parliament, in the light of the recommendations contained in the Joint Opinion.

The group of experts responsible for finalising the draft Law had provided a detailed report on the follow-up given (or planned to be given) to most of the recommendations. More generally, the event had shown a clear commitment of the expert group and of the Moldovan government to improving the draft Law as suggested by the Opinion, particularly regarding the powers of prosecutors outside the criminal sphere, the revocation of the Prosecutor General, and the arrangements for the appointment of prosecutors in the Autonomous Territorial Unit of Gagauzia. It was pointed out, however, that some of the legislative amendments envisaged by the reform of the Prosecution Service might require an amendment of the Moldovan Constitution, which remained a very complex challenge in the political context of the country. Thus, the draft Law provided for a transition period as well as alternative solutions, which would not require constitutional amendments. The revised draft had subsequently been adopted in first reading by the Moldovan Parliament.

Joint Opinion on the draft election code of Georgia (CDL-AD(2011)043)

Mr Markert informed the Commission that the most important problem raised in the opinion was the very considerable inequalities between electoral constituencies. This issue was now addressed by the Constitutional Court of Georgia in a decision issued on 28 May 2015 (Citizens of Georgia – Ucha Nanuashvili and Mikheil Sharashidze v. the Parliament of Georgia). The Court had ruled that the provisions on the delimitation of constituencies were contrary to the right to equality before the law and the right to universal suffrage, both enshrined in the Constitution, and underlined the necessity to change the current electoral system without imposing the manner and/or the time-frame for doing so. The authorities were now under an obligation to execute the decision of the Constitutional Court, but there were disagreements on how this should be done: for the next elections the majority would like to keep the present mixed system and redraw the constituencies, while the opposition would be in favour of a regionalised proportional system. Since constitutional reform was blocked by the issue of the electoral system, there was some hope that the reform process could resume once the electoral system issue has been settled

Joint Opinion on Draft Amendments to the Law on the financing of political activities of Serbia (CDL-AD(2014)034)

The Law on the Financing of Political Activities of Serbia of 2011 was amended on 10 November 2014.

Concerning the key recommendation asking for a decrease in the level of public funding, it was unclear from the text of the law whether the allocated public funds would decrease or increase.

The other key recommendations remained unaddressed, concerning the autonomous mandate of the Anti-Corruption Agency; the introduction of a limit to overall campaign expenditure and party financing; the decrease of the limit on private funding for individuals and companies.

On a positive note, several of the additional recommendations had been addressed, regarding *i.a.* the control by the State Audit Institution or the reduction of the time-period for the allocation of funds before elections; others recommendations remained unaddressed or partly addressed.

The law as amended in November 2014 brought several innovative features which had not been addressed in the Joint Opinion, concerning for example the use of private funds by political parties or the content of reports on the cost of electoral campaigns.

Opinion on the procedure for appointing judges to the Constitutional Court in times of the Presidential transition in the Slovak Republic (CDL-AD(2014)015)

Dans cet avis, demandé par le ministre de la Justice de la Slovaquie, la Commission est parvenue à la conclusion que le Président de la République sortant pouvait - jusqu'au dernier jour de son mandat (le 15 juin 2014) - nommer trois juges à la Cour constitutionnelle parmi les six candidats proposés par le Parlement, et ce, donc, même après l'élection du nouveau Président en mars 2014. L'avis souligne également que le nouveau Président n'a pas le pouvoir de rejeter les candidatures proposées par le Parlement.

Dans les faits, le Président de la République sortant n'a pas procédé à la nomination des 3 juges pour pourvoir les postes vacants à la Cour constitutionnelle; le nouveau président a nommé un des six candidats sélectionnés par le Parlement et a refusé de pourvoir les deux autres postes vacants parce qu'il considérait que les candidats n'étaient pas qualifiés pour le poste.

Les cinq candidats non retenus ont introduit un recours devant la Cour constitutionnelle invoquant notamment une violation de leur droit fondamental à l'accès à des fonctions publiques pourvues par élections ou autres (Art 30 paragraphe 4 de la Constitution pris en conjonction avec l'article 2 § 2 de la Constitution). Ces cinq requêtes ont été regroupées en deux requêtes.

Le 17 mars 2015, la Cour constitutionnelle a rendu sa décision sur l'une de ces deux requêtes et a conclu que la décision du président de rejeter les 3 candidatures des requérants violait leur droit d'accès à l'accès à des fonctions publiques pourvues par élections ou autres et qu'elle était donc nulle; l'affaire a été renvoyée au Président pour qu'il prenne une nouvelle décision ; le bureau du Président a été condamné à payer les frais et dépens des 3 requérants.

La Cour constitutionnelle n'a pas encore rendu sa décision sur la 2° requête (concernant les 2 derniers requérants) et il semble que le Président n'ait pas pris de nouvelle décision à la suite de l'arrêt de la Cour constitutionnelle.

8. Armenia

Constitutional Reform

Mr Tuori informed the Commission that since the adoption of the opinion on the draft concept paper on the constitutional reforms in October 2014, the group of rapporteurs had met with the Armenian Professional Commission for Constitutional reforms in May, to discuss concrete draft provisions of chapters 1 to 3 of the Constitution. The draft is positive in particular in as much the legal effects of fundamental rights are defined. The next meeting will be held in July to discuss other chapters of the draft amended constitution. The Armenian authorities had asked to receive the Venice Commission's preliminary opinion before the next session, in October.

