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(VENICE COMMISSION)

107th PLENARY SESSION
Venice, Scuola Grande di San Giovanni Evangelista
Friday, 10 June 2016 - Saturday, 11 June 2016

107e SESSION PLÉNIÈRE
Venise, Scuola Grande di San Giovanni Evangelista
Vendredi 10 juin 2016 - Samedi 11 juin 2016

SESSION REPORT
RAPPORT DE SESSION

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1. Adoption of the Agenda

The agenda was adopted without amendment (CDL-PL-OJ(2016)002ann).

2. Communication by the President

The President welcomed members, special guests, delegations and newly appointed members attending the Plenary Session of the Venice Commission. He also presented his recent activities (see document CDL(2016)026).

The President informed the Commission that he had presented the 2015 annual report of activities to the Committee of Ministers of the Council of Europe, which was followed by fruitful discussions with the Ambassadors to the Council of Europe.

He also informed the Commission that Costa Rica had made a formal request for membership. The decision on this state's membership will be taken by the Committee of Ministers of the Council of Europe.

3. Communication from the Enlarged Bureau

The President informed the Commission that the Enlarged Bureau proposed Ms Suchocka, former member in respect of Poland whose mandate had not been renewed, to be elected Honorary President, as she had contributed greatly to the success of the Venice Commission through her commitment and work.

The Commission elected Ms Hanna Suchocka as Honorary President.

4. Communication by the Secretariat

Mr Markert informed the Commission that, since the last Members' Update, 5 requests for opinions had been received. The Parliamentary Assembly had asked for opinions on the amended Electoral Code of "the former Yugoslav Republic of Macedonia" and on the criminal courts of peace of Turkey, Ukraine had asked for an opinion on two drafts for the law on guarantees for the freedom of assembly and Albania for co-operation in electoral reform. In addition, the day before the session the Constitutional Court of Bosnia and Herzegovina had requested an *amicus curiae* brief on issues related to the elections to the House of Peoples of the Federation of Bosnia and Herzegovina. The latter request seemed urgent.

The Commission authorised the rapporteurs on the amicus curiae brief for the Constitutional Court of Bosnia and Herzegovina to send, if necessary for reasons of urgency, a preliminary amicus curiae brief to the Constitutional Court of Bosnia and Herzegovina before the October session.

5. Co-operation with the Committee of Ministers

Ambassador Katrin Kivi, Permanent Representative of Estonia to the Council of Europe and Chair of the Ministers' Deputies, explained that the Estonian chairmanship's priorities included human rights and the rule of law on the internet, which have a great impact on the lives of individuals in Europe; gender equality and children's rights, both of which are central to the respect for human rights, democracy and the rule of law.

Ambassador Zoran Popović, Permanent Representative of Serbia to the Council of Europe, praised the good co-operation between the Venice Commission and Serbia and underlined the importance of upholding European standards and principles in this time of crisis. Towards that end, he very much supported the Council of Europe's involvement in the EU's Neighbourhood Policy. EU accession remained a priority for his country. As to Kosovo's membership of the Venice Commission, he stressed that it had been put to a vote in the Committee of Ministers since no consensus had been reached. Serbia's stance vis-à-vis Kosovo, despite Kosovo now being a member of the Venice Commission, had not changed. Serbia would refer to Kosovo as a province of Serbia administered under United Nations Security Council Resolution 1244. Serbia intended to continue co-operating with the Venice Commission.

Ambassador Erdoğan İşcan, Permanent Representative of Turkey to the Council of Europe, informed the Commission that Turkey had decided to increase its contribution to the Council of Europe, considering that this institution is a fundamental pillar for the enhancement of democracy in Europe. He explained that Turkey had been reluctant initially to co-operate with the Venice Commission, but that it had revised its position.

6. Co-operation with the Parliamentary Assembly

Ms Anne Brasseur, former President of the Parliamentary Assembly of the Council of Europe, referred to the good relations between the Parliamentary Assembly (PACE) and the Venice Commission. She said that her wish for the future was for PACE's requests for opinions to decrease, saying that this would be a clear indicator that states were increasingly in conformity with the European Convention on Human Rights. She also expressed the wish for states to request opinions on laws from the Venice Commission ex ante and not after adoption. She went on to say that current challenges to the rule of law and its institutions were a continuous concern for PACE. She praised the work of the Venice Commission and deplored the fact that there was an international trend towards questioning international human rights law and treaties.

Mr Philippe Mahoux, member of the Committee on Legal Affairs and Human Rights, informed the Commission that the Committee had met three times since the Venice Commission's last plenary session. He referred to an exchange of views on the Rule of Law Checklist, which will take place later this month with the Vice-President of the Venice Commission and will further strengthen the co-operation between the Venice Commission and PACE. Mr Mahoux also referred to the work of the Monitoring Committee of PACE, which had requested an opinion from the Venice Commission on the amended electoral code of November 2015 of "the former Yugoslav Republic of Macedonia" as well as an opinion on "the duties, competences and functioning" of the "criminal courts of peace" established by the Law 5235 of Turkey (institution of criminal peace judgeships).

While emphasising the importance of the Checklist as a Council of Europe reference document, Mr Buquicchio, on behalf of the Commission, invited the Committee of Ministers, PACE and the Congress of Local and Regional Authorities to endorse it so as to provide it with the same status as the "Code of good practice in electoral matters" and the "Code of good practice on referendums". Ambassador Kivi informed the Commission that Minister Kaljurand as Chair of the Committee of Ministers would participate in the presentation of the Checklist to the Legal Affairs Committee of the Assembly.

7. 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, informed the Commission that the Congress was impressed with the Venice Commission's Rule of Law

Checklist, which he believes will be a very useful Council of Europe reference document. This Checklist also appears on the Congress's agenda for its next meeting.

The Commission was also informed about the developments and reports to be adopted at the next meeting of the Monitoring Committee on 28 June 2016 and the signature of the roadmap on local democracy in Armenia. Mr Receveur also referred to recent monitoring visits and pointed to a worrying trend among supreme courts in Europe not taking into account the European Charter of Local Self-Government, which leads to "legislative nationalism".

The President praised the good co-operation between the Venice Commission and the Congress and informed the Commission that Mr Helgesen, rapporteur and Chair of the Scientific Council, would present the Rule of Law Checklist to the Congress at its next meeting.

8. Elections

Following the non-renewal of the term of office of Ms Suchocka, the position of First Vice-President had become vacant. The Bureau had therefore invited Messrs Bartole, Gonzalez Oropeza and Scholsem to act again as Wise Persons and to propose a candidate to the plenary. Mr Bartole explained that the Wise Persons had agreed to propose Mr Kaarlo Tuori, member in respect of Finland, for this position.

The Commission elected Mr Kaarlo Tuori as First Vice-President.

As Mr Tuori was previously the Chair of the Sub-Commission on the Rule of Law, the vice-Chair, Mr Wolfgang Hoffmann-Riem (Germany), took his place as Chair.

