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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

69TH PLENARY SESSION

(Venice, Scuola Grande di San Giovanni Evangelista)
Friday, 15 December (9.30 a.m) –
Saturday, 16 December 2006 (1.00 p.m.)

MEETING REPORT

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1. Adoption of the Agenda

The agenda was adopted.

2. Communication by the Secretariat

Mr Antonio La Pergola introduced the new members of the Venice Commission: Mr Frixos Nicolaides, Supreme Court Judge, Cyprus; Ms Kalliopi Koufa, Professor of International Law, University Aristote, Greece; Mr Lucian Mihai, Professor, Faculty of Law, University of Bucharest, Romania and Mr Dan Meridor, Chairman, the Jerusalem Foundation, Senior Partner, Haim Zadok & Co, Israel (Observer).

Mr Gianni Buquicchio reminded the Commission that the 2007 budget had been cut by 2%. This will be compensated by the contribution from Korea with the result that the Commission's overall budget remains unchanged as compared to 2006. Further budgetary cuts were to be expected for 2008, however these may be balanced out in the long-run with the accession of future members to the Venice Commission. Thanks to a volontary contribution from Ireland for co-operation with Southern Africa many activities had been organised during 2006 that could otherwise not have taken place. In addition, a volontary contribution from Norway for co-operation with the Union of Arab Constitutional Courts is expected during 2007,

During 2006 contacts had been made with the Ibero-American Conference on Constitutional Justice as well as with several other regional networks in and outside Europe. Constitutional justice remains an important sector of the Venice Commission's work.

3. Co-operation with the Committee of Ministers

Ambassador Eleonora Petrova-Mitevska, Permanent Representative of "the former Yugoslav Republic of Macedonia" to the Council of Europe, informed the Venice Commission that its opinions were often used by the Committee of Ministers and proved to be very useful tools in solving a number of issues that it faced. She pointed out the importance of the Venice Commission's opinions for young democracies and made particular reference to the new Guidelines on referendums, which summarised the common European standards, and the study on non-citizens and minority rights.

Ms Petrova-Mitevska was very satisfied with the outcome of the co-operation between the Macedonian authorities and the Venice Commission in the field of the protection of human rights and freedoms, which was of great importance for the development of constitutional justice. She referred to the Opinion on the constitutional amendments concerning the reform of the judicial system (2005), which she said had a great impact on the preparation and adoption of these amendments. She also mentioned the important role the Venice Commission played in the preparation of the Macedonian Electoral Code as well as in the training of the electoral administration before the parliamentary elections this year.

In addition, she informed the Commission that the Macedonian Ministry of Justice recently adopted the draft Law for Public Prosecutors and that this text will soon be sent to the Venice Commission for comments.

Ambassador Sladjana Prica, Permanent Representative of Serbia to the Council of Europe, emphasised the importance of the co-operation between the Committee of Ministers and the Venice Commission. She believes that representatives of the Committee of Ministers should continue to be active in the Venice Commission's plenary sessions and that, in turn, the Venice Commission should be represented during the Committee of Ministers' meetings, especially in topical meetings of its rapporteur groups.

Ms Prica informed the Commission that the Rapporteur Group on Democracy (GR-DEM) discussed the outcome of the Forum for the future of democracy, which took place in Moscow on 18-19 October 2006, and planned its follow-up, which will take place in Sweden in June 2007 and deal with the interdependence between democracy and human rights. She also said that the Venice Commission will have a role to play in the new programme on pre-electoral assistance for fair and democratic elections, which will be a clear and transparent programme with the aim of clarifying and rationalising the Council of Europe's pre-electoral assistance activities.

Ms Prica informed the Commission about the Committee of Ministers' decision this week on the development and consolidation of democratic stability in Serbia. This decision welcomed the smooth handling of the transfer of responsibilities from the State Union to the Republic of Serbia and the progress made in the establishment of state institutions, which included the adoption of a new Serbian Constitution.

