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(VENICE COMMISSION)

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SESSION REPORT
RAPPORT DE SESSION

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1. Adoption of the Agenda

The agenda was adopted without amendment (CDL-PL-OJ(2016)003ann)

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)035).

3. Communication from the Enlarged Bureau

The Plenary was informed that Poland had not sent any delegation for the discussion on the Opinion concerning the Act on the Constitutional Tribunal of Poland, but had only submitted written comments in an unusually aggressive style. These comments had been distributed to the Plenary. Secondly, the Parliamentary Assembly had made a new request for an opinion o the emergency decrees in Turkey. The draft opinion would be submitted to the December Session. As to the two other requests concerning Turkey currently pending before the Commission, the Plenary was informed that, due to the current political situation in the country, the opinion on the duties, competences and functioning of the “criminal courts of peace” would be submitted to the Plenary only in March 2017.

4. Communication by the Secretariat

Mr Markert informed the Commission that the Bureau had decided to postpone the item on the agenda concerning Spain due to the fact that the law which will be the subject of the Opinion was currently being considered by the Constitutional Court of Spain. He also informed the Plenary on slight changes to the agenda.

5. Co-operation with the Committee of Ministers

Ambassador Onno Elderenbosch, Permanent Representative of the Netherlands to the Council of Europe, stated that the Netherlands, during its Chairmanship of the Council of the European Union during the first half of 2016, had stressed, as one of their priorities, the need for a dialogue on the rule of law between the EU member states.

As a preparatory step for this rule of law dialogue, a seminar had been organised in Strasbourg with the participation of the Secretary General of the Council of Europe, the Commissioner for Human Rights as well as the Secretary of the Venice Commission. The report of the seminar highlighted three horizontal themes which form the common thread running through the discussions held on immigration, integration and tolerance: 1) Fundamental values and the Rule of Law form the core of the European identity; at the same time a balance needs to be found between the moral obligations and the actual capacities of each member state. 2) Migrants have rights, but also the obligation to commit themselves to EU fundamental values, just as the member states have to guarantee the Rule of Law for migrants in the same way as for their own populations 3) The negative framework through which migration is currently looked at (illegal aliens etc.) facilitates xenophobia and hate speech.

Finally, Ambassador Elderenbosch welcomed the Venice Commission’s Rule of Law checklist which will be very helpful in achieving the synergy and co-operation between the Council of Europe, the EU, including the EU Agency for Fundamental Rights and the EU member states in their joint efforts to defend fundamental rights and values.

Ambassador Ágnes Kertész, Permanent Representative of Hungary to the Council of Europe emphasised the co-operation between Hungary and the Venice Commission and reminded that since 2010, 11 opinions had been adopted by the Venice Commission in respect of Hungary, concerning in particular, constitutional amendments, review of laws regarding the judiciary, the prosecutor's office, the constitutional court, national minorities and freedom of conscience and religion.

Ambassador Kertész also highlighted the role that the Venice Commission has been playing in Western Balkans serving the stability of the region, as well as the importance of the co-operation with Ukraine. She underlined the importance of the constitutional assistance provided by the Venice Commission to Tunisia, which served the stability and democratic security of the Southern neighbourhood of the Council of Europe. She finally drew attention to the European Commission's communication on the rule of law which referred back to the conclusions of the 2011 Report of the Venice Commission on the Rule of Law, further developed in the Rule of Law Checklist adopted by the Venice Commission in March 2016 and endorsed by the Committee of Ministers in September 2016.

Ms Amy P.Westling, Consul General, Deputy Permanent Observer of the United States of America underlined the outstanding contribution of the Venice Commission to the development of democracy across Europe and beyond. She stated that the recent opinions, concerning in particular Armenia, Bosnia and Herzegovina, Bulgaria, Turkey and Poland illustrate the Venice Commission's commitment e to the consolidation of the Rule of Law and the European constitutional heritage. She underlined the importance of the Venice Commission's activities in these challenging times.

6. Co-operation with the Parliamentary Assembly

Mr Mahoux informed the Commission that the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly had prepared a report on the implementation of judgments of the European Court of Human Rights and identified major problems in nine member states with the highest number of unenforced Court judgments. The Committee had also prepared reports concerning the jurisdictional immunity of international organisations and the rights of their staff. The Monitoring Committee followed the developments concerning the situation of democratic institutions in Poland. Furthermore, in June 2016, the Parliamentary Assembly had adopted a resolution on the functioning of democratic institutions in Turkey, making a number of recommendations concerning in particular the freedom of the press and the High Council of Judges and Prosecutors. The Monitoring Committee of the Parliamentary Assembly, during its meeting in Tirana in September 2016, decided to ask the Venice Commission for an opinion on the overall compatibility of the implementation of the state of emergency in Turkey, in particular all subsequent decree-laws, with the Council of Europe standards. Finally, the Parliamentary Assembly is expected to endorse the Rule of Law Checklist prepared and adopted by the Venice Commission.

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

Mr Jean-Claude Frécon explained that the close co-operation of the Congress with the Venice Commission concerning the chapter on decentralisation in Ukraine had been useful for the Ukrainian authorities. More generally, in the context of decentralisation, the "road maps" signed by the member states which are the subject of post monitoring procedure, contained provisions related to constitutional amendments and extensive references to the Venice Commission's work.

In addition, the Congress' Monitoring Committee had decided to prepare a draft resolution in order to support and promote the Rule of Law Checklist, which will be submitted to the

Congress for adoption. The Commission was also informed of the Congress' work in the electoral field and its interest in the issue of electors, de facto residents in foreign countries, but who are registered in the electoral lists of their home countries. Also, in the framework of the monitoring of the European Charter of Local Self-Government, 11 country visits will be organised by the Monitoring Committee place in 2017. Finally, the Commission was informed that rapporteurs of the Congress visited Turkey in order to examine the situation of mayors who had been dismissed from their duties.

8. Co-operation with the Council of Europe Development Bank

Mr Wenzel explained that the Council of Europe Development Bank (CEB) was the first international financial institution to have taken concrete steps to help its member countries cope with the rapidly intensifying migrant and refugee crisis. The dedicated grant facility which the Bank established in October 2015 (Migrant and Refugee Fund) has been a successful initiative, with contributions received from 17 CEB member states and the European Investment Bank. Further efforts have been made to support the social integration of migrants and refugees in their host countries. The CEB is in close co-operation with the Council of Europe on migration issues and its activities take fully into account the recent resolutions of the Parliamentary Assembly relating to migrants, refugees and dealing with the current crisis; more generally, the CEB's work in this field is in line with the principles and initiatives of the Council of Europe, the European Union and the United Nations. The CEB is also actively involved in the process of EU facility for refugees in Turkey which is entering its implementation phase.

