



Strasbourg, 20 December / décembre 2017

CDL-PL-PV(2017)004

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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

113th PLENARY SESSION
Venice, Scuola Grande di San Giovanni Evangelista
Friday, 8 December 2017 - Saturday, 9 December 2017

113^e SESSION PLÉNIÈRE
Venise, Scuola Grande di San Giovanni Evangelista
Vendredi 8 décembre 2017 - Samedi 9 décembre 2017

SESSION REPORT

TABLE OF CONTENTS/TABLE DES MATIERES

1.	Adoption of the Agenda.....	4
2.	Communication by the President.....	4
3.	Communication from the Enlarged Bureau	4
4.	Communication by the Secretariat.....	4
5.	Election of the President, 3 Vice-Presidents and 4 members of the Bureau as well as of the Chairs and Vice-Chairs of the Sub-commissions.....	4
6.	Co-operation with the Committee of Ministers.....	5
7.	Co-operation with the Parliamentary Assembly.....	6
8.	Co-operation with the Congress of Local and Regional Authorities of the Council of Europe	7
9.	Follow-up to earlier Venice Commission opinions.....	7
	<i>Opinion on Article XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education of Hungary</i>	<i>7</i>
	<i>Opinion on the draft revised Constitution of Georgia as adopted by the Parliament of Georgia at the second reading on 23 June 2017</i>	<i>8</i>
	<i>Amicus Curiae Brief for the Constitutional Court of Albania on the Law on the Transitional Re-evaluation of Judges and Prosecutors (The Vetting Law)</i>	<i>8</i>
	<i>Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey.....</i>	<i>8</i>
	<i>Opinion on questions relating to the appointment of judges of the Slovak Republic.....</i>	<i>9</i>
10.	Armenia	9
11.	Poland	10
	<i>Compatibility with Council of Europe standards on the Rule of Law of the Polish Law on the Ordinary Courts Organisation, and two draft laws on amending the Law on the National Council of the Judiciary and the Supreme Court of Poland.....</i>	<i>10</i>
	<i>Opinion on the Act on the Public Prosecutor's Office</i>	<i>12</i>
12.	Ukraine	12
13.	Report on Constituency delineation and seat allocation	13
14.	Republic of Moldova.....	14
	<i>Joint opinion on the Legal framework of the Republic of Moldova governing the funding of political parties and electoral campaigns</i>	<i>14</i>
	<i>Follow-up to the Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova.....</i>	<i>15</i>
	<i>Avis sur la proposition d'un nouveau texte de l'article 37 de la loi sur l'Avocat du Peuple (Ombudsman) de la République de Moldova</i>	<i>16</i>
15.	"The former Yugoslav Republic of Macedonia"	16
	<i>Three draft laws of "the former Yugoslav Republic of Macedonia" on the abolition of the Council for the Establishment of Facts, on amendments to the Law on the Judicial Council and on amendments to the Law on Witness protection.....</i>	<i>16</i>
16.	Développements constitutionnels au sein des Etats observateurs.....	17
	<i>Japon.....</i>	<i>17</i>
17.	Information on constitutional developments in other countries	17
	<i>Spain</i>	<i>17</i>
	<i>Roumanie.....</i>	<i>18</i>
18.	Co-operation with other countries.....	19
	<i>Mexique.....</i>	<i>19</i>

19.	Co-operation with Group of States against Corruption (GRECO)	19
20.	Information on Conferences and Seminars.....	20
	<i>UniDem-Med Seminar (Algiers, 7-8 November 2017);</i>	20
	<i>World Forum for Democracy 2017 (Strasbourg, 8-10 November 2017);</i>	20
	<i>Regional Conference on “Misuse of Administrative Resources during Electoral Processes: a major challenge for Democratic Elections” (London, 9-10 November 2017)</i>	20
	<i>VII International Congress of Comparative Law “the national and the universal in law: from traditions to postmodernism” (Moscow, 1-2 December 2017)</i>	20
21.	Report of the meeting of the Council for Democratic Elections (7 December 2017).....	21
22.	Report of the joint meeting of the Sub-Commission on Working Methods and the Scientific Council (7 December 2017)	21
23.	Information on the Association of former Venice Commission members	21
24.	Other business	22
25.	Dates of the next sessions.....	22

1. Adoption of the Agenda

The agenda was adopted without any amendments (CDL-PL-OJ(2017)004ann).

2. Communication by the President

The President welcomed members, special guests and delegations. He then presented his recent activities, as indicated in document [CDL\(2017\)042](#).

3. Communication from the Enlarged Bureau

The Commission was informed that at its meeting on 7 December 2017, the Enlarged Bureau had taken note of the adoption of the budget according to the principle of zero nominal growth, contrary to the proposal of the Secretary General of the Council of Europe for 0.5% nominal growth. The global budget of the Venice Commission for the years 2018 and 2019 would thus remain the same, however the funds available for its operational activities would decrease by € 60 000. The resulting gap might be compensated by voluntary contributions by member states and the EU. That said, there remained two important uncertainties, namely the question of whether the Russian Federation would again pay its contribution (which it had suspended in 2017) and whether Turkey's decision no longer to be a major contributor to Council of Europe budgets would already take effect in 2018.

Furthermore, the Enlarged Bureau had decided to keep the draft opinion on judicial reform bills of Poland on the agenda of the 113th plenary session, given the fact that two of the three bills in question were pending before Parliament and the adoption of the Commission's opinion would therefore be particularly useful at the present moment.

4. Communication by the Secretariat

The Secretary of the Commission gave practical information about the session.

5. Election of the President, 3 Vice-Presidents and 4 members of the Bureau as well as of the Chairs and Vice-Chairs of the Sub-commissions

At its October session, the Commission had elected a Committee of Wise Persons, composed of Mr Bartole, Mr Esanu, Ms Hermanns and Ms McMorrow, to prepare the elections.

At the beginning of the Plenary Session, Mr Bartole explained that the Committee had met on 27 November, and had reached a consensus on the proposals. As concerned the candidates, the Committee had taken into account: experience, seniority and the degree of contribution to the Commission's work. A list of candidatures proposed by the Committee of Wise Persons was subsequently distributed to all members.

On the following day, the Wise persons underscored that these were organisational, not political elections. The proposals could not fully match the gender equality objectives due to the regrettable underrepresentation of women on the Commission. They also stressed that their proposals, based in part on spontaneous declarations of interest by the members, did not prevent any member from expressing his or her candidature at this stage.