She concluded by saying that Serbia was pleased with the long-standing co-operation it has with the Venice Commission and looked forward to its continuation.

4. Co-operation with the Parliamentary Assembly

Ms Sabine Leutheusser-Schnarrenberger informed the Venice Commission that the Committee on Legal Affairs and Human Rights adopted the report on the Implementation of Judgments of the European Court of Human Rights during its session in October 2006 and decided to look more closely at major structural problems and unacceptable delays in implementing judgments in a number of states. The report drew attention to specific types of ongoing problems, notably that domestic proceedings cannot be reopened in Italy, a problem also faced by Turkey and by Germany – although in Germany a recent new law has solved this problem. Other issues concerned the overcrowding of detention facilities in Greece, the practice of indirect expropriation in Italy and the lack of progress with the reform of the national security law of Romania. The Assembly called on governments to act on all these matters and appealed for more parliamentary oversight on how states implement the Court's judgments, as non-compliance jeopardizes the effectiveness of the entire Convention system. The Committee on Legal Affairs and Human Rights will follow-up this matter in 2007.

The Commission was informed about the report on the ratification of the Framework Convention for the Protection of National Minorities by member States of the Council of Europe which aimed at evaluating the different points of view of the eight member States which had not yet ratified this Convention.

Mr Peter Schieder added that the Council of Europe's North-South Centre organised a Forum on Constitutionalism – the key to democracy, human rights and the rule of law, in November 2006 thanks to the support provided by the Venice Commission, which has given the Centre a new impetus. He also mentioned the Assembly's report on an improved institutional balance for the organisation, in which it invites the Committee of Ministers to reach an agreement to strengthen the Assembly's role regarding the elaboration and adoption of legal instruments, in negotiations with other international organisations as well as in the adoption of the budget, explaining that the Committee of Ministers intended to deal with this report in its respective sub-committee on 16 January 2007.

Mr Schieder also told the Commission that during his recent visit to China to discuss, inter alia, human rights, a proposal for an Asian Parliamentary Assembly and relations between China and the Council of Europe, he was informed on how elections of the Second Chamber of the

Legislative Assembly of Hong Kong took place and, as discussions on this issue continued, he suggested that the Venice Commission be contacted for assistance on this issue.

5. Co-operation with the Congress of local and regional authorities of the Council of Europe

Mr Keith Whitmore informed the Venice Commission about the Congress' Moscow Session, during which the monitoring reports on Albania, Bosnia and Herzegovina, Slovakia and on the elections in Georgia and Azerbaijan were adopted. A recommendation on the Group of Independent experts' opinion on the compliance of the Norwegian legislation with the Charter (right to a judicial remedy) was also adopted as were an opinion on the draft CDLR recommendation on local and regional public services, a recommendation and a resolution on the UN Habitat Guidelines on decentralisation. A debate on the draft laws prepared by the Russian Duma concerning the status of mayors of regional capitals took place and a round table on European Cities – how to support the Middle East was organised.

Mr Whitmore also explained that the Congress had observed the first round of the election of the Bashkan (Governor) of Gagauzia (Moldova) and will observe the second round on 17 December 2006. A number of incoherences and contradictions to the Venice Commission's recommendations were identified in the Law on the election of the Bashkan of Gagauzia. In that respect, the Congress will invite the Venice Commission to consider this Law.

Following a request made by the Venice Commission regarding the Code of Good Practice on Referendums, the Congress was expected to adopt this text in the near future.