Mr Harutunyan recalled that some fifteen meetings with political parties had been organised in June in Yerevan in order to discuss the reform on which a consensus was found. The authorities now intended to engage in a dialogue with the civil society.

The Commission authorised the rapporteurs to send preliminary opinion(s) on the draft amendments to the Constitution to the Armenian authorities before their adoption at the October session.

Request from the Human Rights Defender of Armenia for an opinion on draft amendments to the Law on the Human Rights Defender

The Commission was informed that the Human Rights Defender of Armenia had prepared a set of draft amendments to the Law on the Human Rights Defender and had submitted them to the Venice Commission for opinion. According to the request, the draft amendments were aimed at strengthening the guarantees of independence of the Institution, ensuring its effective functioning and full compliance with the OPCAT (since the HR Defender has been recognised as a National Preventive Mechanism under the Optional Protocol). The opinion would be submitted to the Commission in October 2015.

9. Ukraine

a) Constitutional reform

Mr Alain Delcamp, who represents the Congress of Local and Regional Authorities of the Council of Europe in the Constitutional Commission of Ukraine, reported on his participation in this Commission and, in particular, in the working group on decentralisation. The draft constitutional amendments prepared within the Group constituted a clear progress with respect to the draft examined by the Venice Commission last year. There was a real change of the system. The provisions on local finance seemed particularly well drafted. One remaining issue was the dismissal of the new prefects (previously the governors). The draft provided for the appointment of the prefects by the President upon the proposal of the Cabinet of Ministers and their dismissal by the President acting alone. While it seemed justified that the President of Ukraine as the guarantor of the unity of the country played a role in their appointment and dismissal, the government also needed to be involved in both. A further issue concerned the absence of a provision making it possible to provide for special arrangements in some areas of Ukraine. Such a constitutional provision did not have to relate to specific areas.

The Speaker of the Verkhovna Rada and Chair of the Constitutional Commission of Ukraine, Mr Volodymyr Groysman, thanked the Venice Commission for its contribution to the constitutional reform in Ukraine. He underlined that the process of decentralisation had been launched by the Ukrainian authorities due to their wish to improve the situation in the country and had not been imposed on the country from the outside. In his view, this was one of the crucial reforms to be undertaken. There would be three levels of self-government, communities, districts and regions, as well as prefects representing the State level, to be appointed by the President on the proposal of the Cabinet of Ministers. He asked the Commission to provide an opinion on the draft amendments to the Constitution on decentralisation as a matter of urgency.

Mr Oleksiy Filatov, Deputy Head of the Presidential Administration and Secretary of the Constitutional Commission, provided information on the activities of the working group on the judiciary of the Constitutional Commission. Its work was not as advanced as that of the working group on decentralisation but could be concluded in July. It was proposed to remove the role of the Verkhovna Rada in appointing judges and to give the main role to the judicial council with the President exercising a merely ceremonial role. The judicial council would be composed in a different manner, with 9 judges elected as members by their peers, the President of the Supreme Court as an ex officio member and 9 other members. One of the difficulties in the work was how to carry out, in view of the poor state of the judiciary in the country, the transition to a judicial system with 3 levels.

Ms Suchocka, the Venice Commission's representative on the Constitutional Commission, welcomed the progress achieved both with respect to the judiciary, where some details remained to be settled, and to decentralisation. The Polish experience showed how important and difficult decentralisation was. She underlined the importance of co-operation between the President and the Cabinet of Ministers both for the appointment and dismissal of the prefects. It was also important to introduce into the text a provision providing for the possibility of special arrangements in certain areas. This would enable Ukraine to meet its international obligations.

Mr Tuori supported the points made by Ms Suchocka.

Mr Gussetti strongly supported the proposal to introduce a rule allowing for special arrangements in certain areas. This was important for the implementation of the Minsk Agreements, which was a priority for the European Union.

The Commission authorised the rapporteurs to send a preliminary opinion on the draft constitutional amendments on decentralisation or on any other amendments which it may receive to the Ukrainian authorities prior to its adoption by the Commission at its next plenary session.

b) Immunity of MPs and judges

Mr Tuori presented the draft opinion on the draft law on introducing changes to the Constitution of Ukraine on the immunity of Members of Parliament and judges. The draft followed the distinction between substantial non-liability and procedural inviolability, as set out in the Commission's Report on the Scope and Lifting of Parliamentary Immunities.

Inviolability could be an obstacle to the fight against corruption. However, in the current state of the rule of law in Ukraine, a complete removal of inviolability for Members of Parliament risked being dangerous for freedom of expression of MPs. Therefore other safeguards needed to be established, e.g. a system resembling the Italian one, whereby a minority of Members of Parliament may appeal to the Constitutional Court against the prosecution of a Member of Parliament. As concerns judicial immunity, the Commission welcomed the shift of the competence to lift the judges' immunity from Parliament to the High Judicial Council. The draft opinion expressed the hope that the current constitutional reform process would turn the Council into a really independent body.

The Commission adopted the opinion on the draft law on introducing changes to the Constitution of Ukraine on the immunity of Members of Parliament and judges (CDL-AD(2015)013).

c) Lustration

Ms Bilkova reminded the Commission that the interim opinion on the Lustration law, adopted in December 2014, pointed to certain important shortcomings in the law, which had been acknowledged by the Ukrainian authorities. In the following months, the rapporteurs had engaged in a constructive dialogue with the authorities. Draft amendments to the Lustration law had been submitted to the Verkhovna Rada on 21 April, and the Commission had been requested to assess them.