The Commission then proceeded with the elections. It elected for a term of two years:

Mr G. Buquicchio (Italy) as President;
Ms H. Kjerulf Thorgeirsdottir (Iceland) as First Vice-President;
Ms V. Bílková (Czech Republic) and Mr M. Frendo (Malta) as Vice-Presidents;

Ms C. Bazy-Malaurie (France), Mr J. M. Castella Andreu (Spain), Mr I-W. Kang (Republic of Korea) and Ms T. Khabrieva (Russian Federation), as members of the Bureau;

The Chairs of the Sub Commissions and Councils as follows:

Mr J. Helgesen (Norway) (Scientific Council)
Mr B. Vermeulen (Netherlands) (Fundamental Rights);
Ms R. Kiener (Switzerland) (Federal State and Regional State);
Mr I. Cameron (Sweden) (International Law);
Mr J. Velaers (Belgium) (Protection of Minorities);
Mr R. Barrett (Ireland) (Judiciary);
Mr K. Tuori (Finland) (Democratic Institutions);
Mr R. Clayton (United Kingdom) (Working methods);
Mr J.L. Sardon (Peru) (Latin America);
Mr G. Jeribi (Tunisia) (Mediterranean Basin);
Mr W. Hoffmann-Riem (Germany) (Rule of Law);
Ms L. Err (Luxembourg) (Gender Equality);
Mr C. Grabenwarter (Austria) (Constitutional Justice¹);

The President of the Council for Democratic Elections²: Mr O. Kask (Estonia);

The Vice-Chairs of the Sub Commissions and Councils (without representation on the Enlarged Bureau) as follows:

Mr O. Can (Turkey) (Scientific Council);
Mr P. Dimitrov (Bulgaria) (Fundamental Rights);
Ms S. Cleveland (United States of America) (Federal State and Regional State);
Mr A. Varga (Hungary) (International Law);
Mr A. Endziņš (Latvia) (Protection of Minorities);
Ms J. Omejec (Croatia) (Judiciary);
Mr D. Meridor (Israel) (Democratic Institutions);
Mr P. Vilanova Trias (Andorra) (Working methods);
Ms J. Otálora Malassis (Mexico) (Latin America);
Mr M. Medelci (Algeria) (Mediterranean Basin);
Mr S. Holovaty (Ukraine) (Rule of Law);
Ms A. Anastas (Albania) (Gender Equality)
Mr Z.M. Knežević (Bosnia and Herzegovina) (Constitutional Justice);

Mr Buquicchio thanked the Commission for the trust it had expressed through his re-election. Ms Suchocka expressed her special appreciation for Mr Buquicchio's achievements and endeavours as President of the Commission.

6. Co-operation with the Committee of Ministers

Ambassador Emil Ruffer, Former Chair of the Ministers' Deputies, Permanent Representative of the Czech Republic to the Council of Europe, drew attention to current threats to the constitutional systems in several member states and he emphasised the pivotal role of the Venice Commission in ensuring respect of the Rule of Law. He reported on a number of events organised under the recent Czech chairmanship of the Committee of

¹ Also Co-Chair of the Joint Council on Constitutional Justice. The other Co-Chair is elected by the liaison officers.

² The Vice-President will be elected by the Council from among the representatives of the Assembly and the Congress.

Ministers which were aimed at strengthening the Rule of Law. He referred, in particular, to an event on the binding effect of judicial decisions, a seminar on the impact of immunities on the Rule of Law and a conference on lessons learnt from GRECO's 4th Evaluation Round dealing with corruption prevention in respect of MPs, judges and prosecutors.

Ambassador Dmytro Kuleba, Permanent Representative of Ukraine to the Council of Europe, thanked the Venice Commission for its significant contribution in recent years to the reform process in Ukraine, most notably to the judicial reforms which included important constitutional amendments. He informed the Commission that as part of this on-going process, the reformed Supreme Court would be inaugurated the following week. He also stressed Ukraine's commitment to implementing the Commission's recent recommendations on the establishment of a High Anti-corruption Court.

Ambassador Keith McBean, Permanent Representative of Ireland to the Council of Europe, underlined that the Venice Commission was a success story which since Ireland's accession in 1990 had always received his country's full support. He noted that today its core functions were more relevant than ever and that respect of the Rule of Law was a remaining challenge, including in mature democracies.

The President thanked the representatives of the Committee of Ministers for their constructive words and acknowledged the fruitful co-operation with the member States, including through the designation of highly competent and committed members of the Commission.

7. Co-operation with the Parliamentary Assembly

Ms Brasseur, former President of the Parliamentary Assembly, informed the Venice Commission that the Assembly had elected a new President who would complete the term of the President who had resigned. The work of the investigation Commission headed by Sir Nicholas Bratza would be presented in Spring 2018. This would hopefully enable the Assembly to focus once again on its substantive work rather than its own workings. She highlighted the excellent co-operation between the Parliamentary Assembly and the Venice Commission as concerns election observation missions. In 2017, the Commission had participated in such missions in Armenia, Serbia, Bulgaria, Albania, Kyrgyzstan and Turkey (referendum). The legal advice of the members of the Venice Commission and their input during the discussion of the draft statements was a real added value. Another field of co-operation concerned conferences on electoral issues, such as the regional conference on the misuse of administrative resources during electoral processes on 9-10 November 2017. During that conference, many dangers of such misuse had been identified and possible remedies were discussed. Members of the Assembly participating in the conference supported the preparation of a report of the Assembly on that topic. This work would be done in close co-operation with the Venice Commission and the Congress. The Venice Commission's opinions were the legal basis for the preparation of the reports by the Assembly.

M. Mahoux, membre de la Commission des Questions juridiques et des droits de l'homme, informe les participants que cette Commission a adopté un rapport sur l'immunité de juridiction des organisations internationales et droits des personnels et un avis sur le protocole portant amendement à la Convention sur le traitement automatisé des données. Elle a tenu des discussions sur les circonstances du meurtre de Boris Nemtsov, sur une possible future convention sur la profession d'avocat, sur la confiscation des avoirs illicites du crime organisé et sur les problèmes juridiques posées par la guerre hybride.

En plus des rapports d'examen périodique sur l'Islande, l'Estonie et l'Irlande, la Commission de suivi a présenté un rapport sur le fonctionnement des institutions démocratiques en Azerbaïdjan.

Outre un rapport sur des crimes contre l'humanité commis par Daech et un rapport sur les situation des droits de l'homme en Azerbaïdjan, lors de sa dernière session plénière l'Assemblée a adopté le rapport de M. Mahoux sur la Liste des critères de l'état de droit de la Commission de Venise. Ce rapport a été débattu conjointement avec celui de M. Fabritius sur les nouvelles menaces contre la primauté du droit, qui appliquait ces critères à des exemples concrets en Bulgarie, Moldova, Pologne, Roumanie et Turquie en faisant référence aux avis respectifs de la Commission de Venise. Un amendement apporté à ce rapport contenait une nouvelle demande d'avis sur les lois polonaises affectant l'indépendance judiciaire. La Commission de suivi utilisera cet avis.

M. Buquicchio remercie chaleureusement Mme Brasseur et M. Mahoux, qui ne représenteront plus l'Assemblée parlementaire de leur excellente coopération.

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

Mr Leen Verbeek, Chair of the Congress' Monitoring Committee, informed the Commission that his Committee had extended the monitoring of local and regional democracy for one year. The Congress adopted a resolution on the suspension of the Vice-President of the Chamber, the Mayor of Chisinau. A recall referendum had taken place on 19 November but there had been a participation rate of only 17.53 per cent, making the referendum invalid. The Congress had requested an opinion from the Venice Commission on the conformity of the recall referendum with international standards and good practice. In co-operation with the OSCE/ODIHR, the Congress had observed local elections in "the former Yugoslav Republic of Macedonia" and in Georgia. The Monitoring Committee and the Congress' Plenary Session would debate the report on the local integration of migrants and IDPs. The Congress' participation in the London conference on the abuse of administrative resources as well as its Checklist on this topic had been an example of the good co-operation between the Congress and the Venice Commission. On 15 November 2017, the 3rd Summit of Mayors had adopted the Barcelona Declaration on radicalisation. In the framework of its co-operation with the South Mediterranean countries, the Congress had organised a colloquium in Rabat on regionalisation and decentralisation of government.