6. Follow-up to earlier Venice Commission opinions

The Commission was informed on the follow-up to:

Opinion on the Law on Freedom of Assembly in Azerbaijan (CDL-AD(2006)034)

Ms Flanagan recalled that the Commission had adopted an opinion on the law on Freedom of Assembly in Azerbaijan at its October session. As this is an existing law, the authorities had agreed to make amendments with a view to bringing it more into conformity with European standards. With a view to facilitating this process, a meeting took place in Strasbourg on 6 December 2006. During this meeting, the Azeri representatives Mr Fuad Alesgerov, Head of the Co-ordination Department, Presidential administration, and Mr Chingiz Askarov, Attaché, Presidential Administration, presented proposals for amendments which aimed at reacting to the recommendations contained in the Venice Commission's opinion. These amendments were examined in detail, article by article and a number of suggestions were made by the rapporteurs present at the meeting, Ms Flanagan and Mr Aurescu, as well as the representative of the OSCE Baku office. The Azeri representatives took note and indicated that the proposals for amendment would be reworked before being formally presented to the Commission probably with a new request for opinion.

Opinion on property restitution and compensation on the territory of Georgia for the victims of conflict in the former South Ossetia District (CDL-AD(2006)010)

The Secretariat informed the Commission that the text adopted in the second reading did not take into account the Venice Commission's opinion. This was problematic because the purpose of the Law was not only to provide justice for the displaced persons but also to serve as a confidence-building measure in view of the overall settlement of the conflict. The Secretariat also pointed out that the draft Law provides for the participation of international organisations in the appointment of the members of the restitution commission. Therefore, it

was necessary to take into account their views on the composition of the Commission if the Law was to become operational.

The Venice Commission learned from the Legal Task Force of the Council of Europe in Tbilisi that there were communication problems, which prevented the opinion from being taken into account. It would, however, still be possible to overcome this problem.

The Minister of Justice of Georgia, Mr Gia Kavtaradze, replied that there was indeed some miscommunication within Parliament. Discussions with the representatives of the Council of Europe would continue and the Venice Commission's opinion would receive thorough consideration. However, over time, the attitude of international organisations changed: while they were ready to be a part of the process at the beginning, they now preferred to remain neutral and to limit themselves to the appointment of members of the restitution commission. This might have contributed to the miscommunication. The Minister promised to keep the Venice Commission informed on the progress on this issue.

7. Armenia

Draft Opinion on the Law on the Human Rights Defender and amendments

Mr Hjörtur Torfason presented the draft Opinion (CDL(2006)090) on the Law of the Republic of Armenia on the Human Rights Defender and amendments (CDL(2006)098 and 100) drawn up on the basis of comments made by himself (CDL(2006)093) and Messrs Ledi Bianku and Marek Antoni Nowicki, expert of the Directorate General of Human Rights of the Council of Europe (CDL(2006)088 and 094 respectively).

He explained that the Law on the Human Rights Defender was amended following the entry into force on 8 December 2005 of the revised Constitution and of the subsequent election of the first Defender established for a regular 6-year term. In accordance with the revised Constitution, the Law provides for the election of the Defender by Parliament with a qualified majority. The amendments were made in order to ensure an alignment between the text of the Law and the Constitution. Furthermore, a specific change in Article 7.2 of the Law was made in order to achieve conformity with a judgment of the Constitutional Court delivered on 6 May 2005.

The institutional structure for the Armenian Human Rights Defender was, in general, in conformity with accepted European standards. The mandate permitted a wide interpretation and provided the Defender with powers to protect against violations of human rights and freedoms by the executive power. However, the question may be raised whether his or her authority to monitor the administration and promote the observance of human rights might be expressed in stronger terms. The Defender's mandate could also be strengthened by listing his or her competences more specifically.

The amendments provided for the election of the Defender for a single term of 6 years. Although the single term constituted an advantage from the point of view of independence, it may be questioned whether the Constitution did in fact preclude a second term.

The Defender's immunity was basically equivalent to the immunity of Deputies of the National Assembly. It persisted after the end of his or her term, but this did not apply to the immunity of the staff. The immunity could be widened to the effect that the Defender and his or her staff should be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity and within the limit of their authority.

The amendments relating to the position of the Defender towards the courts of law were mainly made in deference to the above-mentioned judgment of the Constitutional Court, which was appropriately accepted. The limits between the mandates of the Defender and the judicial

power may need further clarification. An excess of caution should not be applied in drawing the line.