9. Co-operation with the Commissioner for Human Rights

Mr Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, thanked the Commission for the invitation to a first exchange views on issues of common interest and ways to increase synergies between the two institutions.

In his address, the Commissioner highlighted in particular his work on issues of rule of law and of administration of justice and mentioned examples of countries (such as Albania, Poland, the Russian Federation or Turkey) in respect of which, in his dialogue with the state authorities, he had systematically echoed the position taken by the Venice Commission in its Opinions, or had recommended that the Venice Commission be invited to provide a legal opinion on the issue at stake.

The thematic documents adopted by the Commission - the Rule of Law Checklist, the guidelines on peaceful assembly, the study on the democratic oversight of security services - had also served as useful tools for the Commissioner in his action.

The Commissioner further stressed that the work of the two institutions was complementary: based on the high expertise of its members, the Commission can provide an in depth analysis while, on his side, the Commissioner can analyse the broader context and can react in a quick and flexible manner to emerging threats. He expressed his satisfaction with the excellent co-operation, including between the secretariats of the two institutions.

The President thanked the Commissioner and confirmed that, although less apparent, the co-operation between the two secretariats has always been effective and fruitful. He also expressed his conviction that the co-operation between the two institutions could and would be developed even further.

10. Co-operation with the European Union Agency for Fundamental Rights

Mr Michael O'Flaherty, Director of the European Union Agency for Fundamental Rights, thanked the President for the invitation to participate in the Plenary Session. He informed the

Commission of the role of the Agency as an independent body established by the European Union to provide advice to the EU institutions and member states on fundamental rights issues, through surveys, legal opinions and analyses, motions, as well as through the Agency's activities in the field. The migration crisis was an example, where the Agency deployed staff to observe the fundamental rights' situation on the ground and provide expertise and advice where it was needed.

Co-operation with the Council of Europe and its main institutions, especially in the area of fundamental rights, was of key importance for the Agency. In particular, it was essential to favour an approach where the focus is primarily placed on complementarity, enhancing synergies and mutually reinforcing strategies rather than on useless competition.

Mr O'Flaherty underlined the substantial contribution of the Commission to the promotion and enforcement of the rule of law standards, through both its country opinions and more practical tools such as its recent Rule of Law Checklist, highly valued and appreciated by the EU institutions and the member States. In this context, he informed the Commission of on-going related work of the Agency, in particular under the EU Rule of Law Framework.

The members were also informed that the Agency is developing a new platform, a fundamental rights information system, aimed at bringing together findings on fundamental rights from sources such as the Council of Europe, the European Union, the United Nations, as an integrated tool of objective indicators for member states, able to measure compliance with the shared values of democracy, rule of law and fundamental rights.

Finally, Mr O'Flaherty reiterated the importance of the co-operation between the two institutions, and expressed the readiness of the Agency to explore new ways and tools to develop this co-operation. The President thanked Mr O'Flaherty and stressed that the Rule of Law Checklist was an excellent platform for pursuing and strengthening this co-operation.

11. Follow-up to earlier Venice Commission opinions and reports

Rule of Law Checklist (CDL-AD(2016)007)

Ms Granata-Menghini informed the Commission that since its adoption in March 2016, the Rule of Law Checklist had met with great interest. It had been submitted for endorsement to the Parliamentary Assembly, to the Committee of Ministers and to the Congress for Local and Regional Authorities of the Council of Europe. The Committee of Ministers had already endorsed it on 6 September 2016, while the relevant procedures were pending before the other bodies. The Checklist had also been presented at events organised by the European Economic and Social Committee and by the Belgian Ministry of Foreign Affairs in Brussels and at the OSCE/ODIHR Human Dimension Implementation Meeting in Warsaw.

Final Opinion on the revised draft constitutional amendments on the Judiciary (15 January 2016) of Albania (CDL-AD(2016)009)

At the March Plenary Session, the Venice Commission adopted an opinion on Albania which concerned a comprehensive constitutional reform of the judiciary. The reform provided, inter alia, for the vetting of all sitting judges and prosecutors and for a deep reorganisation of two permanent institutions – the High Judicial Council and the High Prosecutorial Council. In its opinion the Commission approved the general direction taken by the reform.

On 21 June 2016, the Albanian Parliament had unanimously adopted the reform.

The text which has been approved is generally consonant with many of the previous recommendations of the Commission. However, as regards the appointment of the members

of the vetting bodies and of the permanent institutions, the system put in place by the amendments is quite complicated. It is to be seen how this complicated system will function in practice.

The next phase of the reform is the adoption of the implementing legislation and the election of the members of the newly created bodies. The first package of 7 laws has been recently voted by Parliament. The opposition supported only one bill out of seven and declared that they will challenge those laws before the Constitutional Court.

Amicus curiae brief for the Constitutional Court of the Republic of Moldova on the Right of Recourse by the State against Judges (CDL-AD(2016)015)

The Commission was informed that the Constitutional Court of the Republic of Moldova had rendered a judgment on 25 July 2016 on the constitutionality of Article 27 of the Moldovan Law no.151 on Government Agent. This judgment took most of the recommendations made by the Commission in its *amicus curiae* brief for this Court on the Right of Recourse by the State against Judges into account.

The impugned Article gives the State the right to recourse action against individuals (including judges) whose actions or inactions have caused or greatly contributed to violations of the European Convention on Human Rights found by a judgment of the European Court of Human Rights, by a friendly settlement imposed on the Republic of Moldova for a case pending before that Court or by a unilateral declaration of the Government of the Republic of Moldova.

The Constitutional Court held that recourse action in itself was not contrary to the Constitution, as long as the independence of judges was guaranteed, since judicial independence is a prerequisite for the rule of law and a fundamental guarantee of a fair trial. It found that Article 27 exceeds the general framework of the liability of judges, because it does not require the existence of a national judicial decision rendered in a separate trial proving the individual's guilt, but is only based on a judgment by the European Court of Human Rights. The Constitutional Court therefore declared Article 27 only constitutional to the extent that recourse action is based on a sentence handed down by separate judicial proceedings at the national level, finding the individual has committed actions or omissions intentionally or through gross negligence, which contributed to the violation of the European Convention on Human Rights.