9. Follow-up to earlier Venice Commission opinions

Opinion on the Proposed Amendments to the Constitution of Ukraine regarding the Judiciary as approved by the Constitutional Commission on 4 September 2015 (CDL-AD(2015)027)

Mr Markert informed the Commission that, on 2 June, the Verkhovna Rada of Ukraine had finally adopted the constitutional amendments regarding the judiciary. 335 of 423 MPs voted in favour. The text was mainly identical with the text submitted by the President of Ukraine to the Verkhovna Rada, which had integrated practically all recommendations of the Commission (cf. CDL-AD(2015)043). Only the vote of no confidence by the Verkhovna Rada in the Prosecutor General had been reintroduced into the text. The implementing legislation was adopted on the same day but had not been reviewed by the Commission.

Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland (CDL-AD(2016)001)

Mr Markert informed the Commission that, despite the urgent request of the Commission, the Polish Government continued to refuse to publish the decisions of the Constitutional Tribunal. The plenum of the Supreme Court had recommended all courts to apply also the non-published decisions of the Tribunal. An expert group had been established to deal with the Commission's recommendations but had not yet produced any results. Draft laws amending the law on the Constitutional Tribunal were currently being discussed in parliament.

At the international level on 13 April the European Parliament urged Poland to fully implement the recommendations of the Commission. On 1 June the European Commission adopted a Rule of Law opinion on Poland, using for the first time the new Rule of Law framework. While

the wording of the opinion was confidential, it was primarily motivated by concerns about the situation of the Constitutional Tribunal.

Opinion on the draft Act to amend and supplement the Constitution (in the field of the Judiciary) of the Republic of Bulgaria (CDL-AD(2015)022)

The Commission was informed that, as part of the reform of the Bulgarian judiciary, following the constitutional amendments adopted in this area in December 2015, the Bulgarian parliament adopted, on 31 March 2016, a first series of amendments to the Judicial Act.

In its related 2015 Opinion, the Venice Commission had welcomed in particular the proposed division of the Bulgarian Supreme Judicial Council into two separate chambers, for judges and prosecutors. Specific recommendations had been made regarding certain important aspects of the Council's organisation and operation. The Commission was not consulted prior to the amendment of the Judicial Act; however, according to the information available, the adopted changes were largely implementing the recent constitutional amendments.

A new series of amendments to the Judicial Act were under preparation and the Bulgarian authorities had already announced their intention to submit them to the Commission for assessment.

Joint opinion on amendments to the Election Code of Georgia as of 8 January 2016 (CDL-AD(2016)003)

Mr Garrone informed the Commission that the Election Code of Georgia as amended on 8 January 2016 already included the new delimitation of most single-member constituencies. However, it leaves it to the Central Election Commission to define the boundaries of the constituencies in the four main cities of Georgia (30 constituencies out of 73): Tbilisi, Rustavi, Kutaisi, and Batumi.

The Central Election Commission provided the secretariat of the Venice Commission with the following information:

- It had held consultative meetings prior to drawing these 30 constituencies. Such meetings were held with political parties, NGOs, diplomatic missions, international organisations, national minorities and female members of local self-governing bodies.
- On 31 March 2016, it adopted the delimitation of constituencies in the four main cities.
- It met the objectives set by the decision of the Constitutional Court according to which the deviation between the districts cannot exceed 15%.

At this stage, it was not possible to assess whether the new delimitation is party-neutral.

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)

Ms Granata-Menghini informed the Commission that the Lustration Law of Ukraine had been adopted in September 2014, with minor amendments adopted in January 2015. In December 2014, the Commission adopted a rather critical interim opinion which recommended substantive amendments. In June 2015 the Commission adopted a final opinion on a set of draft amendments submitted to the Verkhovna Rada on 21 April 2015. The Final opinion recognised that the Ukrainian law was not a classic lustration law, in that it also aimed to fight against large-scale corruption; while this aim was legitimate, the fight against corruption did not belong in the lustration law. At any rate, more individualisation would be necessary, sanctions would have to depend on the severity of the irregularity committed; judges ought not to have

been included at all as there were specific laws relating to the judiciary. The procedure of lustration had to be centralised, and at the very least the newly-created body had to receive individual complaints as a preliminary step prior to judicial review, which remained essential.

The amendments registered on 21 April 2015 were examined by the VR Committee on Legal Policy and Justice and returned to the relevant working group for amendment. On 18 March 2016, the working group submitted the new draft law to the Committee. The Constitutional Court had just resumed consideration of the constitutionality of the Lustration Law. The Minister of Justice had provided, upon the Secretariat's request, only a brief English summary of the draft amendments, not the full text. A very preliminary analysis of this information revealed that: the recommendation to differentiate the period of exclusion from public life of those accused of corruption did not appear to have been followed; the recommendation to exclude candidates to any political post from the list of persons subject to lustration had not been followed; the recommendation to exclude judges from the application of the lustration law did not appear to have been fully followed, as only some cases of exclusion were mentioned as a novelty; the list of positions to be lustrated had not been revised and had instead been expanded; the recommendation that lustration should be administered in a centralised way had only partly been followed. A Central Executive Body with a special status will be created, but it would mainly be competent to monitor the implementation of the Lustration law and would not be competent to receive individual applications.

> *Joint Interim Opinion on the Draft Law amending the Law on Non-commercial Organisations and other Legislative Acts of the Kyrgyz Republic (CDL-AD(2013)030)*

The Joint Interim Opinion by the Venice Commission and the OSCE/ODIHR on the Draft Law amending the Law on Non-commercial Organisations and other Legislative Acts of the Kyrgyz Republic adopted in 2013 criticised the notion of "foreign agent" and additional registration requirements for foreign and national NGOs receiving funding from abroad. The opinion pointed out that the Draft Law was problematic in the light of a number of international instruments ratified by Kyrgyz Republic and was not in line with the 2007 Constitution of the Kyrgyz Republic, notably Article 16 on the prohibition of discrimination.

The Draft Law had subsequently become the centre of a major debate between the Kyrgyz civil society and the authorities in 2014 - 2016. National NGOs had criticised the draft because they considered that it represents a threat to constitutional rights. Numerous publications and analytical materials prepared by national NGOs and independent experts referred to the opinion of the Venice Commission and OSCE/ODIHR.

In June 2015, the Kyrgyz Parliament adopted the Law at first reading. Under pressure from civil society, the term "foreign agent" was no-longer used in the 2015 draft. However, a number of restrictions criticised by the CDL – OSCE/ODIHR opinion were still part of the draft. On 25 February 2016, 123 national NGOs published an open address to the authorities asking them not to adopt the Law in question.

On 12 May 2016, Parliament voted against the Law (46 MPs in favour and 65 against). According to the Rules of Procedure of the Jogorku Kenesh, a law on this matter cannot be re-submitted for discussion during the following six months.

10. Poland

Ms Kiener introduced the Draft Opinion on the Act of 15 January 2016 amending the Police Act and certain other Acts of Poland, drawn up at the request of the Monitoring Committee of Parliamentary Assembly of the Council of Europe. The Commission was also informed that a number of amendments had been introduced to the Draft Opinion following its examination by the Sub-Commission on Fundamental Rights and that the rapporteurs met with a delegation of

the Polish authorities. The opinion focused on the different surveillance techniques employed by the security services under the amended legislation.

The Police Act had been amended following a 2014 judgment of the Constitutional Tribunal of Poland; while some of the amendments followed the recommendations contained in that judgment, the amended Act still left room for abuse of surveillance powers. The Opinion first examined Article 19 of the Police Act, which regulated "classical" surveillance methods (such as wiretapping). It recommended elaborating on the principle of proportionality: secret surveillance should be employed only in the most serious cases, the courts should examine specific facts, and there should be a probability that the surveillance may bring important information. The law should exclude explicitly any possibility of surveillance of communications clearly covered by lawyer-client privilege, and describe conditions in which it is possible to get access to communications of those who are not themselves suspected of any criminal acts.