A remaining question was whether it might be assumed that the power of the Defender to make recommendations upon his or her own initiative was clearly provided for.

Mr Bianku insisted that the Defender's mandate should also include human rights violations by omission. He also questioned whether the provision in Article 10 that the "Defender shall not consider those complaints that must be settled only by Court" would not be too narrow and exclude cases which should be within the competence of the Defender, at least before an appeal to the Court was made.

Mr Nowicki underlined that Article 4 on the incompatibilities was too narrow. Not only should membership in political parties but also membership in trade unions and, in general, any activity that cannot be reconciled with his or her status as the Human Rights Defender be excluded.

The inviolability of property and premises of the office of the Defender should be guaranteed and the Defender should be able to receive financing from international donors.

Mr Angel Sanchez Navarro pointed out that paragraphs 28 and 87 of the draft Opinion referring to multiple candidates and gender equality should be deleted because they referred to political options rather than standards.

Mr Nowicki replied that nothing prevented Armenia from going further in this direction than other countries have done. This was indeed and issue of political choice, which should be clarified in the opinion.

The Commission adopted the opinion on amendments to the Law on the Human Rights Defender of Armenia with amendments (CDL-AD(2006)038).

Law on political parties

Mr Carlos Closa Montero presented his comments (CDL(2006)079) on the conformity of some provisions of the Law on political parties of Armenia with international standards. He identified a number of problems in the Law on political parties in Armenia, notably Article 32, which might be contrary to the opinions of the Venice Commission on the freedom of association in political parties. Mr Closa Montero was also of the opinion that the provisions on the dissolution of political parties in general were not very clear and might create problems in the light of Articles 10 and 11 of the European Convention on Human Rights. The rapporteur expressed his hope that the authorities of Armenia, which had received his comments in November 2006, consider the possibility of revising the Law.

The Commission endorsed the comments of Mr Closa Montero on the conformity of some provisions of the Law on political parties of Armenia with international standards (CDL(2006)079).

8. Croatia

The Secretariat presented the comments by Mr Owen Masters (CDL(2006)081) on the revised version of the Law on the direct election of mayors and heads of municipalities (CDL(2006)082rev., see also CDL(2006)083). The Commission was informed that in March 2006, the authorities requested the assistance of the Venice Commission in improving Croatian legislation on local elections of the executive bodies. Therefore, in the same month, Mr

Masters took part in the working group in Zagreb entrusted with the elaboration of the draft Law on the direct election of mayors and heads of municipalities. These comments have been forwarded to the working group. In autumn 2006, an amended version of the draft Law was sent to the expert and although the new text included some of the proposals made by Mr Masters, a number of provisions of the Law could be further improved, notably:

1) checking the authenticity of the signatures in support of a candidate;
2) the use of mass media in pre-electoral campaigns;
3) reimbursement of campaign expenses;
4) procedure for the operation of polling stations;
5) rights of the observers;
6) organisation of repeated elections.

Mr Stanko Nick drew the Commission's attention to the problem of financing electoral campaigns. This issue was of particular concern to civil society and a number of political parties, since the legislative provisions were too vague and lacked sufficient protection against abuses by large political parties.

Mr Ian Micallef informed the Commission that the Congress of local and regional authorities of the Council of Europe was preparing a visit to Croatia for 2007 and that the issue of campaign financing would be discussed with the authorities on that occasion.

The Commission endorsed the comments by Mr Owen Masters (CDL-AD(2006)081) on the revised version of the Law on the direct election of mayors and heads of municipalities.

9. Finland

Mr Kaarlo Tuori presented the Commission with the request for an evaluation of the current Constitution of Finland, which entered into force on 1 March 2000 (CDL(2006)095). The main changes concerned the respective powers of the Parliament, the Government and the President and their relations with the local authorities. The powers of the legislative branch were extended and although the President retained large powers in the field of foreign policy, most issues concerning the European Union were entrusted to the Government. Important changes were also introduced in respect of the possibility of 'privatizing' certain administrative powers on the local level.