9. Follow-up to earlier Venice Commission opinions

The Commission was informed on follow-up to:

Opinion on Article XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education of Hungary ([CDL-AD\(2017\)022](#))

The Act XXV of 2017 of 4 April 2017 amending the 2001 Hungarian National Tertiary Education Act introduced new, more restrictive requirements for the licensing and operation of foreign universities in Hungary. The new rules had a particular impact on the functioning and the actual existence of the Central European University (CEU), a widely-reputed university legally operating in Hungary for many years.

In its Opinion, the Venice Commission acknowledged that, in the absence of unified European norms in the field, it belongs to each state to establish the most appropriate regulatory framework for foreign universities on its territory. Yet, introducing, without very strong reasons, more restrictive rules for already operating universities appeared problematic in the light of the rule of law and fundamental rights principles. The Opinion had thus recommended: exempting operating universities from the requirement of a prior agreement with their home state and from the campus obligation, removing the name-related prohibition and the new restrictions on programme-co-operation, as well as a non-discriminatory and flexible application of the new work permit requirements. The Commission also recommended more flexible implementation

deadlines, essential for the success of the negotiations that were underway and to enable the concerned universities to take the necessary steps to comply with the new regulations.

The Commission was informed that, on 17 October 2017, the Hungarian Parliament amended the 2017 Higher Education law to extend the deadline for foreign universities operating in the country to meet the new requirement to 1 January 2019.

Mr Gussetti further informed the Commission that on 7 December the European Commission had referred Hungary to the European Court of Justice of the EU on the grounds that its Higher Education Law as amended on 4 April 2017 disproportionately restricts EU and non-EU universities in their operations and needs to be brought back into line with EU law.

Opinion on the draft revised Constitution of Georgia as adopted by the Parliament of Georgia at the second reading on 23 June 2017 ([CDL-AD\(2017\)023](#))

During the October Plenary Session, the Venice Commission examined the draft revised Constitution of Georgia which was adopted by the Parliament at the second hearing in June 2017. It reiterated its previous general positive assessment made during the June plenary Session about the constitutional reform but regretted the postponement of the entry into force of the proportional election system to October 2024.

On 26 September the Parliament of Georgia adopted at the third hearing the draft revised Constitution. On 10 October, the President of the Republic vetoed the constitutional bill and asked for the introduction of fully proportional election system in 2020, the abolition of the bonus system and allowing election blocs. On 13 October, the Parliament overrode presidential veto with 117 votes and adopted the constitutional amendments. The revised constitution would enter into force in 2018.

Currently the parliamentary majority was planning to adopt a new round of constitutional amendments following the Commission's recommendation in October. According to the Speaker of Parliament, two hearings would be held by the end of 2017 and the new amendments would be voted in the third hearing in March 2018.

Amicus Curiae Brief for the Constitutional Court of Albania on the Law on the Transitional Re-evaluation of Judges and Prosecutors (The Vetting Law) ([CDL-AD\(2016\)036](#))

In 2015 and 2016 the Venice Commission issued two opinions on the constitutional reform of the Albanian judiciary. Later in 2016, at the request of the Constitutional Court, the Venice Commission prepared an *amicus curiae* Brief on one of the laws implementing the constitutional reform – the “Vetting law”. This law provided for a comprehensive vetting of all Albanian judges and prosecutors by newly created bodies, under the control of international observers. This law was challenged by the National Association of Judges and the Union of Albanian Judges before the Constitutional Court; however, on 30 October the Constitutional Court rejected the complaint, so the vetting may now continue. The reasons for the rejections were not known to date.

Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey ([CDL-AD\(2016\)002](#))

During its March 2016 Session, the Venice Commission adopted an Opinion on a number of provisions of the Turkish Penal Code, including Article 314 concerning membership of an armed organisation. In its Opinion the Venice Commission also examined the application of Article 314 (membership of an armed organisation) in conjunction with its Article 220(6). According to the latter provision, any person who commits an offence on behalf of an

organisation shall also be sentenced for the offence of being a member of that organisation, although his/her organic relationship with an armed organisation is not established. In its Opinion, the Venice Commission considered that Article 314 as applied in conjunction with Article 220 is not completely clear in its wording and that its application may give rise to difficulties in terms of its foreseeability.

On 14 November 2017, the ECtHR delivered a judgment in which it examined Article 314 (membership of an armed organisation) as applied in conjunction with Article 220 (committing a crime on behalf of an armed organisation). In this case, the applicant had participated in a demonstration presumably organised following calls and instructions by an illegal organisation. The domestic courts found that the applicant acted “on behalf” of that organisation by participating in the demonstration and sentenced him to a prison term, as if he were a member of that organisation on the basis of the above-mentioned criminal provisions. Referring also to the Venice Commission’s Opinion, the European Court found that the vast wording of Article 220(6), including its extensive interpretation by the domestic courts, did not afford a sufficient measure of protection against arbitrary interference by the public authorities and was thus not “foreseeable” in its interpretation. Consequently, the Court found a violation of Article 11 ECHR.

Although the facts of this case date back to 2007, the measures that should be taken by the respondent state for the execution of this judgment should also have an effect on the application of those criminal provisions in currently pending cases.

Opinion on questions relating to the appointment of judges of the Slovak Republic
([CDL-AD\(2017\)001](#))

The opinion had called upon the President of Slovakia to accept the decision of the First Senate on complaints in a case then pending at the Constitutional Court lodged by five rejected candidates for the post of judge. On 6 December 2017, the First Senate held (I. ÚS 575/2016) that the President had violated the fundamental right of the applicants to access to elected office. The decision found that the President is obliged to reconsider the case and decide anew by appointing three judges of the Constitutional Court of the Slovak Republic from among the sufficient number of candidates proposed to him by the National Council of the Slovak Republic.

It was now for the President to implement this decision. Other recommendations of the Opinion had been to amend the Constitution providing for a qualified majority (including anti-blocking measures) for the election of constitutional court judges; that the President should actively participate in the selection procedure in Parliament to avoid future rejections; providing for a possibility for a Senate to relinquish jurisdiction to the Plenary of the Constitutional Court and that the Court should announce its judgments only when the written judgment was available. The recent judgment of the First Senate had followed this recommendation.