It was also recommended that Article 20c concerning the collection of metadata (such as location of mobile devices, telephone numbers dialled and calls received, web-sites visited etc.) should incorporate the principle of proportionality.

As to the authorisation and oversight procedures, surveillance under Article 19 is most often ordered by a court, which is positive. However, given that the authorisation proceedings take place ex parte, they must be supplemented by other mechanisms (privacy advocate, notification and complaints mechanism, *ex-post* review by an independent body). Judicial pre-authorisation for metadata collection may not be practicable (except for the most sensitive types of content-related metadata, such as web-logs, for example). However, again, the existing system of ex-post bi-annual generalised reporting to the courts is inefficient; instead, an independent expert body should be required to check the files on metadata collection and apply appropriate remedies.

Following the discussions in the sub-commission and further discussions with the Polish authorities the rapporteurs proposed a number of amendments to the text of the draft opinion.

Mr Stępkowski, Undersecretary of State, Ministry of Foreign Affairs of Poland, agreed that it was necessary to find a balance between privacy and security interests. The adoption of the amended Police Act had been driven by the need to implement the judgment of the Constitutional Tribunal in due time and to create a legal framework for mass surveillance. A delay in the adoption of the amendments was due to the inactivity of the previous Parliament. In the view of the Polish authorities, the draft opinion put too much emphasis on the human rights considerations.

The Commission adopted the Opinion on the Act of 15 January 2016 amending the Police Act and certain other Acts of Poland (CDL-AD(2016)012).

11. Russian Federation

Final Opinion on the amendments to the Federal Law on the Constitutional Court of the Russian Federation

Mr Aurescu reminded the Commission that it had adopted an interim opinion on the draft amendments to the Federal law on the Constitutional Court of the Russian Federation in March 2016, without having had the opportunity of carrying out a working visit to Russia. Such a visit had now taken place, and the final opinion on this matter took account of the results and conclusions of the meetings held in Moscow and St Petersburg as well as of the judgment delivered by the Russian Constitutional Court on 19 April 2016 in the case of Anchugov and

Gladkov v. Russia, the first to be brought under the amendments being considered. The final and the interim opinions were to be read jointly.

The April judgment of the Constitutional Court provided more clarity on the manner in which the amendments could be interpreted, although it was not sufficient to represent a consolidated practice. The Constitutional Court had reached the conclusion that the ECtHR judgment was not executable to the extent that Article 32 of the Constitution could not be interpreted as to allow the exclusion of certain categories of prisoners from the disenfranchisement. In addition, the Court found that the Russian legal order, contrary to the conclusion of the ECtHR, did provide for a proportionate application of disenfranchisement, given that only those who have committed sufficiently serious offences are “prisoners”, and are held in detention, within the meaning of Article 32. Nevertheless, the Constitutional Court had invited the federal legislator to optimise the existing system by reconsidering the system of kinds of penalty alternative to detention.

This judgment showed a welcome constructive attitude on the part of the Constitutional Court, and an interpretation of the amendments as not preventing execution measures from being taken even if a judgment is deemed to be “non executable”. However, the recommendation by the Constitutional Court was not binding over the federal legislator or the government, so that it could not be concluded that the wording of the amendments was not problematic per se. For this reason, the opinion concluded that the Constitutional Court should not be tasked with the whole question of the execution of an international judgment, which is a political and administrative one, not a constitutional one. The Court should only be asked to assess the constitutionality of a specific measure of execution. Just satisfaction did not raise constitutional Issues, so it was not to be submitted to the Constitutional Court. It was further recommended to remove the provision that no execution measures may be taken if the Constitutional Court finds that the execution of a judgment raises issues of constitutionality, as in this case it remained the responsibility of all the other State authorities to find an alternative manner to execute it.

Mr Andrey Klishas, Chair of the Committee on Constitutional Legislation and State Construction of the Federation Council of the Russian Federation, thanked the Commission for the thorough professional opinion. He stressed nonetheless that the Constitutional Court of the Russian Federation was called upon to examine the compatibility with the Constitution of the Russian Federation of the conclusions of an international body, not of specific measures of execution. In the case of Anchugov and Gladkov, the Constitutional Court had found that the suggested interpretation of the ECHR contradicts the Russian Constitution: the logic corollary of this finding is that the judgment may not be executed. Mr Klishas further stressed that, as rightly noted in the opinion, the Constitutional Court had demonstrated its commitment to seek a compromise, as had been previously announced by its President, Mr Zorkin. The Russian Constitution was the supreme legal instrument of the country; the necessity to execute an international treaty had to face the fact that Chapters 1, 2 and 9 of the Constitution are unamendable. Only if there were a strong demand from Russian society could the possibility of adopting a new constitution be envisaged. The prevailing view in Russia was that Mr Anchugov and Mr Gladkov were convicted serious criminals, whose disenfranchisement was fully justified, including under European standards. Mr Klishas added that at its forthcoming session the Duma would deliberate on the consequences of the April judgment of the Constitutional Court, notably on the possibility to amend the criminal legislation as recommended by the Court.

Mr Dmitry Vyatkin, Deputy Chairman of the Committee of the State Duma on Constitutional Legislation and State-building, explained that neither the 2015 amendments, nor the April judgment of the Constitutional Court aimed at putting in question the international obligations of the Russian Federation: on the contrary, they aimed at solving possible conflicts. The Constitution had priority over the international obligations, but this did not justify drawing pessimistic conclusions. There had only been one case of application of the 2015 amendments,

and more cases were necessary to assess them, including in the light of the practice of other States.

Ms Bilkova expressed support for the final opinion, which touched upon the essential question of the relations between constitutional and international law, and stressed that in this particular case having adopted first an interim opinion and afterwards a final one had proved an effective tool to examine the issues in a thorough manner.

The Commission adopted the final opinion the amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation (CDL-AD(2016)016).

Opinion on Federal Law No. 129-FZ on Amending Certain Legislative Acts (Federal Law on Undesirable Activities of Foreign and International Non-Governmental Organisations)

Ms Kjerulf-Thorgeirsdottir presented the draft Opinion requested by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe. The Opinion acknowledged the right of States to monitor the activities of NGOs on their territory and to introduce sanctions for associations, in case of violation of relevant regulations. It recalled however that any sanction must be consistent with the principle of proportionality and in line with the applicable international standards, as enshrined in particular in the ECHR.

The Opinion recommended that concrete criteria as to the grounds for including foreign and international NGOs in the List of NGOs whose activities are deemed undesirable, should be introduced in the Federal Law. The Opinion also recommended that the inclusion of an NGO in the List be taken by a judge and not by the Office of the Prosecutor General. Should the current procedure, not involving prior judicial review, be maintained, then all the procedural guarantees should be clearly indicated in the Federal Law: the Office of the Prosecutor General should provide detailed reasons for the inclusion of an NGO in the List, a notification procedure of the concerned NGO should be provided and the possibility of a judicial appeal against the decision, with a possibility of suspensive effect, should be unequivocally indicated in the Federal Law.