The Final opinion recognised that the Ukrainian law was not a classic lustration law, in that it aimed not only at protecting Ukraine from individuals who on grounds of their ideology may

pose threats to democracy, but also to fight against large-scale corruption, which was not a task of ordinary lustration laws. While both aims are legitimate, the means to pursue them should be different, and for this reason the opinion found that the lustration law ought not to have dealt with corruption at all. If corruption were to be kept in the law, more individualisation would be necessary and sanctions would have to depend on the severity of the irregularity committed. The lustration law ought not to have been applicable to judges at all, not even in relation to corruption. The opinion further expressed a strong preference for a centralised procedure of lustration. If this were not possible, at the very least the competence of the newly-created body needed to be strengthened so that it could receive individual complaints as a preliminary step prior to judicial review, which however remained essential.

Ms Peters presented a number of amendments which the rapporteurs proposed to make following comments by Venice Commission members, as well as by the civil society and the opposition of Ukraine.

Mr Pavlo Petrenko, Minister of Justice of Ukraine, said that the Ukrainian authorities had taken the co-operation with the Venice Commission on this matter very seriously and were determined to take the Commission's recommendation into account. He underlined the need to prevent any reoccurrence of the dramatic situation of Maidan. He welcomed the acknowledgement by the Commission that the lustration process in Ukraine differed significantly from those experienced by other States in the post-communist period, and expressed the view that PACE Resolution 1096/96 was designed to cover "classic" lustration. Ukraine was faced with oligarchic rule, corruption and organised crime, and the lustration law was the response which the authorities found the most adequate to meet these great challenges. He declared that the Ukrainian authorities remained hopeful of success in the democratic transition.

The Commission adopted the final opinion on the Law on Government Cleansing (Lustration law) of Ukraine as would result from the amendments submitted to the Verkhovna Rada on 21 April 2015 (CDL-AD(2015)012).

d) Local elections

Mr Groysman informed the Commission that on 18 June the Verkhovna Rada had adopted in the first reading the draft law on local elections. The draft law, if adopted, would introduce a proportional system with open lists at the level of regions and a majority system for elections at the level of local councils.

10. Georgia

Ms Cleveland introduced the *amicus curiae* brief for the Constitutional Court of Georgia on the non ultra petita rule in criminal cases, previously examined by the Sub-commissions on democratic institutions and fundamental rights. She reminded the Commission that the *non-ultra petita* rule limits appellate courts to examine only matters which have been raised by the parties. The Georgian Supreme Court interpreted recently adopted amendments to the criminal code as establishing this principle for Georgia and had raised constitutional issues in relation to three pending cases.

Ms Cleveland explained that the rapporteurs had not addressed the specific cases and had not assessed the constitutionality of the matter, which was the task of the domestic courts. They had carried out extensive comparative research on the constitutional and criminal law provisions of numerous member States of the Venice Commission. They noted that the competence of the appellate courts is often explicitly limited by the *non-ultra petita* rule, which

flows from the principle of party disposition and also aims to ensure the efficiency of justice, by reducing unnecessary loss of time and costs for the litigants and the judicial system. The *non-ultra petita* rule is applied in the case-law of the European Court of Human Rights and other international courts. However, in some States this rule does not exist. Where it exists, there always are explicit or implicit (introduced through case-law) exceptions linked to very serious cases of human rights violations. For most states, a court of law is allowed to uphold, sua sponte, the fundamental principles of the presumption of innocence (and in dubio pro reo), the protection against double jeopardy (ne bis in idem) and nullum crimen sine lege and lex mitior and, for some states, it is even an obligation for courts to do so, but only in cases where a serious infringement of fundamental rights would otherwise occur. In sum, under the non ultra petita rule the appellate court should not address errors of fact or law allegedly made by a lower court, unless these infringe on fundamental rights.

The Commission adopted the Amicus Curiae Brief on the non ultra petita rule in criminal cases for the Constitutional Court of Georgia (CDL-AD(2015)016).

Mr Dürr informed the Commission that the Venice Commission had been invited by the Georgian Constitutional Reform Commission (CRC) to present a report on the full constitutional complaint (including against Supreme Court judgements). At the CRC meeting in Gudauri on 22 May 2015, Ms Banic, former substitute member of the Commission in respect of Croatia, presented the Commission's report on individual access to constitutional justice (CDL-AD(2010)039rev), which recommends the full constitutional complaint. The discussions at the meeting also covered legislative reforms, such as audio and video recording of court sessions or criteria for the assessment of judges. The question of whether probationary periods for judges could be removed from the Constitution was debated controversially. The delegation from the Venice Commission and a Council of Europe expert strongly supported the replacement of probationary periods by a system of assistant or junior judges who could act like a judge, preparing judgements but doing so under the authority of a permanent judge. Representatives of the authorities insisted however, that it was too early to remove probationary periods.

The Commission was further informed that, on 21 May 2015, the First Deputy Minister of Justice of Georgia had requested an opinion of the Venice Commission, the OSCE/ODIHR and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on draft amendments to the law on Prosecutor's Office of Georgia A meeting between the rapporteurs and a Georgian delegation would take place on 20 June, in parallel to the plenary session.

In view of the urgency, the Commission authorised the rapporteurs to send a preliminary opinion on the draft amendments to the law on Prosecutor's Office of Georgia to the Georgian authorities prior to its adoption by the Commission at its next plenary session.