Opinion on the amendments to the law on the Constitutional Court of Spain
([CDL-AD\(2017\)003](#)) (see under item 17)

Opinion on the Law on the People’s Advocate (Ombudsman) of the Republic of Moldova
([CDL-AD\(2015\)017](#)) (see under item 14)

10. Armenia

Mr Richard Lappin, representing the OSCE/ODIHR, introduced the draft joint opinion by the Venice Commission and the OSCE/ODIHR on the draft constitutional law of Armenia on referendums. The draft law intended to give effect to provisions of the revised Constitution on referendums through a constitutional law needing the approval of 3/5 of parliamentarians. The Constitution provided for various cases of referendums: mandatory constitutional,

optional constitutional, optional on draft laws proposed by people's initiatives and mandatory on belonging to supranational organisations. The opinion welcomed the steps taken by the authorities to adopt a law in conformity with the Constitution and international standards, which addressed issues specific to referendums such as the collection of signatures, as well as non-specific ones such as voting, counting and summary of results. However, the process of drafting the law so far had not involved inclusive discussions and meaningful engagement with all stakeholders, which were key to a successful reform, and a number of key recommendations still had to be addressed. They related to the need to clearly address the unity of content of the referendum proposal and the requirement for the question to be clear and not misleading; to clarify and further develop the provisions on complaints and appeals; that authorities provide objective information about the proposals put to referendum; to provide for the submission of a draft popular initiative for the Constitutional Court's review prior to the collection of additional signatures; to entitle the Constitutional Court to provide a nuanced ruling on the constitutionality of each proposed amendment, and to allow for the valid provisions of a popular initiative to be submitted to the people's vote without a new collection of signatures; to clearly regulate the collection of a referendum initiative support signatures and their verification. Further recommendations included expressly providing for the duty of neutrality of administrative authorities, in order to prevent the misuse of administrative resources; addressing recommendations made on the electoral code in previous opinions; adopting legislation on local referendums. In short, the draft was a welcome step to regulate this issue even though further amendments were recommended, and the co-operation with the Armenian authorities had been excellent.

Mr Poghosyan provided some factual clarifications which were taken into account in the final version of the Opinion.

Ms Khabrieva stated that the Armenian authorities had informed her that the issue of local referendums would be addressed soon.

The Commission adopted the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft constitutional law of Armenia on referendums ([CDL-AD\(2017\)029](#)), previously adopted by the Council for Democratic Elections.

11. Poland

Compatibility with Council of Europe standards on the Rule of Law of the Polish Law on the Ordinary Courts Organisation, and two draft laws on amending the Law on the National Council of the Judiciary and the Supreme Court of Poland

Mr Dimitrov introduced the opinion on the on-going reform of the Polish judiciary. It covered the Act on Ordinary Courts adopted in July 2017, and two Draft Acts proposed by the President in September 2017 – on the National Council of the Judiciary (NCJ) and on the Supreme Court (SC). This opinion was requested by PACE in October 2017 and approved by the Sub-Commission on the Judiciary on 7 December 2017. The rapporteurs did not visit Poland; the Polish authorities had proposed postponing the visit until late December or early 2018, but the postponement was impossible due to the imminent adoption of the two Draft Acts.

The stated goal of the reform was the “democratization” of the Polish judiciary. Indeed, the judiciary should not be a self-governing corporation; however, if implemented, this reform risks putting judges under the control of the political majority in Parliament. This reform follows the extensive overhaul of the Constitutional Tribunal, which had been criticised by the Venice Commission in [an](#) earlier opinion.

Thus, the election of judicial members of the NCJ by Parliament, proposed by the Draft Act on the NCJ, is contrary to the European standard which favours the election of judicial members by their peers. The “democratic” element of such councils is represented by lay members. The procedure of nomination of judicial members, provided by the Draft Act, does not prevent the politicisation of the NCJ.

The Draft Act on the SC provides for the early removal of a large number of SC judges due to the retroactive lowering of the retirement age. This is ill-advised: it affects their tenure and may result in the loss of independence by the judiciary as a whole, since new judges will be appointed by the newly composed (and thus politicized) NCJ. The creation of two special chambers within the SC which are somewhat superior to the other chambers is particularly problematic as it creates an internal hierarchy within the SC. The introduction of the “extraordinary review” chamber endangers legal certainty. Lay judges should not sit on the highest judicial instance and decide on complex issues of law. Candidates to the position of First President of the SC, submitted to the President of the Republic for approval, should all have significant support of their colleagues.

The Act on Ordinary Courts gives too much power to the Minister of Justice vis-à-vis court presidents, and, through them, vis-à-vis the judiciary as a whole, since in the Polish system court presidents have vast powers, especially as regards case-management. This is particularly problematic given that the Minister of Justice is at the same time the Prosecutor General. The Minister should not have nearly unlimited appointment-dismissal powers vis-à-vis court presidents, and should not be able to apply, single-handedly, sanctions to them; the judiciary should be meaningfully involved in such decisions. In sum, the on-going reform poses a serious threat to judicial independence.

Ambassador Janusz Stańczyk, Permanent Representative of Poland to the Council of Europe, explained that a major overhaul of the Polish judiciary was needed because the public had lost trust in the judiciary. The crisis concerning the Constitutional Tribunal of Poland had been successfully resolved. The opinion did not take into account other elements of the Polish system, it was based on hasty conclusions and an insufficient analysis of comprehensive institutional arrangements and historical context. Judges in Poland were sufficiently protected by their status, while the NCJ was a political body. The Act on Ordinary Courts did not affect the independence of the judges but focused on [the courts’ administration](#). Presidents in the Polish system only perform administrative functions and their decisions have no bearing on the rights of the parties in the proceedings. However, Poland remained open for dialogue. The two Draft Acts had been adopted by the lower chamber, and would now be submitted to the Senate.

In the ensuing discussion, several members stressed, inter alia, that the “resolution” of the crisis over the composition of the Constitutional Tribunal ran counter to the recommendations made by the Venice Commission. The NCJ should not be seen as a political body, but must be politically neutral.

The existence of similar arrangements to the Polish proposals in other Council of Europe member States was raised, notably as concerns the appointment of court presidents by the Minister of Justice. While similarities existed, however, in other countries the powers of the Minister of Justice were less broad and not coupled with broad and discretionary powers on the part of court presidents to intervene in the allocation of cases and to impose sanctions.

The Commission adopted the Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts ([CDL-AD\(2017\)031](#)).

Opinion on the Act on the Public Prosecutor's Office

Mr Jean-Claude Scholsem presented the Opinion, previously examined by the Sub-Commission on the Judiciary on 7 December 2017. The merger of the function of the Public Prosecutor General and that of the Minister of Justice was the most important aspect of the new prosecution system established by the 2016 Act on the Public Prosecutor's office and represented a complete reversal of the model adopted in 2009 (split of both functions). The Opinion particularly assessed such a merger against the background of the increased powers of the Public Prosecutor General/Minister of Justice vis-à-vis the entire prosecution service. Bypassing the prosecutorial hierarchy, the Minister could directly intervene in individual cases. Contrary to Ministers of Justice in other countries, the Polish Minister could not only give orders to the top prosecutor but s/he could perform all prosecutorial acts him-/herself in individual cases. The Prosecutor General/Minister could change or revoke any decision taken by a subordinate public prosecutor without consulting that prosecutor. Furthermore, s/he could inspect all materials collected in the course of prosecution activities and pass on this information to any "other person" without control. The Opinion concluded that although the aim of increasing the efficiency of the prosecutorial system was a legitimate one, the merger, coupled with the increased powers of the Minister of Justice/Public Prosecutor General in the 2016 Act, in addition to his/her new powers in the Act on the Organisation of Common Courts (see above) created a real risk for abuse and political manipulation of the prosecutorial service. Mr Scholsem informed the Plenary that written comments had been received from the Polish authorities which had been taken into account in the Draft opinion.