The Opinion concluded that the prohibitions imposed on listed NGOs may only be considered acceptable if all the above mentioned amendments are introduced in the Federal Law - and notably if the decision to include an NGO in the List is taken by a judge or the decision is subject to a meaningful judicial appeal, and is proportionate to the threat the concerned NGO constitutes.

The Commission adopted the Opinion on Federal Law No. 129-FZ on Amending Certain Legislative Acts of the Russian Federation (Federal Law on Undesirable Activities of Foreign and International Non-Governmental Organisations) (CDL-AD(2016)020).

12. Turkey

Opinion on Law No. 5651 of Turkey on Regulation of Publications on the Internet and Combatting Crimes Committed by Means of Such Publication ("the Internet Law")

Mr Pieter van Dijk presented the draft Opinion, requested by the Parliamentary Assembly of the Council of Europe. He underlined that, although some of the amendments introduced to the Internet Law in 2014 and 2015 were intended to countervail previous international criticism, they also created new problems, such as the increase in the powers of the Presidency of Telecommunication to issue blocking orders without prior judicial review and in the number of alternative procedures for access-blocking/removal of content on different grounds. He also highlighted the crucial role played by the Constitutional Court, both by annulling some provisions of the Internet Law in its decision of December 2015, and in the framework of individual applications before it concerning restrictions on Internet freedoms.

The Opinion underlined the different types of access blocking procedures in the Internet Law; it found that, while in one of the procedures the access blocking measure appeared as a "precautionary measure" taken in the framework of a criminal procedure, the other three procedures appeared as full-fledged autonomous procedures through which substantial decisions on access blocking may be taken without any hearing and without even informing the provider and which do not depend on any subsequent criminal or civil substantive procedure. The Opinion recommended that these three procedures should be considered as precautionary, with the consequence that the urgent decision to remove the content of a webpage or to block the website must be considered as provisional and must be swiftly confirmed by the substantive judge following a procedure respecting the defence rights of the provider, failing which the decision becomes automatically null and void. Should those three procedures be maintained as full-fledged, autonomous procedures, then appropriate procedural guarantees should be provided: the judge should be given sufficient time to make a thorough and reasoned proportionality assessment of the interference, a hearing should be held and an appeal against the decisions on access blocking before a higher court should be possible. Further, a list of less intrusive measures than that of access blocking/removal of content should be introduced in the Law and access-blocking should be a measure of last resort. The Opinion also recommended that the system of access-blocking by a decision of the Presidency of Telecommunication without prior judicial review should be reconsidered.

At the Plenary Session, the Turkish authorities submitted written observations on the Draft Opinion which were examined and taken into account by the rapporteurs. Mr Suat Hayri Aka, Under-secretary of the Minister of Transport and Communication, after reminding the important role played by the Internet in enhancing the public's access to news and facilitating the dissemination of information, underlined that the exercise of the freedom of expression carries with it duties and responsibilities and it may be subject to formalities, conditions and restrictions. Mr Aka stated that the Internet Law aimed at fighting offences committed by misuse of opportunities provided by the Internet and at taking necessary preventive measures against broadcasts promoting harmful content. He emphasised the responsibility of global/international Internet actors or companies (hosting and content providers) to co-operate with States, in particular in the context of the fight against terrorism and child abuse and to implement domestic court decisions restricting Internet freedoms.

The Commission agreed to take the written submissions of the Turkish authorities into account with a view to rectifying any factual inaccuracy found in the Opinion.

The Commission adopted the Opinion on Law No. 5651 of Turkey on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publication ("the Internet Law") (CDL-AD(2016)011).

Opinion on the Legal Framework governing curfews in Turkey

Mr Velaers introduced the draft opinion, prepared at the request of the Monitoring Committee of the Parliamentary Assembly and previously approved by the Sub-Commission on Fundamental Rights. The scope of the Opinion was limited to the assessment, in the light of Turkey's obligations under international law, in particular the ECHR, of the legal framework for curfews in Turkey and the legal basis for the decisions by which curfews had been imposed, since August 2015, in certain towns and districts in South-East Turkey.

The Opinion recognised the scale and complexity of the challenges facing the Turkish authorities in their efforts to combat terrorism. It stressed however that, while it is a legitimate aim and a state's duty to protect its citizens from terrorist attacks, it is also crucial in a democratic society to strike the right balance between security needs and the exercise of rights and freedoms, showing due regard for the requirements of the rule of law.

Despite the seriousness of the situation they were facing, the Turkish authorities had made the choice not to declare a state of emergency to engage in the security operations they considered necessary, although these operations and related measures (including curfew decisions) inevitably entail restrictions to rights and freedoms. The curfews imposed since August 2015 had thus not been based on the constitutional and legislative framework which specifically governs the use of exceptional measures in Turkey, including curfews, but on the Provincial Administration Law, which gives wide powers to local governors but does not contain any reference to curfews.

The Opinion concluded that the Provincial Administration Law and the decisions themselves did not meet the requirements of legality. The Opinion therefore recommended to the Turkish authorities no longer to use the Provincial Administration Law as a legal basis for curfews and to ensure that the adoption of all emergency measures including curfews be carried out in compliance with the constitutional and legislative framework for exceptional measures in force in Turkey and the relevant international standards; to ensure that, when a state of emergency is formally declared, all related exceptional measures, including curfew, be subject to an effective review of legality; to provide a clear description, in the State of Emergency Law, of the material, procedural and temporal conditions for the implementation of curfews, including parliamentary and judicial supervision.

Mr Basri Bağci, Deputy Undersecretary of the Ministry of Justice, referred to the important reforms made in the last decade for democratisation in Turkey and emphasised the authorities' commitment to fight terrorism while respecting human rights and rule of law requirements. He provided clarification on the authorities' choice to adopt curfew measures within the framework of the Provincial Administration Law as a way to ensure protection of people's rights and freedoms and ensured the Commission that curfews had been imposed with due regard to the principles of necessity and proportionality, i.e only in the zones covered by security operations, for the duration of those operations, and had been accompanied by support measures for the population. In the authorities' view, the curfew measures had been adopted in full compliance with the Turkish Constitution and the applicable international instruments. Mr Basri Bağci finally stressed that curfews had been subject to judicial review and that the courts had found these measures to be adequate and necessary for ensuring the security of the population.

The Commission adopted the opinion on the Legal Framework governing curfews in Turkey (CDL-AD(2016)010).

13. Armenia

Mr Barrett introduced the preliminary joint opinion on the draft electoral code of Armenia as of 18 April 2016. During the plenary session of March 2016, the Commission had authorised the preliminary opinion to be sent to the authorities prior to the June session, since the newly adopted Constitution required the Code to enter into force by 1 June 2016. The preliminary opinion had therefore been sent to the Armenian authorities in May 2016.

The opinion stressed that the new electoral system proposed in the draft code was rather complex, mainly with respect to the way in which it addresses the constitutional requirement to guarantee a "stable majority". It established a number of significant deviations from a purely proportional system, which, in combination with the short time period allocated to carry out the reform, could affect voters' trust in the electoral system.

The opinion enounced that the draft electoral code could provide an adequate basis for the conduct of democratic elections, and had addressed some prior Venice Commission and OSCE/ODIHR recommendations, improving voter identification and enhancing the Central Electoral Commission's regulatory powers.