11. Kyrgyzstan

Mr Gstöhl presented the draft joint opinion by the Venice Commission and the OSCE/ODIHR on the draft amendments to the Constitution of Kyrgyzstan. This draft opinion had been discussed in the joint meeting of the Sub-Commissions on Democratic Institutions and Fundamental Rights on 18 June 2015. Mr Gstöhl explained that the draft opinion first examined the way in which the Constitution could be amended, given that paragraph two of Article 114 of the Constitution on constitutional amendments would enter into force only in 2020 and therefore

the Constitution could be amended only by a referendum called by Parliament with a two-thirds majority.

In substance several amendments were very questionable, notably the conversion of the Constitutional Chamber into an advisory body; the possibility for political parties to terminate the parliamentary mandate of their MPs; the removal of immunity for members of Parliament; the dismissal of heads of local administrations by the Prime Minister without the need to provide specific grounds; the powers of the Supreme Court Presidium to give general instructions to lower courts. Taken together, the draft amendments represented a huge step backwards for Kyrgyzstan.

On behalf of the OSCE/ODIHR, Ms Alice Thomas highlighted that the opinion proposed the introduction of a system resembling that in Italy, whereby a minority of Members of Parliament would be able to appeal to the Constitutional Chamber against the prosecution of a Member of Parliament. What was particularly problematic in the amendments was that in several areas the draft constitutional amendments would remove provisions from the Constitution and would leave it to future constitutional laws to regulate these areas. This would amount to a 'blind vote'.

Ms Nikitenko, Chair of the Committee on Human Rights, Constitutional Legislation and State Structure, thanked the Commission for the opinion and pointed out that in Kyrgyzstan the views as to whether the Constitution should be amended were widely divergent. In Parliament, some opposition factions had ceased to exist *de facto*. Therefore, the amendments had tried to enforce party discipline. The amendments also sought to strengthen the position of the Prime Minister who was not able to ensure a coherent work of the Cabinet of Ministers. However, there was a heated debate in Kyrgyzstan whether the Constitutional Chamber should become an "other state authority" rather than being a judicial organ. The Venice Commission's opinion would be very important in this respect.

Mr Tekebaev insisted on the need for the Prime Minister to be able to dismiss the head of local state administrations in order to effectively organise the fight against terrorist fighters who spilled over from Afghanistan and Tajikistan. Without means to effectively ensure party discipline, the opposition MPs frequently crossed the floor and the opposition parties were atomised. This could lead to authoritarian rule. Party discipline was essential for the functioning of democracy.

During the discussion, the rapporteurs did not support the proposal to insist in stronger terms on the non-interference of the Prime Minister in the work of the heads of executive local self-government bodies because these authorities were local arms of the central state.

Mr Buquicchio pointed out that he was concerned that a Judge of the Constitutional Chamber had recently been dismissed. He called upon the Kyrgyz authorities to review this dismissal.

The Commission adopted the Joint Opinion on the draft law "on introduction of changes and amendments to the Constitution" of the Kyrgyz Republic (CDL-AD(2015)014).

12. Hungary

Mr Frendo introduced the draft opinion, which had been requested by the Parliamentary Assembly of the Council of Europe and had been previously discussed and amended at the joint meeting of the Sub-Commissions on Fundamental Rights and on Democratic Institution, taking into account, inter alia, the comments received from the Hungarian authorities.

Mr Frendo outlined several important issues raised in the draft opinion. The Hungarian Press Act defines certain types of expression as illegal; it is possible for the State to introduce content regulations (prohibiting hate speech, defamation, attacks of constitutional order etc.), however, the law must be clear that freedom of expression must prevail in certain contexts. The draft opinion recommended that the Hungarian media legislation incorporate the principle of proportionality, as contained in the Hungarian Constitution and developed by the ECtHR.

Furthermore, the provisions related to the duty of linear media to give "balanced" coverage of events are vague and open the door to an overly broad interpretation. The draft Opinion recommended that the Media Council issue soft-law guidelines on the interpretation of existing content regulations, i.e. the requirement of "balanced press-coverage", and its sanctioning powers, which would limit its discretion in interpreting those provisions, without however being binding on courts.

As regards "inaccurate interviews", it is problematic to require that a journalist obtain the consent of the person interviewed before publishing the interview. Disclosure of journalistic sources should be possible only within criminal proceedings, in most serious cases, and where other means of obtaining this information are unavailable.

The draft Opinion also recommended that the composition of the Media Council be revisited: in the particular Hungarian context, where the governing coalition had more than two-thirds votes in the Parliament until early 2015, the election of members of the Media Council by the two-thirds majority did not ensure pluralism. It was thus recommended to form the Media Council on the basis of proportional representation and also to introduce members representing the media community or civil society. A similar recommendation was made in respect of the Board of Trustees which oversees public service media. The Chairperson of the Media Council, who is at the same time the President of the Media Authority, depends too much on the Prime Minister; it was recommended to change the method of nomination, for example by giving the President of Hungary a real power of veto.

Finally, the draft opinion positively noted that the new tax on advertisement revenues, which had raised a lot of debate, had been significantly reduced, while at the same time stressing that the authorities must ensure that it should be applied in a fair manner and should not overburden the media sector. In addition, it was noted that the heavy sanctions which the Media Council may apply might have irreversible effects on the proper functioning of media outlets – there should be therefore a possibility of quick judicial review, and it is up to the court to decide whether the sanction should be suspended or not.