Ambassador Janusz Stańczyk, Permanent Representative of Poland to the Council of Europe, considered that the merger of both functions was a legal tradition in Poland and that an analysis of the prosecution system only on the basis of the 2016 Act without taking into account the entire legal system would be narrow. The Ambassador also pointed to a number of countries with a subordination of the prosecution system to the Minister of Justice.

The Rapporteurs explained that although there are prosecution systems in some European countries with a strict subordination of the prosecutorial office to the Minister of Justice, the merger of both functions in Poland is rather unique in Europe and they underlined the absence of safeguards in the Polish legislation against the intervention of political office in individual cases.

The Commission adopted the Opinion on the Act on the Public Prosecutor's Office (CDL-AD(2017)028).

12. Ukraine

Mr Frenco introduced the draft opinion prepared at the request of the Ministry of Foreign Affairs of Ukraine. The draft opinion had been previously examined by the Sub-Commission on the protection of minorities, which also agreed upon the amendments proposed by the rapporteurs to accommodate comments received from the Ukrainian Government and other interested parties.

Mr Frenco stated that the Venice Commission had already examined provisions on the protection of languages in Ukraine in 2011. As in 2011, the draft opinion stressed that the language question, which remains a complex and highly sensitive issue in Ukraine, requires a careful approach involving an adequate balance between the legitimate aim of strengthening the Ukrainian language as the state language, and the protection of the linguistic rights of Ukraine's national minorities. The Venice Commission acknowledged that it is a legitimate and

commendable aim for states to promote the strengthening of the state language and its command by all citizens, and to take action for its learning by all.

Article 7 of the new Education Law proposed new principles for the use of languages as a medium for education and as subject of instruction, leading to a diminution of the scope of education in minority languages, notably at the secondary level. This had drawn strong criticism and protests both domestically and internationally. The draft opinion indeed concluded that Article 7 contained significant ambiguities and that its provisions actually enabled the previous language regime to be radically changed, at least in secondary education, towards a system focused on the mandatory use of the Ukrainian language as the language of education; this could result in a substantial reduction of existing opportunities for teaching in minority languages. Moreover, the less favourable treatment of the languages which are not EU official languages, in particular the Russian language, was difficult to justify and thus raised issues of discrimination.

The draft opinion therefore concluded that an appropriate solution would be to replace Article 7 with a more balanced and more clearly worded provision, which would also have to address the issue of discriminatory treatment of non EU minority languages.

The draft opinion however also noted the possibilities offered by Article 7 as a framework legislative provision and welcomed the readiness of the Ukrainian authorities to use these possibilities for an interpretation and application more in line with the protection of national minorities. This was stressed during the exchange of views held with Ms Lilia Hrynevych, Minister of Education and Science of Ukraine, who confirmed the willingness of the Ukrainian Government to provide, in the forthcoming law on general secondary education, more detailed and balanced solutions, in the light of the Venice Commission's recommendations and through consultations with national minorities.

In this connection, the draft opinion recommended in particular, with reference to the forthcoming law on general secondary education: to fully use, in the implementing legislation, the possibilities provided by paragraph 4 of Article 7 to ensure a sufficient level of teaching in official EU languages; to continue ensuring a sufficient proportion of education in minority languages at the primary and secondary levels, in addition to the teaching of the state language, while improving the quality of teaching of the state language; to provide more time for a gradual reform; to exempt private schools from the new language requirements; to enter, in the implementation of the new Education Law, into a new dialogue with representatives of minorities and all interested parties; to ensure that the implementation of the new rules does not endanger the preservation of minorities' cultural heritage and the continuity of minority language education in traditional schools.

A number of amendments proposed by the Commission's members were discussed and agreed upon during the plenary meeting.

The Commission adopted the Opinion on provisions of the new Law on Education of Ukraine of 5 September 2017 which concern the use of the state language and minority and other languages in education ([CDL-AD\(2017\)030](#)).

13. Report on Constituency delineation and seat allocation

Ms Karakamisheva introduced the report, which was focused on national elections and did not include guidelines. The report insisted on the importance of proper constituency delineation and seat allocation for equal suffrage. Equal voting power (one person – one vote) might be ensured by allocating seats on the basis of the population, the number of

resident nationals, the number of registered voters and the number of people actually voting. The report addressed the issue of “*mal-apportionment*”, which meant constituency delineation and/or seat allocation going against the principle of equality, through active or passive electoral geometry as well as through gerrymandering. Ensuring equal voting power implied substantive guarantees (representativeness, representation of minorities, equality of opportunity) as well as procedural ones (transparency, delineation by an independent and impartial boundary authority). The report also addressed the types of constituencies: nationwide, possibly combined with smaller ones (including one-member constituencies); multi-member constituencies generally corresponding to sub-national entities or administrative units; one-member constituencies; specific constituencies, e.g. for minorities or citizens abroad.

After enumerating the main international sources in the field, it dealt with possible exceptions and restrictions to equal voting power: exceptions referred to elections in which the principle of equal voting power did not apply, typically those of upper chambers; restrictions could result from the mathematical impossibility to ensure perfect proportionality, but also from the allocation of a minimal number of seats to each constituency, or from electoral geometry, in which case they were excessive. National legislation defined the possible departure from the norm, which should in principle not exceed 10% according to the Code of Good Practice in Electoral Matters (the Code). Gerrymandering – partisan or bi-partisan -, in turn, went against equality of opportunity. Reallocation or redrawing were necessary to avoid (passive) electoral geometry. While most countries provided for reallocation and it was encouraged by the Code, redrawing was the only solution if single-member constituencies were used. The competent body for reallocation or redrawing could be for example a Central Electoral Commission or another electoral management body, Parliament, the Head of State, but, further to the intervention of an independent and impartial boundary commission in case of redrawing, an appeal to a judicial body should be possible in all cases. The report underlined that electoral geometry (including gerrymandering) was a challenge to equal suffrage and therefore to democracy.

Mr Sardon referred to the importance of the electoral system, including the magnitude of constituencies, for the functioning of the political system. Mr Kask fully agreed that the system may have an effect on political stability but the report – contrary to previous reports of the Venice Commission – did not address the electoral system, including legal and natural thresholds.

The Commission adopted the Report on Constituency Delineation and Seat Allocation ([CDL-AD\(2017\)034](#)), previously adopted by the Council for Democratic Elections.

14. Republic of Moldova

Joint opinion on the Legal framework of the Republic of Moldova governing the funding of political parties and electoral campaigns

Mr Dimitrov introduced the opinion which had been requested by the Monitoring Committee of PACE. The opinion had been prepared jointly with the OSCE/ODIHR and with the involvement of a GRECO expert. Mr Dimitrov explained that the opinion followed up on the 2013 joint opinion on draft legislation of the Republic of Moldova pertaining to the financing of political parties and electoral campaigns ([CDL-AD\(2013\)002](#)) and – as far as recent amendments to the campaign finance provisions are concerned – on the 2017 joint opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament) ([CDL-AD\(2017\)012](#)).