Joint Opinion on the draft law on changes to the electoral code of the Republic of Moldova (CDL-AD(2016)021); (see also CDL-REF(2016)053)

Mr Garrone informed the Commission that these changes were urgently needed following the decision of the Constitutional Court to revive the constitutional provisions on the direct election of the President of the Republic – which will take place on 30 October and 13 November 2016. The amendments had been adopted on 29 July 2016. The adopted version of the law differed from the draft only on two points, the most important one being the introduction of a cap of 25,000 signatures for the nomination of candidates. The time for revising the draft was very short due to the proximity of the presidential elections, but hopefully the recommendations of the Venice Commission and the OSCE/ODIHR would be taken into account after the elections. One of the controversial issues was the number and location of polling stations abroad; some more would be opened for the next elections.

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 December 2015, the Bulgarian parliament adopted in

July 2016, after a first series of amendments passed in March 2016, a new 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 opinion had also noted that the amendments did not cover the entire judicial system and other important changes were expected, including a reform of the prosecution.

Due to tight domestic deadlines, it was not possible for the Commission to provide an opinion prior to the adoption of the amendments. Nevertheless, following a recent request by the Parliamentary Assembly, the Commission would now assess the Judicial Act, as amended by the two packages of amendments.

Amicus Curiae Brief for the Constitutional Court of Bosnia-Herzegovina on the Compatibility with the non-Discrimination Principle of the Selection of the Republic Day of the Republika Srpska (CDL-AD(2013)027)

In its 2013 *amicus curiae* Brief adopted at the request of the Constitutional Court of Bosnia and Herzegovina (BiH), the Venice Commission expressed the view that, in the specific circumstances of BiH, the selection of 9 January as the Republic Day of the Republika Srpska (RS) was likely to give rise to discrimination against Bosniaks, Croats and others who live in the RS.

In its decision of November 2015, the Constitutional Court of BiH concluded, largely in line with the Venice Commission's position, that the choice of the Republic Day of the RS was unconstitutional, and instructed the National Assembly of the RS to harmonise the concerned provision with the Constitution of BiH. The decision raised strong criticism among political leaders of the RS, who decided to refuse the decision, called on the Court to repeal it and on the BiH Parliament to adopt a new law on the Constitutional Court (inter alia to remove the "foreign" judges). A referendum on whether to retain (or not) 9 January as the day of the Republika Srpska was eventually held on 25 September 2016, in spite of the fact that the Constitutional Court of Bosnia and Herzegovina had declared this referendum unconstitutional and had decided to suspend it.

In his statement issued on this matter, President Buquicchio had expressed his deep concern over the choice to go ahead with the organisation of the referendum in spite of the decisions of the Constitutional Court and stressed that, in a state governed by the rule of law, the judgments of the Constitutional Court are implemented and are not made the subject of a vote, whether in parliament or by the people.

12. Poland

Mr Tuori presented the draft opinion on the Act on the Constitutional Tribunal requested by the Secretary General of the Council of Europe. As compared to the Amendments to the previous Act adopted in December 2015, which had been the object of the Commission's opinion in March, the new Act contained some improvements, notably the majority required for taking decisions in the Constitutional Tribunal had been reduced from two thirds to a simple majority, the quorum had been reduced from 13 to 11 judges and the President of Poland and the Minister of Justice could no longer initiate disciplinary sanctions against the judges of the Tribunal. However, several measures of the new Act, individually and cumulatively, could slow down the work of the Tribunal. Some issues endangered the independence of the Tribunal and its position as final arbiter in constitutional matters. Three judges had the possibility to refer any case to the full bench without the possibility for the full bench to reject such a request. Four

judges could postpone a case for up to six months. The Prosecutor General could block important cases through his or her absence from hearings. The Constitution gave the judges a role in selecting their President but introduced a system whereby candidates could be appointed who did not have sufficient support from the judges. However, the main concern was that the Act gave the executive the power to control the validity of the judgments of the Tribunal. The President of the Tribunal had to make an application to the Prime Minister for the publication of its judgments. Since 9 March 2016, the Prime Minister had already refused to publish judgments and when the Prime Minister did publish judgments she did so on the basis of a provision of the new Act which declared them to be illegal. Finally, the new Act forced the President of the Tribunal to assign cases to the so-called 'December judges'. The President still refused to accept the oath of the judges who had been legally elected in October 2015.

Mr Buquicchio informed the Commission that the delegation of the Polish Government had refused to come to Venice and had sent a position paper full of attacks against the Venice Commission. A discussion ensued in which members insisted that the reaction of the Polish Government to the draft opinion was unacceptable and that the Commission had prepared its opinion in an objective and impartial manner according to its high standards. The Commission would continue to work in this manner. Referring to 'interference in domestic affairs' was a term that reminded of a period long gone. The opinion itself would be a sufficient reply to the position paper by the Polish Government.

Members expressed their dismay about the unparalleled attacks against the Constitutional Tribunal and the attempts of the current majority to change the Constitution without a constitutional majority. European fundamental principles such as the rule of law and the separation of powers also applied to Poland and had to be applied by all state powers, including the Constitutional Tribunal itself. The position of constitutional court judges was becoming delicate not only in Poland but also in other countries.

Mr Varga informed the Commission that he agreed with the opinion in many points but he insisted that the President of Poland had a decisive role in the appointment of the judges of the Tribunal. He was obliged to object to this opinion also because it was a follow-up to the opinion adopted in March to which he had objected. He welcomed that proposals which he had made in the Sub-Commission on Constitutional Justice were partially reflected in the changes proposed by the rapporteurs.

The Commission adopted the opinion on the Act on the Constitutional Tribunal of Poland (CDL-AD(2016)026).