Mr László Trócsányi, Minister of Justice of Hungary, thanked the rapporteurs for their work. Concerning the election of the members of the Media Council by two-thirds of votes, he explained that this procedure was not new for Hungary and that recently there had been many examples of successful co-operation between the majority and the opposition having resulted in the adoption of laws by two-thirds of votes. The Minister also described the on-going dialogue with the Secretary General of the Council of Europe concerning the media laws and his statements on the progress made in reforming media regulations. As to "proportionality" in the application of content regulations and sanctions, Mr Trócsányi said that the Hungarian courts and in particular the Constitutional Court apply this principle in their daily work. He announced that he would present the Venice Commission's opinionin Hungary, where it would be examined very carefully.

The Commission adopted the Opinion on Media Legislation of Hungary (Act CLXXXV on Media Services and on the Mass Media, Act CIV on Freedom of the Press and the Legislation on Taxation of Advertisement Revenues of Mass Media) (CDL-AD(2015)015).

13. Italy

Ms Peters introduced the draft opinion on the citizen's initiative bill on public participation, citizens' initiative, referendum and popular initiative and amendments to the provincial electoral law of the autonomous province of Trento. The Provincial Council had made the request and the Italian Council of Ministers had transmitted it to the Venice Commission.

The bill proposed a broad extension of direct and participatory democracy. This corresponded to a general trend in Europe but the bill went very far. Among the issues raised, the following deserved particular attention:

- The scrutiny of the conformity with higher law was incomplete, whereas international standards would impose a complete scrutiny.
- The bill abolished any turnout quorum for referendums; this was in line with the Code of Good Practice on Referendums: a turnout quorum encouraged abstention – but a low turnout could delegitimise the vote.
- A group of voters had the possibility to introduce a motion of no confidence: even if this was not the intention of its authors, the bill could be interpreted as allowing a direct recall; this should be clarified.

The opinion recommended carefully considering the impact that the proposed important extension of direct and participatory democracy could have on the smooth functioning of the provincial institutions and for the form of government of the Province.

Mr van den Brande suggested complementing the opinion with a reference to the European citizens' initiative, available since 1 January 2012 on the basis of Article 11 of the Lisbon Treaty and had to be in conformity with the Treaty: participatory democracy had been developed at supranational level. This proposal was accepted.

The Commission adopted the Opinion on the Citizen's Initiative Bill on Public Participation, Citizens' Initiative, Referendum and Popular Initiative and Amendments to the Provincial Electoral Law of the Province of Trento (CDL-AD(2015)009).

14. Republic of Moldova

Mr Sorensen introduced the draft opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova, prepared at the request at the newly elected People's Advocate. He pointed out that the adoption in April 2014 of a new legal framework for the operation of the Moldovan Ombudsman was a step forward in the efforts made to reform this institution.

The legal framework pertaining to the newly designed institution was, overall, in line with the applicable standards and principles, as laid down in particular in the Paris Principles. The Law provided the People's Advocate with extensive competences and contained important guarantees regarding the People's Advocate mandate, his/her powers and methods of operation. The opinion recommended: stronger independence guarantees for the People's Advocate (a qualified majority requirement for his/her election by Parliament; clearly

specified grounds and a higher qualified majority for his/her early revocation, which should involve public hearings and a challenging procedure in court; wider immunity guarantees for the People's Advocate, his/her Deputies and staff; clearer legal guarantees for the provision, from the state budget, of adequate financial resources for the independent and effective operation of his/her Office; a clearer definition of the position (and autonomous status) of the People's Advocate for the rights of the child.

The draft opinion further recommended that the competence of the institution in relation to the private sector and the courts be re-examined and clearly specified in the Law. It was especially recommended that jurisdiction over courts be excluded.

The Commission subsequently held an exchange of views with Mr Mihai Cotorobai, the newly elected people's Advocate of the Republic of Moldova. Mr Cotorobai thanked the Commission for its assistance and underlined that its support was essential in ensuring that the Moldovan legislation provide adequate and effective guarantees for the independence and successful operation of the People's Advocate's Office.

The Commission adopted the Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova the Draft Law on the Prosecution Service of the Republic of Moldova (CDL-AD(2015)017).

15. Tunisie

M. Neppi-Modona informe la Commission de la réunion qui s'est tenue à Tunis le 28 mai avec la Commission d'experts pour l'élaboration du projet de loi sur la Cour constitutionnelle, présidé par M. Amin Mahfoudh. Aucun projet de loi n'avait été communiqué aux membres de la Commission de Venise qui ont participé à cette réunion mais les échanges ont néanmoins été de grande qualité. La disposition de la Constitution relative à la Cour constitutionnelle est conforme aux standards en la matière, ce qui constitue déjà une bonne base pour la loi. La Commission de Venise est bien sûr à la disposition des autorités tunisiennes pour poursuivre cette coopération.

S'agissant de la loi sur le Haut Conseil de la Magistrature de la Tunisie, M. Neppi-Modona indique qu'une audition a eu lieu à Tunis le 30 mars 2015 à l'Assemblé des représentants du peuple de Tunisie. Les résultats de cette audition ont été très positifs puisque de nombreuses remarques, et notamment celles concernant la composition du Haut Conseil, ont été prises en considération dans le texte final. La loi qui a été adoptée en mai a toutefois été critiquée et son adoption a donné lieu à une grève des magistrats qui a duré cinq jours. L'Instance provisoire de la constitutionalité des lois a été saisie de cette loi par 40 parlementaires, l'a déclaré contraire à la Constitution et l'a renvoyée au Président de la République qui lui-même la renverra à l'Assemblée.