Mr Dimitrov stressed that a number of amendments introduced to the Law on Political Parties, the Electoral Code and other relevant laws during 2015-2017 had clearly improved the legal framework. That said, while some previous recommendations of the Venice Commission and the OSCE/ODIHR had been taken into account, there remained several unaddressed recommendations and several concerns had been raised following the above-mentioned reforms. Overall, the lack of comprehensive monitoring and insufficient enforcement of the rules seemed to be the main concerns, which were addressed by two key recommendations. Moreover, the regulations on donations needed to be amended, in particular so as to further reduce donation ceilings and to permit private contributions by citizens of Moldova from their revenues obtained outside the country. Mr Dimitrov pointed out that the current absolute prohibition of such contributions restricted the rights of the large number of Moldovan citizens working and/or living abroad.

Mr Eduard Serbenco, Secretary of State of the Ministry of Justice of the Republic of Moldova, welcomed the opinion which included very useful recommendations, for example, with respect to the reinforcement of the oversight and enforcement mechanisms. At the same time, he disagreed with a limited number of findings and recommendations, most importantly those directed at further limiting donation ceilings and allowing donations from Moldovan citizens' revenues from abroad; the latter might lead to uncontrolled flows of money from abroad and could be misused by neighbouring countries. In this regard, Mr Dimitrov pointed out that both recommendations should be seen together, as lower donation caps would help reduce the risk of abuse. Mr Lappin stressed that from the perspective of the OSCE/ODIHR, it was crucial that citizens with the right to vote and to participate in the political life of the country should also have the right to contribute financially to political parties and electoral campaigns. Finally, Mr van Dijk made it clear that the main challenge for the Moldovan authorities was now the effective implementation of the law, which required a strong political will and should be promoted through all adequate channels, including the Parliamentary Assembly which had requested this opinion.

The Commission adopted the Joint opinion on the Legal framework of the Republic of Moldova governing the funding of political parties and electoral campaigns ([CDL-AD\(2017\)027](#)), previously adopted by the Council for Democratic Elections.

Follow-up to the Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova ([CDL-AD\(2015\)017](#))

The 2015 Opinion had welcomed the adoption in April 2014 of a new legal framework for the People's Advocate (the Moldovan Ombudsman), as a step forward in reforming this institution. The law provided the People's Advocate with extensive competences and contained important guarantees regarding his/her mandate, powers and methods of operation. Overall, the law was in line with the applicable standards and principles. The Opinion however recommended stronger independence guarantees for the People's Advocates including: a qualified majority for his/her election by the Parliament; clearly specified grounds and a higher qualified majority for his/her revocation; wider immunity guarantees; clearer legal guarantees for state financial support to this institution, and increased clarity concerning the institution's competence over the private sector and the courts. The Opinion also recommended that specific constitutional guarantees for the election, status, mandate and competences of the People's advocate be introduced.

Since the adoption of the Opinion, several amendments to the law had been introduced, in 2015 and 2016, although not all related to the Venice Commission recommendations. A major improvement was the introduction in April 2017 into the Moldovan Constitution, of a special chapter on the statute and role of the People's Advocate, containing important

guarantees for the independence of the institution and, as required in the 2015 Opinion, a stronger (two thirds) majority requirement for the dismissal of the post holder. The next step expected was to harmonise the 2014 law with the new constitutional provisions.

Avis sur la proposition d'un nouveau texte de l'article 37 de la loi sur l'Avocat du Peuple (Ombudsman) de la République de Moldova

Mme Err explique que la demande d'avis adressée par l'Avocat du Peuple à la Commission suggérait que le nouveau texte permettrait une ingérence de l'exécutif dans l'activité de l'Ombudsman, à travers la suppression du pouvoir de l'ombudsman de formuler sa proposition de budget, pouvoir désormais conféré au Ministre des finances, et ceci à partir de l'année 2018. Lors de la visite organisée de toute urgence à Chisinau, il s'était avéré néanmoins que le projet de modification de l'article 37, qui répond selon le ministre des finances à une exigence d'uniformisation et simplification des procédures d'approbation du budgets de toutes les instances indépendantes, n'était qu'à un niveau très préliminaire et ne pouvait en aucun cas affecter la préparation du budget pour l'année 2018. Le projet d'avis rappelle que le budget de l'institution de l'ombudsman doit être suffisant à garantir son indépendance et impartialité ; la décision sur le budget revient au parlement, pas au gouvernement, et en dehors de modifications généralisées dues à des contraintes économiques, le gouvernement ne devrait pas intervenir sur les propositions budgétaires de l'Ombudsman. En conclusion, le projet d'avis, considérant que le texte de l'article 37 en vigueur est conforme aux standards alors que le nouveau texte est problématique, recommande aux autorités moldaves de revenir sur l'intention de procéder à cette réforme.

La Commission adopte l'avis sur la proposition d'un nouveau texte de l'article 37 de la loi sur l'Avocat du Peuple de la République de Moldova ([CDL-AD\(2017\)032](#)).

15. "The former Yugoslav Republic of Macedonia"

Three draft laws of "the former Yugoslav Republic of Macedonia" on the abolition of the Council for the Establishment of Facts, on amendments to the Law on the Judicial Council and on amendments to the Law on Witness protection

Mr Varga introduced the draft opinion, requested by the Ambassador of "the former Yugoslav Republic of Macedonia" to the Council of Europe and relating to three draft laws: one liquidating the Council for the Establishment of Facts (the CEF), another amending the Law on the Judicial Council (JC), and the third amending the Law on Witness Protection. The first two draft laws implemented some of the recommendations made in previous Venice Commission opinions, namely the Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of "the former Yugoslav Republic of Macedonia" (hereinafter – the 2015 Opinion). The third draft law was related (albeit indirectly) to the Opinion on the Law on the Protection of Privacy and on the law on the Protection of Whistleblowers of "the former Yugoslav Republic of Macedonia" (CDL-AD(2016)008). These three laws went in the right direction; thus, the liquidation of the CEF and the transfer of its functions to the JC were at the heart of the recommendations of the 2015 Opinion.

However, this reform could raise new problems. The question of judicial remedies available to the members/staff of the CEF should be clarified, in the light of the ECtHR case-law on the matter. It was important to maintain the balance of judicial and lay members in the composition of the JC which decides on disciplinary matters. The opinion made several recommendations. Ethnic quotas had to be respected as far as possible in the circumstances. Members of the JC who initiated disciplinary proceedings should not decide the disciplinary case on the merits. Voting in the JC on candidates to judicial positions should take into account their performance

results and examination grades. In matters of witness protection, the Head of the Department of the Minister of Interior should not be able to discontinue the programme single-handedly, but external checks should exist. Finally, the opinion invited the Macedonian authorities to implement the other recommendations contained in the 2015 Opinion.

Mr Zulfi Adili, State Secretary in the Ministry of Justice of “the former Yugoslav Republic of Macedonia” noted that earlier Venice Commission recommendations were being implemented, but further assistance could be needed in the near future. Some of the recommendations contained in the present draft opinion had already been taken into account – for example, the member of the JC who triggered the proceedings would have no right to vote in the disciplinary panel. The Special Prosecutor would become independent in matters related to witness protection.

In the ensuing discussion the authorities of “the former Yugoslav Republic of Macedonia” were praised for their willingness to co-operate with the Venice Commission.