The opinion was, however, critical on a number of issues. The draft code introduced limitations and deadlines for the formation of coalitions after the first round of elections: the opinion recommended reconsidering the restrictions on the number of participants in a coalition and extending the time period for forming coalitions after the first round. The opinion further recommended, as a confidence-building measure, to allow meaningful consultation of signed voter lists by stakeholders under specific conditions. The introduction of new technologies in respect of voter registration and identification would be a welcome change, but a proper implementation of new technologies had to be ensured.

Mr Lappin stressed the constructive approach in the exchanges of views which were held in preparation of the opinion and referred to important additional recommendations, such as removing the restrictions on observers, strengthening women quotas, and introducing clearer rules on financing and campaigning.

Ms Arpine Hovhannisyan, Minister of Justice of Armenia, informed the Commission that the Electoral Code, which entered into force on 1 June 2016, had been adopted on 25 May 2016 by the Armenian Parliament, with 102 votes in favour, 17 against and 3 abstentions. The consensus was four-fifths, and not only three-fifths, which was the majority required by the constitution. Although the period following the publication of the preliminary opinion was very short, the authorities had tried to address some of the recommendations. Therefore, the issue of access to voter lists had been modified, as well as the women's quotas, which had gone up from 25% to 30%. The electronic mechanisms provided for in the new Code would be tested in pilots at the local level. The recommendations which were not followed, concerned the number of parties in coalitions, as this would go against the logic of the "stable majority" recognised in the Constitution, as well as, among others, the provisions relating to national minorities, as they had not been accepted by the opposition. The Minister stressed that there was still scope for improvement, as additional amendments could be submitted to parliament at an extraordinary session. The Minister requested a new opinion on the compatibility of the amendments to the Code adopted after the publication of the preliminary opinion with the recommendations formulated therein . As local elections would take place in October 2016, the opinion would need to be issued in July.

The Commission endorsed the preliminary joint opinion by the Venice Commission and the OSCE/ODIHR on the draft electoral code of Armenia as of 18 April 2016, previously endorsed by the Council for Democratic Elections on 9 June 2016 (CDL-AD(2016)019). Upon the Minister's request and in the light of the urgency, it further authorised the rapporteurs to prepare an opinion on the amendments to the Electoral Code adopted after the publication of the preliminary opinion and to send it to the Armenian authorities prior to the October Plenary Session.

14. Kazakhstan

Ms Bazy-Malaurie introduced the Draft Opinion, requested by the Supreme Court of Kazakhstan. The Draft Code had been prepared in 2016 by the Union of Judges of Kazakhstan to replace a previous Code of 2009. It regulated the conduct of judges in a professional context, in private and in public spheres. Breaches of the Code might possibly lead to the disciplinary liability of judges, so the Draft Opinion also looked at the Constitutional Law on the system of courts and the status of judges of 2000. This law provided for disciplinary liability in cases of violation of ethical norms. Apparently, that was meant to refer to the Code of Ethics, but the law itself should regulate such matters in more detail.

According to the Opinion, the Law should also indicate the status of the findings of the Ethics Commissions (i.e. bodies created by the Union of Judges to examine cases under the Code) in the proceedings before the Disciplinary Commissions (disciplinary bodies established by the Law). As to the material rules regulating the judges' behaviour, the Code in some respects seemed to go too far. Although the Code was supposed to apply to retired judges as well, many of its rules would be irrelevant or unnecessary in respect of a retired judge.

Mr Mami, President of the Supreme Court of Kazakhstan, expressed gratitude to the Venice Commission for its assistance and for the fruitful co-operation it had had with the authorities of Kazakhstan in the past years. He described the on-going legal reform, aiming at liberalising the legal system of Kazakhstan, and, at the same time, at increasing the accountability of judges, the quality of their decisions and the trust of the population of Kazakhstan in its judiciary. The recruitment of the new judges was now subject to more stringent rules. International organisations, such as the World Bank, had noted improvements in the sphere of judicial independence. The Draft Code of Ethics was based on international sources, in particular on the Bangalore principles, and it would be reviewed before adoption in the light of the Venice Commission's recommendations.

The Commission adopted the Opinion on the Draft Code of Judicial Ethics of Kazakhstan (CDL-AD(2016)013).

15. Republic of Moldova

Amicus curiae brief on the right to recourse action by the state against judges

Mr Hirschfeldt introduced the draft *amicus curiae* brief for the Constitutional Court of the Republic of Moldova on the right to recourse action by the state against judges.

He explained that the question raised in the request by the Constitutional Court was whether a judge could be held individually liable for a judgment rendered on the national level, which was appealed to the European Court of Human Rights (ECtHR) and resulted in a finding of a

violation of the European Convention on Human Rights (ECHR) by the member State, either by a judgment, a friendly settlement or a unilateral declaration, without an actual finding of guilt by a national court against the individual judge concerned; or whether this was an inadmissible interference in the procedural guarantees of judges, in breach of the principle of the independence of judges.

The *amicus curiae* brief concluded that although judges' liability was admissible, it could only be raised where there was a culpable mental state (intent or gross negligence) on the part of the judge. Therefore, liability of judges brought about by a negative judgment of the ECtHR should be based on a national court's finding of either intent or gross negligence on the part of the judge and that a judgment of the ECtHR cannot be used as the sole basis for judges' liability. Where liability of judges was brought about by a friendly settlement of a case before the ECtHR or by a unilateral declaration acknowledging a violation of the ECHR, this must also be based on a finding by a national court of either intent or gross negligence on the part of the judge.

In general, judges should not become liable for recourse action when they are exercising their judicial function according to professional standards defined by law (functional immunity). A finding of a violation of the ECHR by the ECtHR does not necessarily mean that judges at the national level can be criticised for their interpretation and application of the law (i.e. violations may stem from systemic shortcomings in the member States, e.g. length of proceedings cases, in which personal liability cannot be raised). In addition, the operation of the living instrument doctrine of the ECtHR may make it difficult for national courts to predict how the ECtHR will rule.

Lastly, holding judges liable for the application of the ECHR without any assessment of individual guilt may have an impact on their independence, which includes the professional freedom to interpret the law, assess facts and weigh evidence in each individual case. Erroneous decisions should be challenged through the appeals process and not by holding judges individually liable, unless the error is due to malice or gross negligence by the judge.

Mr Aurescu, Mr Tuori and Mr Kuijer made several suggestions, notably regarding the attribution of responsibility that needed to be clarified and the provision of a new procedure at the national level aimed at establishing the culpability of the judge concerned.

The Commission adopted the *amicus curiae* brief on the right to recourse action by the state against judges (CDL-AD(2016)015).

Mr Bartole proposed that the Venice Commission discuss and clarify the content of and limits to its *amicus curiae* briefs at a future meeting of its Scientific Council.

Joint opinion on the draft law on changes to the Election Code of the Republic of Moldova

Mr Gonzalez Oropeza introduced the draft opinion and informed the Commission that the Constitutional Court had annulled the amendments to the Constitution introducing the election of the President of the Republic by Parliament, adopted in 2000. Introducing the direct election of the President implied the prompt adoption of a new law, since the presidential elections have to be held on 30 October 2016. This made it impossible to adopt the amendments in the one-year deadline provided for by the Code of Good Practice in Electoral Matters.