16. Report on restrictions on freedom of expression and freedom of association of judges

Mr Hirschfeldt introduced the draft report (CDL(2015)025) on restrictions on freedom of expression and freedom of association of judges. The report had been prepared at the request of the Inter-American Court of Human Rights and contained a detailed analysis of the ECtHR's case law on this matter, as well as comparative material on selected countries. The report outlined the "contextual" approach for defining the permissible limits of the judge's freedom of expression and the need to take into account the historical and social background of any country or the given political moment.

During the subsequent discussion, it was stressed that interference with the freedom of expression of judges calls for closer scrutiny and related amendments to the draft report were agreed. The members also discussed, in this context, the issue of the participation of judges in political parties. It was pointed out that there is a variety of models in different European States and no uniform standards exist.

The Commission adopted the Report on restrictions on freedom of expression of judges (CDL-AD(2015)018).

17. Report on the method of nomination of candidates in political parties

At the meeting of the Council for Democratic Elections in December 2012, it was decided to launch a study on the method of nomination of candidates within political parties. The report focused on the internal rules of political parties for nominating candidates and the requirements needed to improve democratic decision-making and inclusiveness within each party.

Two main principles were central to the internal functioning of political parties. Firstly, the principle of party autonomy, under which political parties were granted associational autonomy in their internal and external functioning. Secondly, the principle of internal democracy, the argument being that because political parties are essential for political participation, they should respect democratic requirements within their internal organisation.

Legal measures to foster respect for democratic principles in the selection of candidates were consistent with the international standards and principles stated by the Venice Commission. However, legal intervention in the selection of candidates was not always required or suitable. On the one hand, long-established democracies with deep-rooted political parties favoured associational freedom, since internal democracy was guaranteed by the political parties themselves. On the other hand, state interference in the selection of candidates in new or transitional democracies might jeopardise political pluralism. It was therefore for each country to choose between a liberal view, which favoured the freedom of political parties and the absence of legislation concerning their internal affairs (including the nomination of their candidates), and the view which sought to strengthen internal democracy in the selection of candidates through legislation. Many states also had elements of both models.

Among those countries that had regulated these issues, there were two specific elements of "substantive" intra-party democracy: a growing number of countries had included gender quotas in their legislation. As to the rules on the representation of minorities, ethnic and vulnerable groups, there were reserved seats or special constituencies, resulting in "guaranteed mandates" as a way of ensuring such groups' representation.

The Commission adopted the Report on the method of nomination of candidates within political parties (CDL-AD(2015)020).

18. Preliminary Report on exclusion of offenders from Parliament

Following the agreement between the ruling majority and the opposition in Albania, ending the boycott of Parliament, the President of the "Special Parliamentary Committee to address the issue in the Resolution for agreement between the ruling majority and the opposition in the Assembly of Albania" asked for the Venice Commission's co-operation on the issue of "people with criminal records, who hold a public office or seek to be elected or appointed to one". In this framework, the rapporteurs prepared a preliminary report on the exclusion of

offenders from Parliament, which takes into account the situation in more than 30 States as well as contributions from members of the Commission on this issue.

Mr Kask stated that this report was still preliminary, in the sense that the legal analysis would still be developed in a further version. It focused on two main areas: the possibility to stand as a candidate and the possible termination of the mandate following a criminal conviction. The international standards were rather similar in both cases. The issue of ineligibility had been dealt with in a number of cases before the European Court of Human Rights; the case-law on the right to vote was in general applicable by analogy. There was a considerable variety of national legislation: a few countries provided for no restrictions; in a second group of countries, only some crimes or electoral offences were taken into account; in a third one any kind of imprisonment led to ineligibility; finally, in some countries, a (parliamentary) committee or a judge could restrict the right to be elected or terminate a mandate on the basis of immoral behaviour. There were also cases of restrictions when the judgment was not yet final.

In short, the standards were not obvious since national practice was very diverse. One of the main conclusions could be that restrictions should be limited to what is necessary (proportionality principle): they have to take account of the severity and nature of the offence, as well as of the length of the sentence; a lifetime sanction could be envisaged only in extreme cases; the presumption of innocence would go against deprivation of the right to be elected before a final sentence save for rare exceptions (such as indictment by the International Criminal Court). No legislation was found to address sentences pronounced abroad as such, but if a conviction is considered binding on the basis of international treaties or recognised in conformity with national legislation, it has to be taken into account in the same way as a conviction in-country. The issue of possible retroactivity (and whether the restriction is of a criminal or an administrative nature) was pending before the European Court of Human Rights in a case concerning Italy.

The final version of the report would develop the analysis and, in particular, address the issue of the risks of the exclusion of criminal offenders from parliament in countries where the independence of the judiciary is not fully ensured.

The Commission adopted the preliminary report on the exclusion of offenders from Parliament (CDL-AD(2015)019).

19. Co-operation with other countries

Peru

The Commission was informed that for the first time, in February 2015, the Vice-Minister of Justice of Peru, Mr José Avila Herrera, sent a request for an opinion on the draft Criminal Code provisions on hate crimes and others and on the draft anti-discrimination legislation. within the framework of a national human rights implementation plan of Peru, where there is no specific legislation to fight discrimination.