The Commission adopted the Opinion on the Draft Law on the termination of the validity of the Law on the Council for establishment of facts and initiation of proceedings for determination of accountability for Judges, on the Draft Law amending the Law on the Judicial Council, and on the Draft Law amending the Law on Witness protection (CDL-AD(2017)033).

16. Développements constitutionnels au sein des Etats observateurs

Japon

Le Consul Général du Japon à Strasbourg, Observateur Permanent auprès du Conseil de l'Europe M. Takamasa Sato rappelle que le Japon suivait et assistait aux travaux de la Commission en tant qu'observateur depuis 1993. L'ambassadeur exprime sa reconnaissance au Président Buquicchio, pour avoir reçu récemment M. Kanno, Juge à la Cour suprême ainsi que M. Gotoda, député de la chambre des Représentants. Le président a exprimé l'espoir que le Japon deviendrait bientôt membre à part entière de la Commission.

Au Japon, des débats sont en cours sur la question de savoir jusqu'où peut aller le Gouvernement dans le respect de la constitution basée sur le maintien de la paix face à l'augmentation des menaces pour la sécurité nationale du Japon. La constitution de 1946 n'a jamais été modifiée. Pour le faire, deux tiers de tous les membres des chambres haute et basse, ainsi que la majorité des suffrages d'un référendum national sont requis. L'initiative d'une réforme constitutionnelle appartient au parlement pas au gouvernement. Les partis de la coalition au pouvoir ont été les grands vainqueurs lors de derniers scrutins : le Parti Libéral Démocrate (PLD) a obtenu 284 sur 465 postes de députés à la Chambre des représentants. Un des principaux thèmes portés par le PLD, concerne la réforme constitutionnelle.

La délégation de la république du Corée a exprimé son inquiétude concernant ces projets d'amendements de la constitution japonaise.

17. Information on constitutional developments in other countries

Spain

Mr Castella Andreu informed the Commission on developments with respect to Catalonia. On 6-7 September 2017 the Catalan Parliament passed two laws: 1) on referendum of self-

determination (19/2017) and 2) on legal transition and foundation of the Republic (20/2017), both immediately suspended by the Constitutional Court and later declared unconstitutional (rulings 114 and 124/2017). The rulings were based on substantive grounds (the laws were against the constitutional principles of sovereignty of the Spanish people as a whole, of unity of the Nation and of superiority of the Constitution) and procedural grounds (insufficient delays for parliamentary discussions, disregard for legal guarantees: a relevant advisory opinion of the Council of Statutory Guaranties had been disregarded). As for the Law on Referendum, a call for a secession referendum is not amongst the powers of the Autonomous Communities and requires a constitutional amendment. Parliaments of Autonomous Communities have the power of initiative for introducing amendments to the Constitution, while the Catalan parliament has not used this right.

The referendum was held on 1 October 2017 in disrespect of the Venice Commission's standards for referendums and without a neutral national or international observation. A week after the referendum the Catalan Parliament declared Catalonia's independence. On 27 October the Spanish Senate authorised the National Government to apply the extraordinary measures of Section 155 of the Spanish Constitution: the Catalan parliament was dissolved and the Catalan government - dismissed; the Prime Minister called for early elections on 21 December 2017 in Catalonia. Podemos (a Spanish left-wing political party) challenged these measures before the Constitutional Tribunal. In the meantime a Commission of the Congress of Deputies had begun the evaluation of almost 40 years of political decentralisation in Spain, which could result in a constitutional reform. Replying to Mr van den Brande who suggested that peaceful participation in a referendum was a matter of freedom of expression, that the reaction by the Spanish government including police violence on the referendum day had to be assessed against the EU subsidiarity and proportionality principles, Mr Castella Andreu noted that the questions of secession were not regulated at the EU level but at the national level. The Catalan referendum was a political issue with constitutional consequences. Judicial proceedings concerning the incidents of police violence were pending before ordinary courts. Some of the images around the police violence on the day of the referendum were fake.

Mr Castella Andreu also pointed out that during these events, the Constitutional Court of Spain had twice used its powers of execution, which had been the subject of the Venice Commission's opinion adopted in March 2017 ([CDL-AD\(2017\)003](#)). The Court had imposed coercive penalty payments against the deputy head of the economic department of the Catalan Government and against the members of the electoral commission. These measures had been effective because the Catalan Government dismissed the electoral commission and appointed new members to supervise the referendum.

Roumanie

Répondant à une question de Mme Cleveland sur la réforme judiciaire en cours en Roumanie, M. Toader, membre de la Commission et ministre de la Justice de la Roumanie, explique que son ministère a préparé les projets de loi ainsi qu'une demande d'avis de la Commission de Venise et les a transmis à la commission du parlement chargée d'examiner ces projets. Le projet de loi sur l'organisation du pouvoir judiciaire a déjà été adopté par la Chambre des Députés; les deux autres projets de loi sont encore devant le parlement. Il explique également qu'il y a plusieurs possibilités de saisir la Cour constitutionnelle au sujet de ces textes et exprime en même temps l'espoir que la Commission sera appelée à se prononcer sur l'ensemble de ces trois projets de loi et que les textes définitifs seront conformes à la Constitution et aux standards de la Commission de Venise.

18. Co-operation with other countries

Mexique

Mme Otálora Malassis a informé la Commission sur les développements récents dans le domaine électoral au Mexique. En 2018, 87 millions d'électeurs vont participer aux élections présidentielles (dont la préparation a déjà commencé en octobre 2017), législatives et municipales. 30 Etats sont concernés, 9 nouveaux gouverneurs vont être élus; 3 600 mandats en tout vont être renouvelés. Au Mexique, il y deux organes qui sont en charge des élections : la Cour suprême de la nation et le Tribunal électoral fédéral (ci-après : TEF). En 2013, la Commission de Venise a rendu un avis à la demande du Mexique sur la législation électorale du pays. La Constitution mexicaine a été amendée en tenant compte des quatre recommandations principales de la Commission: l'interdiction de réélection des parlementaires (ainsi que mandats municipaux) a été levée ; la parité entre femme et homme dans les élections législatives a été renforcée, confirmée dans la jurisprudence du TEF et même étendue aux élections municipales ; la nullité des élections présidentielles a été introduite (pour trois causes concernant le financement des campagnes électorales) et la représentation des populations autochtones est garantie par la Constitution depuis 2016.

En outre, en novembre 2017, le TEF a lancé le projet de création d'un réseau mondial des juridictions électorales : 32 pays et 10 organisations internationales font partie de cette initiative. Le président Buquicchio informe la plénière de sa récente rencontre avec Mme Otálora Malassis au Conseil de l'Europe, où il a été convenu de développer le dialogue entre la Commission et ce réseau à travers la Conférence mondiale de justice constitutionnelle.

19. Co-operation with Group of States against Corruption (GRECO)

Mr Marin Mrčela, President of the Group of States against Corruption, informed the Venice Commission on current activities of the group. GRECO had recently launched its Fifth Evaluation Round on the topic "Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies". Mr Mrčela referred to recent examples of co-operation with the Commission, such as the involvement of GRECO experts in the preparation of opinions on Moldova and Ukraine. He stressed the similarities between the Commission and GRECO, which are both based on enlarged agreements and give advice to member states on core issues of the Council of Europe. He also mentioned the synergies between both bodies as exemplified in numerous mutual references to relevant opinions and evaluation reports.