The opinion stated that, while the draft law was generally in accordance with international obligations and standards, a number of provisions had to be reconsidered. In particular, restrictions on the right to stand for elections provided by the Constitution could not be dealt

with in the present legislative amendments. The 10-year residence requirement was excessive, and the 40-year age requirement could be considered high. Proficiency of state language testing had to be reasonable, objective and verifiable.

Mr Shlyk also recalled that several recommendations needed to be addressed, including the need for an improved organisation of the procedure for voting abroad and the campaign related regulations. OSCE/ODIHR stressed the good co-operation with the authorities, as they have been invited to observe the presidential elections on 30 October 2016. A needs-assessment mission will be conducted in July and, if necessary, followed by an observation mission in October.

Mr Sergiu Sirbu, Member of the Legal Committee for Appointments and Immunities, Parliament of the Republic of Moldova, stressed that the legal reform was needed after the judgment of the Constitutional Court, but that it was not a reform planned by Parliament, creating an unprecedented situation. This judgment also established a tight timetable to adopt the urgent and much needed changes to the legislation. The authorities would try to take into account all recommendations made in the opinion before the final adoption of the amendments, including the recommendations concerning the opening of polling stations abroad. However, a change in the Constitution would be necessary in order to address some of the recommendations, and this change would not be possible before the elections. Mr Buquicchio called for this constitutional change, which has been a long-standing recommendation of the Venice Commission.

Mr Iurie Ciocan, President of the Central Electoral Commission of the Republic of Moldova, stressed that the legislation may still undergo further amendments before the elections, although it should be put in the perspective of the rest of the electoral legislation. The rules on campaign financing, on political parties, on media, etc., applied to all other elections, including referendums, so they will be applied in the same manner to presidential elections.

Mr Delcamp stressed that, in the debate on the draft opinion at the Council for Democratic Elections, the length of residency requirement was discussed, and an amendment was proposed to the opinion; the issue of the voters residing abroad was also a major concern, which was the object of a recommendation by the Congress.

The Commission adopted the joint opinion by the Venice Commission and the OSCE-ODIHR on the draft law on changes to the Election Code of the Republic of Moldova, previously adopted by the Council for Democratic Elections (CDL-AD(2016)021).

16. Montenegro

The Commission was informed that the draft law introducing amendments to the Law on Minority Rights and Freedoms of Montenegro had been revised by the Ministry of Human and Minority Rights of Montenegro and transmitted to the Commission for an assessment of its compliance with the 2015 recommendations.

Almost all key recommendations contained in the 2015 Opinion had been addressed, as follows: according to the revised draft, *ex officio* members of the minority councils cannot take part in the election of the other members of the councils (as was proposed in the initial draft); the composition of the Management Board of the Minority Support Fund has been amended to ensure that each minority council will have its representative on the Management Board; eligibility criteria/incompatibilities for the Management Board and the Director of the Minority Fund, which the Venice Commission had considered excessive, have been excluded; a 30%

cap on the operational expenses of the Fund has been introduced, as a way to prevent unlimited discretion of the Board over the allocation of money.

The recommendations on increased clarity notably concerning the functions and institutional position of the Centre for Minority Culture Preservation and Development and on entrusting the Management Board of the Fund with the power to prescribe project evaluation modalities and the content of required forms and documentation. had not been addressed. In the absence of specific information on the newly established Council for Minority Nations and Other National Minority Communities, the Commission reserved its position.

The Commission took note of the Secretariat Memorandum (CDL-AD(2016)022) on the compliance of the revised draft law on amendments to the Law on Minority Rights and Freedom of Montenegro with the Venice Commission's 2015 opinion on the draft law amendments to the Law on Minority Rights and Freedoms of Montenegro.

17. Ukraine

Mr Frendo presented the text of the draft opinion on the Amendments to the Law of Ukraine on election of people's deputies regarding the exclusion of candidates from party lists, which had been requested by the Monitoring Committee of the Parliamentary Assembly. The rapporteurs considered that the new Law made parties more powerful than the will of the people, since it allowed them to remove from the lists, at their absolute discretion and without any limitation, a candidate with the potential of being legitimately elected, after election day and prior to such a candidate being confirmed as elected by the Central Electoral Commission.

As the Commission had previously stated as concerns Article 81 of the Constitution of Ukraine, it was contrary to international standards to empower a political party ex post facto to deny the electorate its choice and choose who to place on its party list in a position to be elected. The retroactive effect of the law and the lack of possibilities to appeal against decisions of parties were also contrary to international standards. The opinion therefore recommended deleting from the law the power of political parties to remove from their lists, after an election had taken place, candidates who at the time were "deemed unelected" but retained a potential to be elected.

The Commission adopted the opinion on the Amendments to the Law of Ukraine on election of people's deputies regarding the exclusion of candidates from party lists (CDL-AD(2016)018).

Conference on "Elections in Ukraine in the context of European democratic standards

The Commission was informed that the Conference on "Elections in Ukraine in the context of European democratic standards" which had taken place in Kyiv on 26-27 May 2016 had brought together representatives of academia, MPs, independent experts from Ukraine and international experts. The participants had the opportunity to discuss international standards and their implementation in Ukraine in areas such as the choice of electoral systems, election campaigns and electoral complaints and appeals system. A presentation of a new (third) edition of the publication of Venice Commission documents in the Ukrainian language had been made within the framework of this event.

18. Georgia

Mr Gstöhl presented the preliminary opinion on amendments to the organic law on the constitutional court and the law on constitutional proceedings. This opinion had been requested by the President of Georgia, when the amendments had already been adopted and he disposed of only 10 days to decide whether to enact the law or to veto it. Therefore, the rapporteurs had to prepare a preliminary opinion within one week. The preliminary opinion welcomed the new election system for the President of the Court, which ensured a real choice for the judges, the introduction of an automatic case-distribution system and the entry into force of acts of the Constitutional Court upon their publication on the web-site of the Court.

However, other provisions needed to be reconsidered in order to ensure the proper functioning of the Court. A strict limitation of the term of the judges should be only introduced together with a constitutional amendment providing that the outgoing judge continues in office until the new judge enters into office; a provision which reduced the powers of the judges during the last three months of their term should be removed; the requirement of a minimum of six votes for taking decisions in the plenary session should be lowered and a provision enabling a single judge to refer a case to the plenary session should be amended. During the examination of these amendments, the rapporteurs had noted other problems in the legislation, which should be addressed in future amendments.

Ms Tsulukiani, Minister of Justice of Georgia, informed the Commission that following the publication of the preliminary opinion, the President of Georgia had vetoed the amendments and proposed certain changes to Parliament, which the latter had accepted. The revised amendments had entered into force. Ms Tsulukiani suggested that these facts be reflected in the opinion. These changes concerned the three months' rule limiting the power of outgoing judges and the procedure for rejection by the plenary of requests from an individual judge to deal with a case in the plenary. The increased quorum and voting majority in the plenary had been maintained only for cases relating to organic laws. The Minister underlined that the Constitution did not provide for the possibility of submitting the amendments to the Constitutional Court for preliminary review.

Mr Levan Bodzashvili, Deputy National Security Adviser to the President of Georgia, welcomed the speedy availability of the opinion, which had enabled the President to base his veto on it. The legislation should be further improved through the ordinary legislative process.