The rapporteurs would travel to Lima on 24 and 25 August to discuss with the main stakeholders, including representatives of the government and of the Ministry of Justice, the main groups in the opposition, the ombudsperson and representatives of the civil society. The draft opinion would be submitted for discussion and adoption at the October Plenary session in Venice in the presence of a representative of the Ministry of Justice. The draft legislation was scheduled to be discussed in the Peruvian Parliament in November and adopted in December.

Turkey

On behalf of the Bureau of the Commission, Mr Buquicchio presented a draft declaration on interference with judicial independence in Turkey, which had been approved by the Bureau at its meeting on 18 June. The draft declaration deplored the non-execution of judicial decisions, the sudden removal of prosecutors from pending cases, the allegedly arbitrary massive transfer of judges and prosecutors to other courts and even the arrest of some of them for decisions taken. The draft declaration called upon the Turkish authorities to review these measures and to introduce constitutional and legislative guarantees against the transfer of judges against their will.

Mr Can raised several objections in relation to the draft declaration. He doubted whether the Commission had sought and received sufficient information from the Turkish Ministry of Justice and the Judicial Council. He pointed out that letters which the Commission had received from judges and prosecutors could be part of an organised campaign. The Commission would not be in a position to verify the allegations made in these letters. In reality, in all cases when decisions had not been executed, these decisions were null and void because the judges had rendered these decisions on issues not legally falling into the scope of their competence. The really competent judges had then decided on these issues. The transfer of judges had been decided by the Judicial Council which was composed pluralistically since its election in October 2014. Both the old and the newly composed Judicial Council had taken similar steps against members of the Gülenist movement. The Venice Commission did not have sufficient information about the Gülenists, which were a hidden and strictly hierarchically-structured organisation which had infiltrated the military, the judiciary and the police. The draft declaration did not take into account the genuine need to eliminate this structure in full compliance with the rule of law. It did not fall into the scope of competences of the Venice Commission. Mr Can requested the withdrawal of the draft declaration or to formulate it in a more balanced way.

Mr Helgesen supported the draft declaration and pointed out that the Venice Commission could not decide on the individual cases but the mass transfer of judges and prosecutors was as such extremely problematic. Mr Buquicchio deplored that the very positive constitutional and legislative reforms in 2010 and 2011 had given way to interference in the independence of the Judiciary.

The Commission adopted the declaration on the independence of the Judiciary in Turkey.

20. Information on constitutional developments in other countries

United Kingdom

Mr Richard Clayton informed the Commission on the complex debate on human rights taking place in the United Kingdom. Two different issues were being discussed: the possible abolition of the Human Rights Act and the introduction of a clause to opt out from the obligation to execute judgments of the European Court of Human Rights in accordance with Article 46 of the European Convention. These two steps would imply breaking the formal link between the British courts and the European Court, as well as ending the ability of the Court to force the United Kingdom to change the law.

The Conservative Party manifesto published in 2015 gave a clear commitment to repealing the Human Rights Act. An abolition of this Act would pose several risks, including a possible increase of cases being submitted to the European Court of Human Rights against the UK. It would be difficult to extend the abolition all over the UK, because this would breach the Good

Friday agreement between the UK and Ireland, as well as the Sewel constitutional convention in Scotland, according to which Westminster will normally legislate on devolved matters only with the express agreement of the Scottish Parliament, after proper consideration and scrutiny of the proposal in question. Hence the abolition could be confined to England and Wales.

Mr Helgesen, as well as Mr Alivizatos, Mr Vargas and Mr Vermeulen, stressed that the discussion on reconsidering the commitments towards the European Convention of Human Rights is not a mere UK problem, but a pan-European one.

The Commission decided to create a working group to follow this issue and to prepare a concept paper for its discussion at the Sub-Commission on fundamental rights in October 2015. A seminar on this topic would be organised in Oslo.

21. Organisation of Arabic Speaking Electoral Management Bodies

Mr Frendo informed the Commission about the launching event of the Organisation of the Arabic Speaking Electoral Management Bodies that had taken place in Beirut, Lebanon, on 8 – 9 June 2015. At the opening event the President of this new organisation had thanked the Venice Commission for its support and expressed his hope that co-operation with the Venice Commission would continue in the future. Representatives of Iraq, Jordan, Lebanon, Libya, the Palestinian Authority and Yemen attending the conference signed the charter of the new organisation.

The participants at the conference expressed their hope that other countries of the region would soon join this organisation, notably electoral management bodies of Egypt and Tunisia. The delegation of the Venice Commission which also included Mr Peter Wardle from the Electoral Commission of the UK had a fruitful exchange of views with the Executive Committee of the Organisation of the Arabic Speaking Electoral Management Bodies on possible co-operation in such areas as expert assistance in training of its staff and on the preparation of its next meeting in December 2015. Mr Frendo was of the opinion that the Venice Commission should support this useful initiative.

22. Information on the Oxford University Science of Constitutions Programme

Mr Denis Galligan, Professor of Socio-Legal Studies as well as Ms Monika Magyar and Mr Daniel Smilov, informed the Commission about the Constitutions programme at Oxford University. The aim of the programme was twofold: to identify and analyse the main indicators covering the success and failure of constitutional systems and to achieve practical conclusions by using specific examples. This programme could be very helpful to the work of the Commission, because it could give a practical input to the processes of constitution making, their consequences for the implementation of the constitution and the weaknesses and points of tension. Over 20 indicators had been identified at the constitutional level, which showed the different implications of various constitutional models, concerning transitional societies, complex states, minorities, etc. The programme could take into account requests by the Commission, for example on the issue of institutions and the rise of populism and on the relationship between democracy and the rule of law.