Previous GRECO evaluation rounds dealing for example with party funding, corruption prevention in respect of MPs, judges and prosecutors had many connections with the Commission's work, and Mr Mrčela expressed the wish that GRECO's co-operation with the Commission be continued and further developed in the future. In this connection, he informed the Commission that GRECO's working methods had recently been amended to allow for *ad hoc* (re-) assessments in case of urgency such as serious deterioration of a member State's compliance with relevant standards and recommendations; it had just been decided to apply such an extraordinary procedure with respect to Poland and Romania given the legislative developments concerning the judiciary. Mr Mrčela concluded by inviting the President to one of GRECO's 2018 plenary sessions.

The President thanked Mr Mrčela for the invitation, welcomed his statements and expressed the Commission's readiness to further co-operate in areas relevant to both bodies, given their common aim to improve democracy and Rule of Law in member states.

20. Information on Conferences and Seminars

The Commission will be informed on the results and conclusions of:

UniDem-Med Seminar (Algiers, 7-8 November 2017);

The Venice Commission, in co-operation with the Constitutional Council of Algeria and the Directorate General of Civil Service and Administrative Reform of Algeria organised the 6th UniDem-Med seminar on the subject "Women and the Labour market". This activity was financed by the Joint Programme between the CoE and the EU in the Southern Mediterranean. Ms Herdis Kjerulf Thorgeirsdottir informed the Commission that the seminar focused, among other issues, on the articulation between the international standard-setting system and the various national legal systems in the field of gender equality and on the situation of women in the public administration sector. The seminar was attended by high-level civil servants of the MENA region countries and more than 60 representatives from the public administration of Algeria. This successful event was the first UniDem seminar organised in Algeria and the authorities expressed their wish to continue working with the Venice Commission on the topic of equality as well as further developing the existing co-operation in such fields as constitutional justice and human rights protection mechanisms.

World Forum for Democracy 2017 (Strasbourg, 8-10 November 2017);

Ms McMorrow, together with Mr Dikov from the Secretariat, took part in one of the sessions of the World Democracy Forum in Strasbourg which was dedicated to citizens' participant assemblies and deliberative democracy (Strasbourg, 9 November 2017). This session was designed as a "moot assembly" where issues related to the new methods of public involvement in policy-making were debated. The Irish experience was particularly useful in this field. Ms McMorrow proposed to prepare a short internal overview of the new approaches to participative/deliberative democracy.

Regional Conference on "Misuse of Administrative Resources during Electoral Processes: a major challenge for Democratic Elections" (London, 9-10 November 2017)

Mr Barrett reminded the Commission that Ms Brasseur, in her intervention on behalf of the Parliamentary Assembly, had already mentioned this conference and referred to the fact that the Assembly intended to follow it up with a text to be adopted. The conference had indeed been a good example of co-operation between the Venice Commission, the Assembly and the Congress. The representatives from the countries of the Eastern partnership had contributed actively to the debates, which were partly based on the reports already adopted by the Commission.

VII International Congress of Comparative Law "the national and the universal in law: from traditions to postmodernism" (Moscow, 1-2 December 2017)

Mr Helgesen informed the Commission about the VII Congress of Comparative Law organised by the Institute of Legislation and Comparative Law of the Government of the Russian Federation of which Ms Khabriyeva, the Russian member of the Commission, was the Director. The international speakers included Mr Georg Stawa, President of CEPEJ, Mr Jean-Paul Costa, former President of the ECtHR and Director of the International Institute for Human Rights; Mr H. Hajiev, former ECtHR judge in respect of Azerbaijan and Mr M. Ismayilov, Member of the Venice Commission, as well as scholars from France, Switzerland, Iran, Belarus, Germany, Lithuania and Serbia. The geographical spread and the scientific level of the national participants were impressive, including rectors and deans of most law faculties in

Moscow and the regions, as well as young researchers. Several round tables were devoted to very topical themes. The Institute played an important role building bridges between the Venice Commission and the Russian society, not in the least by translating many of the Commission's opinions into Russian and publishing books devoted to the Commission's work.

21. Report of the meeting of the Council for Democratic Elections (7 December 2017)

Mr Kask informed the Commission on past and future co-operation of the Council with the OSCE/ODIHR, PACE and the Congress of Local and Regional Authorities, *inter alia*, in the field of election observation. He mentioned the current revision of the 2010 Guidelines on political party regulation, jointly with the OSCE/ODIHR. It was envisaged to present the amended version at the June 2018 session in view of its adoption.

Furthermore, Mr Kask presented the revised questionnaire for the planned study on referendums ([CDL\(2017\)022rev2](#)) which had been adopted by the Council. Following the decision taken by the Scientific Council to launch a study on the dangers of referendum abuse and based on previous discussions by the Council and by a working group on the issue, Mr Alivizatos had prepared the revised draft questionnaire ([CDL\(2017\)022rev](#)), which was submitted by the Council to the Venice Commission for adoption, in view of its circulation to all members.

The Commission adopted the questionnaire for the study on referendums ([CDL\(2017\)022rev2](#)), previously adopted by the Council for Democratic Elections.

22. Report of the joint meeting of the Sub-Commission on Working Methods and the Scientific Council (7 December 2017)

Mr Clayton informed the Commission that the Sub-Commission had examined a number of items and had reached the following conclusions: as concerns preliminary opinions, a working group would work on updating the relevant procedure and practice; as regards follow-up to previous opinions, in addition to the current practice of providing information at Plenary Sessions, information would be posted on the Commission's website as of next year, thus increasing transparency; members would also receive regular information by e-mail. As to the appointment of rapporteurs, the Secretariat would produce a paper setting out the relevant criteria, which would then be distributed to all members; proposals had been made to encourage new members to start working on opinions. Finally, a reflection paper on the issue of the Commission's stance on constitutional court decisions would be prepared by a working group.

23. Information on the Association of former Venice Commission members

In the absence of Ms Flanagan, Ms Mychelova as Secretary General of the Association of Former Members and Substitute Members of the Venice Commission (AFM) said that the Association had been created in 2014 and to date counted 60 members. In addition she reminded the Commission of the Association's objectives (cf. article 4 of the Statute of the AFM). In 2017, 10 of the AFM members had participated in the preparation of 5 opinions and 4 studies and had represented the Venice Commission in 8 conferences, meetings of experts and seminars. This year the Association would meet for the 4th time and would elect its Second president and the Bureau. The list of participants and the agenda were made available to the participants of the session and the current members were invited to join the dinner of the former members.

24. Other business

Mr Dürr informed the Commission that the Secretariat had prepared an updated version of the compilation on constitutional justice, which took into account important opinions on Slovakia (appointments), Ukraine (selection procedure and individual complaint), Spain (execution of judgments) and Poland (independence). The updated compilation would be available on the site soon ([CDL-PI\(2017\)008](#)).

25. Dates of the next sessions

The schedule of sessions for 2018 was confirmed as follows:

114 th Plenary Session	16-17 March 2018
115 th Plenary Session	22-23 June 2018
116 th Plenary Session	19-20 October 2018
117 th Plenary Session	14-15 December 2018

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](#)