Mr George Papuashvili, President of the Constitutional Court of Georgia, informed the Commission that he would refrain from commenting on the constitutionality of the amendments because an NGO had announced that it would appeal to the Constitutional Court against them. Nonetheless, he considered important to stress that the amendments had been adopted in a hasty manner and had not been sent for comment either to the Court or to the civil society. Contrary to a promise made to the PACE rapporteurs, the bill had not been sent to the Venice Commission before its adoption.

Mr Buquicchio and Mr Grabenwarter welcomed that a compromise had been found between the President and Parliament. Mr Grabenwarter highlighted that consultations with the Constitutional Court on amendments to the legislation governing the work of the Court were part of constitutional culture. Without such consultations, the proper functioning of the Constitutional Court could be endangered because other state powers lacked specific, deep understanding of the internal functioning of the Court. He insisted that a qualified majority for voting in a constitutional court was justified only for repressive proceedings (impeachment, prohibition of political parties). There could be no parallelism between the voting majority for legislation in Parliament and in the Constitutional Court. In a constitutional court, two blocks of judges might develop, none of whom reaches the a two thirds majority. As a consequence, the court might end up in a situation where it cannot take any decisions and is paralysed. This

should be avoided. The Commission should examine this question in general terms. Mr Buquicchio and Mr Helgesen welcomed this proposal.

The Commission endorsed the Opinion on the Amendments to the Organic Law on the Constitutional Court and to the Law on Constitutional Legal Proceedings (CDL-AD(2016)017).

19. Co-operation with other countries

Tunisia

Mr Neppi Modona informed the Commission about the recent co-operation with Tunisia. On 23 March 2016, the House of People's Representatives of Tunisia had adopted the Law on the Supreme Judicial Council. Although the overall assessment of the new Law was positive, some of its provisions were not in line with best international practices. Mr Neppi Modona regretted, among other things, the limited role played by members of the Council from outside the judicial power, notably their exclusion from voting in disciplinary proceedings. The adoption of this important text had removed the last obstacle to the establishment of the new Constitutional Court, because some of its judges are to be appointed by the High Judicial Council.

On 25–26 May 2016, representatives of the Venice Commission participated in a workshop on "the foundations of the independence of independent bodies". The event was organised by the The Instance of Truth and Dignity, by UNDP and by the UN High Commissioner for Human Rights and brought together representatives of the independent bodies created after the revolution (ISIE, HAICA, INLUCC, IVD, IPSJJ).

Mr Neppi Modona further informed the Commission that the Tunisian authorities were preparing a draft organic law on these independent institutions.

20. Information on constitutional developments in other countries

Algérie

Mr Mourad Medelci, Président du Conseil constitutionnel d'Algérie, informe la Commission des récents amendements constitutionnels dans son pays. Pour favoriser la réconciliation nationale, la langue amazighe est reconnue dans la Constitution. Les libertés de manifestation de la presse sont renforcées ; les délits de presse ne seront plus punis par la prison. Le Sénat aura le droit d'initiative et d'amendement législatif; un système électoral mixte majoritaire est introduit ; l'inamovibilité des juges est garantie ; le droit de recours pénal est introduit ; la vie privée est garantie ; les inégalités régionales seront réduites pour avancer la cohésion sociale ; le climat des affaires est amélioré ; les femmes auront un accès prioritaire aux sièges du Parlement ; la lutte anti-corruption est promue ; l'indépendance du Conseil constitutionnel est renforcée ; le nombre de juges constitutionnels ? est augmenté de 9 à 12 et la durée de leur mandat est augmentée de six à huit ans ;une minorité parlementaire peut saisir le Conseil constitutionnel ; le Conseil d'Etat et la Cour suprême peuvent saisir le Conseil constitutionnel de l'exception d'inconstitutionnalité.

Georgia

Mr George Papuashvili, President of the Constitutional Court of Georgia, informed the Commission that in September 2016, the Constitutional Court of Georgia would celebrate its 20th anniversary. Over the course of 20 years, the Court had established itself as a competent, respected and trusted institution both domestically and internationally, having received

endorsements from NGOs, international organisations, legal experts and academia. The Constitutional Court of Georgia had been elected as the chair of the Conference of European Constitutional Courts. Since its establishment, the Court had annulled more than 250 legislative acts, almost every third case considered on the merits had ended in favour of the applicant. These cases related to freedom of assembly, freedom of speech, fair trial, rights of sexual minorities to donate blood, the nine-month pre-trial detention period, the abolition of imprisonment for private use of marijuana, bringing the disproportionate majoritarian electoral system in line with Venice Commission standards, government surveillance and many more important topics. In its case-law, the Court systematically referred to the judgments of other courts and the Strasbourg Court. The Court actively used the Venice Forum and requested *amicus curiae* briefs from the Commission. The Constitutional Court of Georgia was grateful for the support by the Venice Commission, which often co-hosted international judicial conferences, seminars and round tables. The positive legacy of the Court would endure even in times of the difficulties, which the Court had faced in recent years.

Italy

Mr Bartole explained to the Commission that the main thrust of the recent constitutional reform in Italy was to overcome the perfect bicameralism of the current Constitution. After the reform, the Chamber of Deputies would retain the political tasks such as the confidence in the govenment and the approval of the government's programme. It would also exercise the main legislative powers. The Senate would become a body of representatives of local government. It would only exercise limited legislative functions (notably in respect of constitutional laws) and would have the power only to propose legislative amendments to the Chamber of Deputies. The system of elections to the Senate would be complex: Regional Councils would elect their representatives, but following the indications of the electorate. The constitutional reform further required a higher majority for the election of the President of the Republic and the decision of the Constitutional Court on newly adopted electoral rules. The method of appointment of five constitutional judges by parliament would be modified with a division between the two chambers, but with no qualified majority. Finally, the competences of the Regions would be reduced, espacially in the fields of communications and transport infrastructures.

This reform had been adopted by parliament, but before entering into force it needed to be approved by referendum, to be held in Autumn.

Turkey

Mr Can informed the Commission on the recent constitutional developments concerning the lifting of immunity of the deputies of Parliament. According to Article 83 of the Constitution, a deputy who is alleged to have committed an offence before or after his/her election shall not be detained, interrogated, arrested or tried, unless the Assembly decides otherwise. The relevant provisions of the Constitution and the Internal Rules of the Parliament concerning the procedure for lifting immunities provided for instance, for the prohibition for political party groups to take a separate decision on immunity lifting, the obligation for the Parliament to proceed to a separate vote for each request for lifting of immunity, and the possibility for the concerned deputies to apply to the Constitutional Court against the decision of the Parliament to lift their immunities.

On 20 May 2016, the Turkish Parliament adopted a constitutional amendment according to which all requests for immunity-lifting in respect of deputies which were currently pending before the Ministry of Justice and the Parliament were deemed to be accepted by the Parliament. That meant that on the basis of this constitutional amendment, the prosecution no longer needed the permission of Parliament in order to investigate crimes allegedly committed by the concerned deputies, which were the subject matter of the current pending requests for lifting of immunity. 59 MPs from the People's Democratic Party (HDP) and 11

MPs from the main opposition party (CHP) lodged applications to the Constitutional Court claiming that the constitutional amendment amounted in fact to a substantive decision of Parliament to lift the immunity of MPs without the procedural guarantees provided by the Constitution and the Internal Rules of the Parliament. The Constitutional Court rejected these applications on the grounds that constitutional amendments could only be examined with regard to their form, and not to their substance. Mr Can concluded that the only possibility left to the concerned deputies was an individual application before the Constitutional Court claiming a violation of their personal rights as a consequence of the constitutional amendment which had resulted in lifting their immunities without the procedural guarantees provided in domestic law.