13. Turkey

Ms Omejec explained that by way of constitutional amendment of 12 April 2016, inviolability had been lifted for all pending prosecution requests relating to 139 Members of the Turkish Parliament. However, the normal procedure of lifting immunity which provided ample guarantees had been lifted for all pending prosecution requests relating to 139 Members of the Turkish Parliament. However, the normal procedure for lifting immunity which provided ample guarantees had been kept in place for all future cases. The opposition parties were disproportionately concerned by the amendment. Due to the dire situation of the Turkish judiciary already before the coup but also after it, the lifting of immunity had come at the worst possible moment. The draft opinion welcomed that only inviolability was abrogated while non-liability for statements made in parliament was maintained. Nevertheless, most of the files for which inviolability was removed by the amendment concern offences related to speech, although speech by members of parliament outside parliament, related to offences such as insulting the President, insulting a public officer, terror propaganda or incitement to hatred. The

ECtHR had found numerous violations of the right to freedom of expression in Turkey and the Commission's opinion on certain articles of the Turkish Penal Code (CDL-AD(2016)002), had concluded that these articles provided for excessive sanctions and that they had been applied too widely by the Turkish courts. The opinion found that the amendment was not proportionate. Instead of simplifying its procedure for lifting immunity the Turkish Parliament completely removed all guarantees for the MPs concerned. The amendment was a temporary, "one shot", *ad hoc* and *ad homines* constitutional legislation, concerning 139 individually identifiable deputies. This constituted a misuse of the constitutional amendment procedure. Mr Meridor insisted that governments have to fight terrorism but they have to do so on the basis of the rule of law. The workload of Parliament could not be an excuse for also removing the appeal to the Constitutional Court against the lifting of immunity.

Mr Mustafa Erol, Deputy Under-Secretary at the Ministry of Justice of Turkey, expressed appreciation that the draft opinion condemned the coup. However he regretted that the draft opinion did not take into account that, since July 2015, the PKK terror organisation had started a bloody insurrection against Turkey and some MPs had openly supported the terrorists and had even transported weapons for the PKK. It had been necessary to resort to the exceptional constitutional amendment to avoid social indignation. The constitutional amendment had been adopted with a large majority and the will of this majority had to be respected. By examining whether it was justified to abrogate parliamentary immunity, the draft opinion exceeded the mandate of the Venice Commission. Contrary to the draft opinion, there was full parliamentary non-liability in Turkey and this had not been affected by the amendment. Even if the procedure for the lifting of immunity were simplified, the handling of the 800 files would have taken far too long. The draft opinion stated that most of the files were related to freedom of expression but the MPs whose immunity had been lifted had called for violence. Whether the MPs were guilty or not would be decided by independent courts. The amendment did not result in any limitation of freedom of expression but according Article 10 ECHR all kinds of speech relating to national security and inciting violence and terrorism are out of the scope of freedom of expression. The opinion's assessment doubting the impartiality and independence of the Turkish judiciary was completely subjective. The allegation that prosecutors who had brought the cases against the MPs had themselves been arrested after the coup had been received from a political party and had not been verified with the Ministry of Justice. The amendment was not *ad personam* but it was a general and abstract norm, not targeting a specific political group. As a consequence, there was no violation of the principle of equality.

The Commission adopted the opinion on the suspension of Article 83 of the Constitution of Turkey (Parliamentary inviolability) (CDL-AD(2016)027).

14. Albania

Ms Hermanns presented the draft *amicus curiae* brief, requested by the Constitutional Court of Albania, and informed the Commission that the question raised by the Constitutional Court was whether or not Law no. 133/2015 *"On the treatment of property and finalisation of the process of compensation of property"* was in conformity with the requirements of Article 1 of Protocol No. 1 to the European Convention on Human Rights and the respective case-law of the European Court of Human Rights.

Ms Hermanns reminded the Commission that the restitution of property issue was a longstanding one in Albania, having led to administrative or judicial decisions, which in turn had led to several different situations: (1) Final administrative or judicial decisions containing a specific amount of compensation to be granted, but which had not yet been enforced, indisputably raised a "legitimate expectation" and would not be reassessed under Law no. 133/2015. There was no "interference" in these cases, within the meaning of Article 1 of

Protocol No. 1 to the ECHR, as long as these decisions were duly enforced; and (2) Decisions determining restitution or compensation only on the surface and not on financial worth – did not create a clear legitimate expectation.

Ms Hermanns went on to explain that Law no. 133/2015 introduced a new compensation scheme, which changed the evaluation method that could lead to lower compensation. Even if lower compensation cannot be qualified as formal expropriation, it could qualify as an "*other interference*" under Article 1 of Protocol No.1 to the ECHR. But, since the interference has a clear legal basis in Law no. 133/2015, there seems to be a sufficiently clear and detailed legal basis for the interference at issue. It also seems to pursue a legitimate aim, since Law no. 133/2015 aims to effectively finalise the process of treatment of property through recognition and compensation. Taking into consideration the various problems of an effective completion of restitution and compensation in Albania, the intentions of this Law also appear to be in the public interest within the meaning of Article 1 of Protocol No. 1 to the ECHR. In addition, the interference could be considered proportionate if the financial fund of 50 billion Albanian Leks attributed to the compensation scheme over a period of 10 years has been carefully determined in the light of the state budget as a whole and the Albanian GDP.

The Commission adopted the *Amicus Curiae* brief on the restitution of property in Albania (CDL-AD(2016)023).

15. Armenia

Mr Lappin introduced the second preliminary Joint Opinion by the Venice Commission and the OSCE/ODIHR on the Electoral Code of Armenia as amended on 30 June 2016, which had been sent to the Armenian authorities on 19 July 2016.

Armenia had adopted a revised constitution by a referendum held on 6 December 2015, and moved from a semi-presidential to a parliamentary regime. The new constitution required the entry into force of a new Electoral Code by 1 June 2016. While the new Code had entered into force on that date and the Venice Commission had endorsed a first joint opinion on the last version of the draft code in June 2016, the Minister of Justice had asked for a second opinion on the Code, which would address the Code as amended on 30 June 2016.

An extraordinary Session of the National Assembly was held on 27-30 June 2016, at which two laws were adopted. The first one aimed at improving certain technical aspects of the process through the introduction of a new electronic system; its entry into force was dependent on the adoption before 1 September 2016, of a Central Electoral Commission decision on the availability of relevant financial means; this law however did not enter into force, since no company was available to provide the necessary technical support in the agreed period of time before the next elections. The second law contained amendments which addressed some of the recommendations presented by the Venice Commission and the OSCE/ODIHR in its first Joint Opinion and had entered into force on 30 July 2016.