The Commission took note of the information provided by Mr Tuori and invited all members interested in contributing to the opinion on this issue to inform the Secretariat.

10. Georgia

Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts

Ms Hanna Suchocka, as one of the rapporteurs, recalled that the Parliamentary Assembly had requested the Commission to prepare an opinion on the above-mentioned text, in particular with regard to the principle of the independence of the judiciary. She explained that this request had been made in the context of the dismissal by the High Judicial Council of 14 judges, including judges of the Supreme Court of Georgia, on the basis of Article 2.2 (a) of the Law. The judges were held to have grossly violated the Criminal Code due to an incorrect interpretation of the law. Although the case merely provided background information for the

opinion, it raised several important questions, notably: (1) whether the Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts was adequate and sufficiently guaranteed the independence of the judiciary; (2) whether it was possible to bring disciplinary charges against judges when a normal appeals procedure was available and (3) whether the High Judicial Council was the adequate body to deal with this issue.

The Minister of Justice of Georgia, Mr Gia Kavtaradze, agreed with the rapporteur's comments and explained that this Law had not been prepared by the Ministry of Justice, but by the judiciary and was subsequently submitted for comments to the Council of Europe with the approbation of the Ministry of Justice. He informed the Commission that further amendments were currently being made to this Law and that the Ministry was working in close co-operation with the OSCE on this issue.

The draft opinion should be ready for adoption at the March session and the Secretariat proposed that the rapporteurs also take into account the amendments made to this Law.

The Commission took note of the information received from Ms Suchocka and Mr Kavtaradze and noted that the rapporteurs (Ms Suchocka, Mr Vogel and Ms Nussberger) will prepare the Opinion on the Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts for adoption at the next session.

Draft Constitutional Law on Amendments to the Constitution

Mr Olivier Dutheillet de Lamothe, as one of the rapporteurs, recalled that the reporting members had had very little time to prepare their comments due to the fact that they received the draft text only a few days before the session. It was now clear that the main reason for the constitutional amendments was the wish to hold the next presidential and parliamentary elections together in Autumn 2008. This implied prolonging the term of office of Parliament (due to expire in Spring 2008) and shortening the term of office of the President (due to expire in Spring 2009). Prolonging the term of office of an assembly beyond the time envisaged at its election was acceptable only as an exceptional step, duly justified by constitutional and not for purely political reasons. In the present case, such justification could either consist in a decision to generally hold these elections together or to hold them always during a specific period of the year conducive to ensuring a high participation. In any case, the Constitution had to fix the date more precisely. The possibility given to the President to fix the date within a period of 2 or 3 months was excessive. Furthermore, the draft contained two options for what should occur if a President dissolved Parliament for the second time during his or her term. In the rapporteur's view, the second option implying an ad hoc switch to a parliamentary system could lead to inter-institutional conflicts, which should be avoided.

Mr Sergio Bartole, as the other rapporteur, added that, while the implementation of this option was problematic, it had to be acknowledged that it was motivated by the desire to achieve a better balance of powers.

Mr Kavtaradze pointed out that serious reasons made it imperative for his country to hold both elections together in the autumn of 2008.

In the ensuing discussion, it was emphasised that introducing the joint holding of presidential and parliamentary elections as a general principle was an implicit decision in favour of a strong position of the President, which seemed undesirable.

The Commission asked the reporting members, in co-operation with the Secretariat, to prepare the opinion on the basis of their previous comments and the discussions at the present session and to forward it to the Georgian authorities as soon as possible.

Joint opinion with the OSCE/ODIHR on the election code of Georgia

At its 67th session (June 2006), the Venice Commission had adopted a joint opinion with the OSCE/ODIHR on the Electoral Code of Georgia, as amended on 23 December 2005 (CDL-AD(2006)023).

Subsequent amendments had been made in 2006. The Commission was accordingly invited to examine the draft joint opinion (CDL(2006)084) of the OSCE/ODIHR and the Venice Commission on the Electoral Code of Georgia, as amended on 24 July 2006 (CDL(2006)080).