23. Gender Equality Commission

Mr Clayton informed the Commission of the results of the meeting of the Gender Equality Commission, which took place in Strasbourg on 16 April 2015. Following the appointment of two gender rapporteurs in 2014 by the Venice Commission, several steps to build further a coherent approach towards gender equality had been taken. Firstly, all Venice Commission

documents relating to gender equality had been put together on the Web site under this topic, which made them more visible and easier to retrieve. Secondly, even though the Commission could only act at the request of member States or institutions concerning draft constitutions and legislation, it had constantly stressed the importance of the principle of gender equality. This was the case concerning the Tunisian Constitution and it has been a constant approach in the electoral field. Moreover, new requests, such as the opinion on the draft anti-discrimination legislation of Peru, could further reinforce the work of the Commission in this field and the importance of gender equality. The recently adopted Report on the Method of Nomination of Candidates within Political Parties has a special focus on the need to promote women participation in politics as a key element of intra-party democracy. This Report would be used by the Parliamentary Assembly to discuss a recommendation on the issue.

The Commission decided to create a Sub-Commission on gender equality.

24. Compilations of Venice Commission opinions and reports

Mr Helgesen presented the compilations on Constitutional Justice and on Prosecutors proposed by the Scientific Council for endorsement at the Plenary Session.

The Commission endorsed the compilations of Venice Commission opinions and reports on Constitutional Justice (CDL-PI(2015)002) and on Prosecutors (CDL-PI(2015)009).

25. Report of the meeting of the Council for Democratic Elections (18 June 2015)

Mr Kask informed the Commission on the meeting of the Council for Democratic Elections held on 18 June 2015. The opinions on the Citizen's Initiative Bill on Public Participation, Citizens' Initiative, Referendum and Popular Initiative and Amendments to the Provincial Electoral Law of the Province of Trento, the Report on the Method of Nomination of Candidates in Political Parties and the Preliminary Report on Exclusion of Offenders from Parliament, dealt with under items 14, 18 and 20 of the agenda, had been adopted at this meeting. A discussion on the preliminary guidelines on the abuse of administrative resources had taken place, as well as a presentation of all the different activities developed in the electoral field, such as participation in conferences or meetings in Bucharest (on electoral integrity and regional cooperation), Moldova (post-electoral conference), Albania (on the electoral administration procedural rules) or Ukraine (on local electoral reform) and the assistance given to the PACE election observation missions (in Turkey). The Venice Commission had further developed its cooperation with PACE by co-organising an important conference on the international standards in the electoral field, which was held in Paris on 4 and 5 June 2015.

A special item had been devoted to the 12th EMB Conference in Brussels which had taken place in March 2015. The 13th EMB Conference would take place in Bucharest in April 2016. Ms Weesing-Loeber, who works at the Council of State of the Netherlands, had presented her work on the technical aspects of electoral law. IDEA had been invited for the first time to present the future co-operation with the Council for Democratic Elections, and the OSCE/ODIHR had also informed the Council about the co-operation developed with the Venice Commission.

26. Report of the meeting of the Sub-Commission on the Rule of Law (18 June 2015)

Mr Tuori informed the Commission that significant progress had been made in the elaboration of the Rule of Law checklist. The final document would consist of two main sections: an introductory part setting out the background and the enabling environment and the checklist itself, made up of five sections containing benchmarks and explanatory notes. The benchmarks would be mainly legal, with some factual ones also being added. The text would also contain references to the legal sources.

The working group planned to meet once more and then to submit its work to the Sub-Commission on the Rule of Law in December 2015.

27. Other business

Mr Kang informed the Commission that the Joint Council on Constitutional Justice had held its 14th meeting in Bucharest on 11-12 June 2015 at the invitation of the Constitutional Court of Romania, which had organised the meeting in an excellent manner. The Joint Council had approved the request of the Presidency of the Conference of European Constitutional Courts to prepare a working document for the Conference's 17th Congress; it had adopted revised Guidelines for Contributions to the Bulletin on Constitutional Case-Law and CODICES and revised Guidelines for the "Classic" Venice Forum. The Joint Council had been informed about co-operation with regional and linguistic groups and that the 4th Congress of the World Conference would take place in Vilnius, Lithuania, probably in the period between 10 and 13 September 2017. A new CODICES database was being prepared. The Joint Council meeting was followed by an excellent mini-conference on "Blasphemy and other limitations to the freedom of expression".

Mr Dürr informed the members that, like the liaison officers, they would be invited to register for weekly mailings on the Constitutional Justice Media Observatory;

Mr Vardzelashvili informed the Commission about the preparation by the Constitutional Court of Georgia of the 17th Congress of the Conference of European Constitutional Courts to be held in Batumi in 2017. On 10-11 September 2015, the Court would host the preparatory meeting of the Circle of Presidents of the Conference, followed by a conference on "Application of International Treaties by Constitutional Courts and Equivalent Bodies: Challenges to the Dialogue".

28. Dates of the next sessions

The schedule of sessions for 2015 is confirmed as follows:

104th Plenary Session	23-24 October 2015
105th Plenary Session	18-19 December 2015

The Commission confirmed the schedule of sessions for 2016 as follows:

106th Plenary Session	11-12 March 2016
107th Plenary Session	10-11 June 2016
108th Plenary Session	14-15 October 2016
109th Plenary Session	9-10 December 2016

Link to the provisional list of participants