The new Electoral Code as amended on 30 June 2016 had taken into account a significant number of the recommendations made in the previous opinion, notably:

- The time-period for the formation of political coalitions after the first round of elections had been doubled in order to avoid a second round;
- Access to the stamped voter lists had been made possible (under specific conditions);
- The mandatory test for citizen observers had been removed. The requirement for specific provisions in the charter of the citizen observer organisations to have been in

force for at least three years preceding the elections had been reduced to one year, but regrettably not totally removed;

- The requirement for the President to appoint the acting chairperson or a member of the CEC "in consultation with parliamentary factions" had been added;
- Women's representation had been enhanced by increasing the minimum quotas for each gender on candidate lists;
- The CEC was now obliged to develop and publish training materials for the members of all electoral commissions, specialists, candidates, proxies, observers, and voters.

The first Joint Opinion had recommended reconsidering the restrictions on the number of participants in coalitions. This recommendation, as well as some others of lesser importance had not been followed

The Council for Democratic Elections had added a paragraph to the preliminary opinion on the cancellation of the first law and the signature of a new political agreement on 13 September 2016 by broad consensus.

Ms Arpine Hovhannisyan, Minister of Justice of Armenia, stated that the process of adoption and revision of the electoral code was a success story which had built public trust. Even if the introduction of the planned technical measures had not been possible, a solution had been found, which had led to an agreement including free access to stamped voter lists. Even if not fully in line with international standards, the latter innovation had contributed to ensuring public trust through a large consensus, including civil society. The amendments were pending before parliament.

Ms Hovhannisyan expressed her satisfaction for the fruitful co-operation with the Venice Commission and requested it to prepare two more opinions, on the draft law on the Human Rights Defender and on the draft law on political parties.

The Commission endorsed the second preliminary Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Electoral Code of Armenia (as amended on 30 June 2016), previously endorsed by the Council for Democratic Elections on 13 October 2016 (CDL-AD(2016)031).

16. Azerbaijan

Mr Alivizatos introduced the preliminary opinion on the Draft Modifications to the Constitution of Azerbaijan submitted to Referendum of 26 September 2016, requested by the Bureau of the Parliamentary Assembly on 6 September 2016. Due to the urgency of the matter, the Bureau had authorised the rapporteurs to issue a preliminary opinion. A visit to the country being impossible due to time-constraints, the Secretariat had repeatedly approached the Azeri authorities inviting them to submit written comments on the upcoming reform, but received no reply. The preliminary opinion was made public on 20 September 2016.

The reform had been put to referendum without the involvement of the Parliament, as allowed by the current Constitution; the time-frame was very tight and did not permit any genuine public discussion to take place. The constitutional rules governing the reform were unclear. In 2009 the Venice Commission had already criticised Azerbaijan for the removal of the two-term limitation on the presidential mandate. By the proposed modifications the position of the President is strengthened even further – his term of office is extended to 7 years, he may choose arbitrarily an earlier date for his re-election, may single-handedly appoint and remove Vice-Presidents, dissolve the Parliament at his will (while the Parliament has no real power to remove the Cabinet), etc. All these aspects disturb a proper balance of

powers giving excessive powers to the President. The reform contains nevertheless some positive elements in its human rights component – for example, new rights as well as proportionality are henceforth guaranteed at the constitutional level. However, it also introduces a number of limitations on the rights of political participation, which must be interpreted narrowly by the legislator and the courts.

The Commission heard the address of Mr Shahin Aliyev, Head of Department of Legislation and Legal Expertise, Office of the President of the Republic of Azerbaijan. Mr Aliyev explained that the Azeri authorities had not sent comments to the Venice Commission because the first letter sent by the Secretariat on 7 September 2016 to the Office of the Permanent Representative of Azerbaijan to the Council of Europe in Strasbourg had reached the Presidential Administration in Baku only 4 days later. Mr Aliyev also explained that 12 September was a public holiday in Azerbaijan. On the substance Mr Aliyev explained that constitutional reform was necessary in order to ensure the stability and continuity of the political course in times of economic crisis. He also referred to the examples of some other countries which have a 7-year presidential mandate (as Italy, for example, or France before the reform), or to the powers of other presidents to appoint Vice-President (for example in the USA).

In the ensuing discussion the dangers of “cherry-picking” in constitutional design were emphasised, and the question of the viability of Azerbaijan’s membership of the Council of Europe, with reference to the Greek precedent, was raised. Upon Mr Aliyev’s request, it was decided to make the written comments of Azerbaijan available on the web-site of the Commission.

The Commission endorsed the Preliminary Opinion on the Draft Modifications to the Constitution of Azerbaijan, submitted to the Referendum of 26 September 2016 (CDL-AD(2016)029).

17. Bosnie Herzégovine

Mémoire amicus curiae pour la Cour constitutionnelle de la Bosnie-Herzégovine sur le mode d'élection des délégués à la Chambre des peuples de l’Assemblée parlementaire de la Fédération de Bosnie-Herzégovine

M. Scholsem présente le projet de Mémoire *amicus curiae*, demandé par la Cour constitutionnelle de Bosnie-Herzégovine, dans le sillage d’un contrôle de constitutionnalité portant sur certaines dispositions de la loi électorale de la Bosnie-Herzégovine relatives à l’élection des délégués de la Chambre des peuples à l’Assemblée parlementaire de la Fédération de Bosnie-Herzégovine. Ce projet de Mémoire *amicus curiae* avait également été examiné lors de la sous-commission sur les institutions démocratiques, le 13 octobre 2016.

Il était demandé à la Commission de Venise de répondre à la question de savoir si le mode d’élection des délégués à la Chambre des peuples du Parlement de la Fédération de Bosnie-Herzégovine, notamment la manière complexe de répartition des sièges dans les dix cantons, est compatible avec les principes qui fondent le patrimoine électoral européen, eu égard aux particularités de la situation constitutionnelle et à la décision de la Cour constitutionnelle sur les peuples constitutifs.

M. Scholsem rappelle que la composition de la Chambre des peuples de la Fédération ne doit pas simplement refléter la participation des dix cantons au processus législatif, mais assurer la représentation des peuples constitutifs sur une base paritaire, en faisant en sorte que chacun

d'entre eux dispose du même nombre de représentants, et que la Chambre joue le rôle d'un organe exerçant un droit de veto au sein du pouvoir législatif de la Fédération.