21. Co-operation with the Inter-American Court of Human Rights

Mr Roberto Caldas, President of the Inter-American Court of Human Rights, informed the Commission about the complex context in which the Inter-American system had had to operate in the first half of 2016. There had been three main challenges during this period: the unprecedented number of refugees and undocumented migrants; the situation of political crisis in Brazil, for which the Inter-American Court of Human Rights had been able to establish certain standards; the financial crisis of the Inter-American system. In the *Granier v. Venezuela* case*,* the responsibility of the media in the context of a democratic crisis was explored. The Media also has social and democratic duties, such as the obligation not to promote hate speech or social polarisation. In the *Escher v. Brazil* case, the Court had addressed the right to private life in the context of judicial investigations. The Court had stated that telephone tapping might constitute a serious interference in the private life of an individual and it had established standards in which such interception and its publicity would be compatible with the American Convention.

Finally, Mr Caldas stressed the magnitude of the financial crisis that the Inter-American System, and, in particular, the Court, are currently facing. The Inter-American Court is the international tribunal with the lowest budget in the world. It has a regular income of 2.7 million dollars, provided by the Organization of American States. This amount only represents around 50% of the Court's income, while the remainder is covered by special voluntary contributions from States, international co-operation projects and contributions from other entities. In December 2015, Denmark and Norway had notified the Court that they would no longer be sending their voluntary contributions. These donors made up almost 38% of the Court's total income.

Ms Cleveland stressed the catastrophic financial crisis that the Inter-American Court is facing. Mr Helgesen proposed to bring this issue back to his government in Norway.

Mr Buquicchio proposed that the Commission invite all member States to support the Inter-American Court of Human Rights to help it overcome the financial crisis.

The Commission expressed its support for the Inter-American Court of Human Rights and called on its member states to help overcome its financial crisis.

22. Report of the meeting of the Joint Council on Constitutional Justice (7-8 June 2016)

Mr Dürr informed the Commission that the 15th meeting of the Joint Council on Constitutional Justice had taken place on 7 and 8 June 2016, gathering around 50 liaison officers and several members of the Venice Commission. Ms Marjolein van Roosmalen from the Council of State of the Netherlands was elected Co-President of the Joint Council in respect of the liaison officers. The participants discussed constitutional court seminars and contributions to the *Bulletin on*

Constitutional Case-Law and the CODICES database. Representatives and liaison officers from regional and language based groups of constitutional courts presented co-operation between these groups and the Venice Commission.

The 4th Congress of the World Conference on Constitutional Justice would be hosted by the Constitutional Court of Lithuania in Vilnius on 11 to 14 September 2017. The Lithuanian liaison officer informed the participants of the state of advancement in the preparation of this event. With the recent accession of the Supreme Court of Guinea-Bissau, the World Conference had 99 members.

On the second day, a mini-conference on the topic of "Migration" had been held, at which liaison officers presented the case-law of their courts on this topic. The liaison officer from the European Court of Human Rights showed the participants a short video on the Court's case-law in matters of asylum.

23. Report of the meeting of the Council for Democratic Elections (9 June 2016)

Mr Kask informed the Commission about the results and conclusions of the meeting held on 9 June 2016. Two draft opinions had been discussed and adopted by the Council. The first one was the joint opinion prepared together with the OSCE/ODIHR on the amendments to the Electoral Code of the Republic of Moldova (item 15), which was the result of the need to adapt the legislation to re-establishment of direct presidential elections, that will take place in the Republic of Moldova on 30 October 2016. The other opinion related to Ukraine (item 17) and concerned the amendments to the Law on election of people's deputies regarding the exclusion of candidates from party lists.

The Council had further endorsed the preliminary opinion on the Electoral Code of Armenia as of 18 April 2016 (item 13).

The Council had also considered the question of the publication of the lists of voters having voted in the elections, and had decided to prepare an interpretative declaration to the Code of Good Practice on Electoral Matters on this matter for the October meeting. It had also worked on the new version of the electoral glossary, which was revised and adopted with a few formal changes.

Several activities regarding co-operation with other bodies were discussed. Firstly, the Council decided to invite the International Foundation for Electoral Systems (IFES) as an observer. Secondly, Ms Zikmund, from the Congress of Local and Regional Authorities of the Council of Europe, presented the development of the work on the misuse of administrative resources in local and regional elections, which aimed at completing the Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes adopted by the Venice Commission and the OSCE/ODIHR. This work showed the good co-operation between the Venice Commission and the Congress. Finally, the OSCE/ODIHR had informed the Council about the many activities carried out together with the Venice Commission, as well as about their observation of election missions since March 2016.

24. Report of the meeting of the Scientific Council (9 June 2016)

Mr Helgesen informed the Commission on the Pan-European Conference on constitutional monitoring which would take place in Yerevan in October 2016 at the initiative of the President of the Constitutional Court of Armenia. He also presented two new compilations, on Media and Elections and on Gender Equality. This second compilation could be the basis for a new Study by the Venice Commission on the Constitutional protection of the principle of gender equality. The Scientific Council proposed both compilations for endorsement by the Plenary.

Mr Van den Brande stressed the importance of these compilations of Venice Commission opinions and reports, which provided an extremely useful set of quotations and references to the essential parts of the Commission's work. He proposed in particular to develop further the issue of media and elections, mainly on the links between democracy and freedom of expression.

The Commission endorsed the compilations of Venice Commission opinions and reports concerning Media and Elections (CDL-PI(2015)006) and Gender Equality (CDL-PI(2016)007).

Mr Helgesen finally informed the Plenary that the Seminar on the Relationship between the ECtHR and domestic authorities and courts, which had been postponed several times, would take place in Oslo in 2017. The Scientific Council had further decided to revert to the possible preparation of a study on the rule of law and international terrorism at a future meeting.

25. Other business

Ms Granata-Menghini informed the Commission about progress in the preparation of the International Conference on "Global Constitutional Discourse and Transnational Constitutional Activity" to be held in Venice on 7 December 2016 (Link to Programme). This conference could be seen as a logical follow-up to the UniDem seminar organised in 2012 in Helsinki on "Constitutional design".

All members were warmly invited to participate, and were asked to kindly inform the Secretariat as soon as possible about their intention to do so, in order for the necessary logistic arrangements to be made.

Mr Kovler informed the Commission about the release of the second volume on the Venice Commission published by the Institute for Legislation and Comparative Law of the Russian Federation. A third volume was planned on the topic of the independence of the judiciary, and all members were invited to contribute as authors.

26. Dates of the next sessions

The schedule of sessions for 2016 was confirmed as follows:

108th Plenary Session	14-15 October 2016
109th Plenary Session	9-10 December 2016

The schedule of sessions for 2017 was confirmed as follows:

110th Plenary Session	10-11 March 2017
111th Plenary Session	9-10 June 2017
112th Plenary Session	6-7 October 2017
113th Plenary Session	8-9 December 2017

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

Link to the list of participants