Cette proportionnalité faussée du système électoral pourrait ne pas respecter les principes de l'héritage électoral européen s'il s'agissait d'un organe législatif élu au suffrage direct, mais il est justifiable de ne pas appliquer la notion d'égalité de la force électorale à des composantes spéciales de l'appareil législatif de la Bosnie-Herzégovine instituées pour assurer la représentation des peuples constitutifs et du groupe des « autres ». Le but est légitime car il constitue la base même de la Bosnie-Herzégovine. Il doit être distingué de l'arrêt *Sedjić et Finci* et *Zornić* où il s'agissait d'une exclusion absolue, ce qui n'est pas le cas dans cette requête, car les peuples constitutifs sont tous représentés.

La Commission adopte le Mémoire *amicus curiae* sur le mode d'élection des délégués à la Chambre des peuples de l'Assemblée parlementaire de la Fédération de Bosnie-Herzégovine (CDL-AD(2016)024), préalablement examiné par la sous-commission sur les institutions démocratiques le 13 octobre 2016).

18. Kyrgyz Republic

Mr Esanu presented the joint preliminary opinion on draft amendments to the Constitution of Kyrgyzstan. On the basis of a request from Mr Shikmamatov, Acting Chairperson of the Committee on Constitutional Legislation, State Structures and Regulations of the Kyrgyz Parliament, the OSCE/ODIHR had invited the Venice to prepare a preliminary joint opinion on the draft amendments.

The draft amendments related to constitutional provisions on the status of international human rights treaties and their position in the hierarchy of norms, the separation of powers, the dismissal of members of Cabinet, the manner of appointing/dismissing heads of local state administration, the independence of the judiciary and of judges as well as the roles of the Supreme Court, and of the Constitutional Chamber, among others. The draft amendments would negatively impact the balance of powers by strengthening the powers of the executive, while weakening both the parliament and the judiciary. The role of the Constitutional Chamber as an effective organ of constitutional control would be seriously affected. Some of the proposed amendments raised concerns with regard to key democratic principles, in particular the rule of law, the separation of powers and the independence of the judiciary. This concerned notably reference to vaguely defined 'highest values' in the Constitution, which could be used to restrict human rights and fundamental freedoms. The Provisions on the appointment of the judges of the Constitutional Chamber and the Supreme Court would give wide discretion to the President in their selection. Provisions on mandatory waivers of judges' privacy rights were problematic. The removal of provisions obliging the Kyrgyz authorities to restore the rights of persons following decisions of international human rights bodies which confirm violations of human rights and freedoms, was an important step back.

As already recommended in the 2015 Joint Opinion, the constitutional procedure for amendments should be followed (adoption by a two-thirds majority and only following at least three readings with a two months' interval between).

Mr Tekebaev insisted that with its opinion the Venice Commission was not interfering in internal affairs. The amendments had been prepared in secret. Following his request for an opinion, Mr Shikmamatov had been pushed out of his position. The authorities saw the rule of law as a danger for the exercise of their power. The 'higher values' had been introduced' in the Constitution to restrict freedoms. Kyrgyzstan was on the way to a totalitarian system.

Mr Tekebaev was grateful to the OSCE/ODIHR and the Venice Commission and expressed his hope that the opinion would have significant impact in Kyrgyzstan.

The Commission endorsed the preliminary joint opinion by the Venice Commission and the OSCE/ODIHR on the introduction of amendments and changes to the Constitution of the Kyrgyz Republic (CDL-AD(2016)025).

19. Spain

The examination of the opinion on amendments to the Organic law on the Constitutional Court of Spain had been postponed to a forthcoming session by decision of the Commission's Bureau.

20. « The former Yugoslav Republic of Macedonia »

Mr Vilanova Trias introduced the draft joint opinion by the Venice Commission and the OSCE/ODIHR on the Electoral Code of "the former Yugoslav Republic of Macedonia" as amended on 9 November 2015. The Code had been amended in November 2015 following a political agreement (the "Przino agreement"). Early elections were previously scheduled to be held in spring but had been postponed twice; they were now scheduled for 11 December 2016.

The amendments addressed a number of recommendations raised in previous opinions of the Venice Commission and OSCE/ODIHR, as well as in election observation reports of the OSCE/ODIHR, including on the principle of equal suffrage for out-of-country voting, the composition and competences of the State Election Commission, the level playing field in terms of media coverage during the election period, the party and campaign finance reporting and auditing, the deadlines for courts to decide on electoral disputes, procedures to enhance the accuracy of voter lists and mechanisms for promoting women's participation as candidates.

However, a number of previous Venice Commission and OSCE/ODIHR recommendations remained unaddressed and some gaps and ambiguities needed to be eliminated. The Code would benefit from a complete review in order to harmonise it internally and with other relevant laws. Key recommendations pertaining to parliamentary elections that remained to be addressed included:

- Candidate registration, especially those related to signature collection;
- Dismissal of members of the election administration;
- Restrictive campaign regulations related to the length of the campaign, and to the broad definition of campaign activities;
- Public hearings on complaints and appeals;
- Periodic reallocation of seats or review of district boundaries by an independent body.

It had to be underlined once more that a successful electoral reform is built on at least the following three elements: 1) clear and comprehensive legislation that meets international standards and addresses prior recommendations; 2) adoption of legislation by broad consensus after extensive public consultations with all the stakeholders; 3) political commitment to fully implement the electoral legislation in good faith. The revised code reflected consensus between the major political parties and this had to be welcomed.

Mr Paasivirta informed the Commission that the early parliamentary elections, which were an essential part of the Przino agreement, had been facilitated by Commissioner Hahn and

members of the European Parliament. It was essential that the electoral process be credible, which implies preventing voter intimidation, separating state and party activities and a balanced media reporting. The reforms recommended had to take place in a timely manner rather than on the eve of the elections themselves.

Mr Lappin informed the Commission that the OSCE/ODIHR would be observing the upcoming elections and deploy a mission at the end of the month.

The Commission adopted the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Electoral Code of "the former Yugoslav Republic of Macedonia" as amended on 9 November 2015, previously adopted by the Council for Democratic Elections on 13 October 2016 (CDL-AD(2016)032).

21. Publication of lists of voters having participated in elections

Mr Endzins introduced the draft interpretative declaration of the Code of Good Practice in Electoral Matters on the publication of the lists of voters having participated in elections, prepared by the secretariat and adopted by the Council for Democratic Elections. The background to this document was the request made by electoral stakeholders, in particular in Armenia, to have such lists published in order to prevent the impersonation of voters who were on the list but did not vote, in particular because they were *de facto* abroad. In short, the draft interpretative declaration was in favour of meaningful access to the lists of voters having participated in elections but not of their publication.

The Commission adopted the interpretative declaration of the Code of Good Practice in Electoral Matters on the publication of lists of voters having participated in elections, previously adopted by the Council for Democratic Elections on 13 October 2016 (CDL-AD(2016)028).

22. Report of the meeting of the Council for Democratic Elections (13 October 2016)

Mr Darmanovic informed the Commission about the results and conclusions of the meeting held on 13 October 2016. The Council had endorsed the second preliminary Joint Opinion on the Electoral Code of Armenia (as amended on 30 June 2016) (item 15) and adopted the Joint Opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia" as amended on 9 November 2015 (item 20) as well as the interpretative declaration on the publication of lists of voters having participated in elections (item 21).

Several other issues had been discussed, such as the meeting with representatives of the working group on electoral reform of Ukraine held in Strasbourg in June, the OSCE/ODIHR's activities, in particular relating to election observation and the publication of handbooks, and the preparation of a report on the misuse of administrative resources by the Congress of Local and Regional Authorities.

23. Ukraine

Mr Esanu explained that the Opinion on two draft laws of Ukraine on guarantees for freedom of assembly had been requested by the Speaker of the Verkhovna Rada. He observed that the draft opinion under discussion would be the fifth opinion of the Venice Commission concerning freedom of assembly in Ukraine and expressed the hope that the Ukrainian

authorities would finally adopt a law on assemblies, taking into consideration the Venice Commission's recommendations both in this and previous relevant opinions.

Both draft laws contained similar provisions, from both a structural and substantive point of view, which is why the rapporteurs had decided to combine the assessments concerning both drafts. There is a legislative gap in the Ukrainian legislation concerning the organisation and conduct of assemblies. It was up to the Ukrainian authorities to fill this gap, either by enacting a specific law on assemblies or by amending the existing legislation in order to introduce rules on assemblies; nonetheless, the substance of the observations and recommendations of the Venice Commission remained applicable in either case. The Joint Opinion mainly recommended that some clarification be made concerning the definition of assembly in the Draft Laws, that content-based restrictions should be excluded and that exceptions to the rule that only courts may order restrictions to the freedom of assembly be introduced.

In the subsequent discussion, it was also pointed out more generally that, since in practice the term "assemblies" covers various "events" which may be very different from each other, it would be important that the legislative provisions contain precise definitions clarifying to what kind of events the term "assembly" refers.

The Commission adopted the Joint Opinion on Two Draft Laws on Guarantees for Freedom of Peaceful Assembly of Ukraine (CDL-AD(2016)030).

24. Co-operation with other countries

Japon

M. Shinsuke Shimizu, Ambassadeur, Consul Général du Japon, rappelle à la Commission que la première participation du Japon à la Commission de Venise en tant qu'observateur a eu lieu en 1993 – avant même qu'il devienne observateur au Conseil de l'Europe en 1996.

M. Shimizu explique que le Japon est profondément attaché à l'état de droit, et que son pays apprécie les avis de la Commission tant par leurs thématiques que par les méthodes de travail de la Commission, qui, suite à des débats approfondis et objectifs et en maintenant un dialogue étroit avec les pays concernés, parvient à des éléments de solution fidèles aux principes mais adaptés à la réalité.

M. Shimizu informe la Commission qu'en 2015 M. Buquicchio et M. Markert avaient rencontré au Japon le Président de la Cour suprême et des hauts fonctionnaires ; Mme Granata-Menghini aurait bientôt l'occasion de rencontrer des représentants du Ministère des affaires étrangères du Japon afin de discuter de l'adhésion possible du Japon à la Commission de Venise. Il y avait un intérêt pour l'adhésion à la Commission de Venise, mais pas dans l'immédiat pour des raisons budgétaires.

M. Shimizu rappelle que la Constitution du Japon, inchangée depuis 1946, est source de stabilité. La possibilité d'une réforme de la constitution a été évoquée, mais la procédure d'amendement est très lourde, avec une adoption par chaque chambre du parlement avec une majorité qualifiée, suivie d'un référendum avec la majorité du peuple.

M. Buquicchio souliogne que la présence de M. Shimizu à la plénière était un geste de la part du Japon envers un renouement avec la Commission de Venise et encourage le Japon à devenir membre de plein droit de la Commission.

Maroc

M. Neppi Modona informe la Commission que depuis 2014, lorsque la Commission de Venise avait donné un avis informel sur deux projets de lois organiques – le premier sur le Conseil Supérieur du Pouvoir Judiciaire et le deuxième sur le Statut des magistrats – les autorités marocaines ont fait des progrès très importants dans la démocratisation du système judiciaire. Ces deux lois ont été promulguées en 2015 et prennent en compte partiellement les recommandations faites par la Commission.

La dernière mission au Maroc, qui a eu lieu en septembre dernier, avait été organisée en coopération avec la Commission Européenne pour l'Efficacité de la Justice (CEPEJ), le Conseil consultatif de juges européens (CCJE) et le Conseil consultatif de procureurs européens (CCPE) sur la mise en place de la loi sur le Conseil supérieur du pouvoir judiciaire, notamment le règlement intérieur de ce nouveau Conseil, ainsi que des relations entre le Conseil et le ministère de la Justice et le service d'inspection au sein du nouveau Conseil.

Lors de cette mission, la délégation de la Commission avait remarqué que la procédure disciplinaire, prévue dans la loi organique, avait des aspects inquisitoires. En effet, le magistrat du Conseil qui procède aux investigations en qualité de rapporteur participe également à la décision finale et que tous les membres du Conseil participant aux décisions préliminaires sont les mêmes que ceux qui prennent la décision finale. Afin de corriger cet aspect sans modifier la loi organique, il faudrait que la décision finale soit confiée seulement aux membres du Conseil n'ayant pas participés aux enquêtes et investigations et n'ayant pas pris des décisions dans les phases préliminaires de la procédure disciplinaire.

Les autorités marocaines n'ont pas sollicité d'avis de la Commission à ce sujet, mais la délégation de la Commission a eu l'occasion de signaler ces points critiques à la délégation de l'Union Européenne sur place, qui gère un programme d'appui sectoriel à la réforme de la justice au Maroc.

M. Correia ajoute que lors de cette dernière mission au Maroc, il avait été souligné qu'il est important que le Conseil soit indépendant, ce qui est garanti par l'article 109 de la Constitution du Maroc. Il explique que la réforme judiciaire avançait bien, mais qu'il serait tout de même nécessaire de partager des informations sur les standards du Conseil de l'Europe et notamment de la Commission de Venise et sur les bonnes pratiques sur l'indépendance judiciaire avec les autorités du Maroc.

25. Information on constitutional developments in other countries

Chile

Mr Romero Guzman informed the Commission about the preparation of a comprehensive reform of the 1980 Constitution, which had been adopted under the military regime and since then had undergone many patchwork amendments.

The preparation of a new text of the Constitution is backed by President Michelle Bachelet (social-democrat); this process is driven by the search for a new legitimacy through wide public participation, a re-definition of the economic model on which the State is based (instead of an overtly liberal model enshrined in the current Constitution). Groups of experts are working with the population throughout the country trying to identify popular ideas about the future of the society and the State. However, the current constitutional framework only provides for a partial amendment of the Constitution, therefore it is unclear how a completely new text may be put to the vote. It is a slow and incremental process.

Greece

Mr Alivizatos informed the Commission about the reform, launched by Prime-Minister Tsipras.

The current Constitution is based on a nearly-ideal Westminster model (majoritarian, unicameral, centered on Cabinet); however, in 2010 the two old major political parties lost much of their popularity, the government is now coalition-based. The main issues for Prime-Minister Tsipras are governmental accountability and the independence of the judiciary. The Syriza-led Government declare as their aim to take the power from the technocrats and give it back to the people and elected politicians. They suggest proportional representation, direct election of the President, a limit on the re-election of MPs (2 mandates maximum), new possibilities for the referendum (to initiate new laws or to put a veto on laws already adopted by Parliament, as well as to approve any future limitation of national sovereignty by international treaties and bodies).

Monaco

M. Didier Linotte, Président du Tribunal suprême de Monaco, informe la Commission que la Principauté de Monaco est un pionnier en matière de justice constitutionnelle en Europe. Dès son établissement en 1911, le Tribunal suprême était compétent pour contrôler la constitutionnalité des lois ainsi que de tout acte public par rapport à l'ensemble de la hiérarchie des normes. Ce contrôle s'exerce par recours direct en annulation. L'annulation peut être totale ou partielle, mais le Tribunal peut aussi émettre des réserves d'interprétation. L'accès au Tribunal est très large. Il est ouvert aux personnes naturelles et juridiques, les citoyens et les étrangers y inclus les non-résidents.

Le 19 juin 2015, la procédure du Tribunal a été réformée et modernisée pour encore mieux garantir le délai raisonnable Avec cette réforme, le Tribunal a obtenu son autonomie budgétaire. L'inamovibilité des juges, qui existait déjà en pratique a été inscrite dans les textes. L'égalité des armes a été améliorée. La procédure contradictoire a été élargie aux mesures d'instruction pour rendre plus rapide la procédure principale. La procédure prend en moyenne seulement 10 mois.

D'autres réformes au Monaco concernent la sécurité interne et notamment l'écoute administrative.

Slovak Republic

Mr Buquicchio reminded the Commission that in March 2016 it had adopted a declaration that inter alia expressed concern that vacancies at the Constitutional Court of Slovakia had not been filled.

On behalf of Mr Kiska, President of Slovakia, Mr Ján Mazák, legal advisor of the President, informed the Commission that in 2011 the previous President, Mr Gasparovic had refused to appoint the candidate elected for the position of Prosecutor General, Mr Czernec. In that case, the Constitutional Court had given Interpretation 4/2012 of the Constitution in which the plenum of the Court decided that the President had been entitled to refuse that appointment. On the basis of that interpretation, which, in the President's opinion, applied also to the appointment of judges of the Constitutional Court, in 2014, President Kiska appointed only one out of six candidates elected by Parliament for three vacancies at the Court. The rejected candidates appealed to the Constitutional Court. A chamber of the Court decided that that Interpretation 4/2012 was not applicable in their case. However, a chamber of the Court could not contradict the Interpretation 4/2012 given by the plenum of the Court and President Kiska was therefore entitled to reject candidates.

Ms Baricova explained that the plenum of the Constitutional Court had not accepted the arguments of the President of Slovakia. The Court would be able to provide the Venice Commission with all relevant decisions and audio recordings.

A general discussion ensued on the role and position of constitutional court judges, democratic legitimacy or the procedures for their appointment, the independence of the constitutional courts and the separation of powers.

Mr Buquicchio informed the Commission that the Minister of Foreign Affairs of Slovakia had invited him to come to Bratislava to discuss this situation. The visit could take place in November.

United Kingdom

Mr Clayton informed the Commission on the “Brexit” referendum that took place on 23 June 2016. He explained that the turnout for this referendum was very high: 71.8%, with more than 30 million people voting. Out of these, 51.9% voted to leave the EU and 48.1% voted to stay in the EU. Three areas voted to stay in the EU: Scotland, Northern Ireland and London.

Mr Clayton explained that the referendum was based on a simple “yes/no” question to whether or not the UK should stay in the EU. There were no plans as to what would happen should the referendum be in favour of leaving the EU. Prime Minister Theresa May took office following the Brexit referendum. The former home secretary took over from David Cameron, who had resigned the day after losing the referendum.

Mr Clayton also explained that in 2011, the Government at the time had said that referendums were not binding, but consultative. Prime Minister May has now said that "Brexit means Brexit", but to date there is still much debate about what this means in practice, especially on such issues as how British firms do business in the EU and what curbs are brought in on the rights of EU nationals to live and work in the UK.

Discussions ensued on the referendum results, which showed a generational gap between the young, who voted to remain in the EU, and the older generation, who voted to leave. The issue on whether Scotland would be holding a second referendum regarding its independence as well as whether triggering Article 50 should require an act of Parliament were also discussed.

26. Compilations of Venice Commission opinions and reports

Mr Helgesen presented the compilation of Venice Commission opinions and reports on Freedom of Expression proposed for endorsement at the Plenary Session.

The Commission endorsed the compilation of Venice Commission opinions and reports on Freedom of Expression (CDL-PI(2016)011).

27. Other business

Members were reminded of a request by the Secretariat to provide information on the legislation and practice on funding, especially from foreign sources, of associations of their respective countries. They were kindly requested to provide such information before the end of October 2016.

28. Dates of next sessions

The schedule of sessions for 2016 was confirmed as follows:

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