Mr Vulchanov, on behalf of the OSCE/ODIHR, highlighted the co-operation of the Venice Commission and the OSCE/ODIHR with the Georgian authorities to improve electoral law and practice in Georgia. Progress had been made, but there was still room for improvement. The co-operation should therefore continue.

Ms Lazarova Trajovska said that the Venice Commission and the OSCE/ODIHR had already adopted a number of opinions on Georgia's electoral law. This was explained by the large number of changes the texts had undergone. Progress had been made on transparency, observation, the media, the role of the central election Committee, the use of languages other than Georgian, ballot procedures and the use of indelible ink, for example. Further improvements were necessary, particularly in respect of the quorum, the distribution of seats among the constituencies in parliamentary elections, electoral rolls and appeal.

Mr Whitmore, for the Congress of Local and Regional Authorities of the Council of Europe, supported the draft opinion.

The Commission adopted the joint opinion of the OSCE/ODIHR and the Venice Commission on the Electoral Code of Georgia, as amended on 24 July 2006 (CDL-AD(2006)037).

11. Kazakhstan

The Secretariat informed the Commission on the results of the visit of a Commission delegation to Kazakhstan on 16-17 November 2006. Mr Buquicchio thanked the Mission of the European Commission to Almaty for its contribution to the organisation of this visit. The meetings with the representatives of the Kazakh authorities were very fruitful and the co-operation between the Venice Commission and the Kazakh authorities will continue in 2007. The authorities were planning to conduct reforms in two steps: from 2006 to 2008 a number of laws will be amended in the framework of the existing Constitution and then from 2008 to 2011 the authorities were planning to carry out a substantive constitutional reform aimed, amongst other things, at strengthening Parliament.

The Commission held an exchange of views with Mr Alikhan M. Baimenov, Majilis Deputy, Parliament of Kazakhstan, Chair of the working group on constitutional reform, and with Ms Svetlana Bychkova, member of the Constitutional Council, on possible co-operation with the Republic of Kazakhstan.

Mr Baimenov said that the visit of the Venice Commission's delegation to Kazakhstan was a very important event and that the authorities of Kazakhstan might ask the Commission for assistance on a wide range of issues, such as powers of Parliament, elections and legislation on local authorities. He informed the participants that a special Commission on reforms, composed of 5 working groups, had been set up by the President of Kazakhstan and described the activities of the working group on constitutional reform, which he chaired. In December 2006, the working group produced a report with a number of recommendations on possible ways of reforming the Constitution and transmitted it to the President of Kazakhstan (this report is available from the Venice Commission Secretariat). Mr Baimenov strongly supported the idea of the accession of Kazakhstan to the Venice Commission and expressed his hope that this would happen in the near future.

Mrs Bychkova added that the planned reforms might include the extension of the powers of the Constitutional Council of Kazakhstan. She also informed the Commission that the Council was planning to co-organise a conference in co-operation with the Venice Commission in the spring of 2007.

The Commission took note of the information provided by the representatives of Kazakhstan.

12. Report of the Sub-Commission for the protection of minorities (14 December 2006)

Study on non-citizens and minority rights

Mr Bartole, who had chaired the sub-commission on an ad hoc basis, reported on the discussion on the draft report on non-citizens and minority rights (CDL-MIN(2006)002rev). The study had been launched in 2004 and two round tables had been held in 2004 and 2006. These round tables had been an opportunity for useful exchanges of views with representatives of the competent bodies of the Council of Europe, the OSCE and the Office of the UN High Commissioner for Human Rights.

The draft report had been examined by the sub-commission at the Commission's October session. However, because its agenda had been very full, the sub-commission had been unable to consider all the questions raised by this document. An initial exchange of views had nevertheless taken place at the October plenary session, when some members had suggested improvements to the draft report.

Mr Bartole informed the Commission that having re-examined the draft report, in which the conclusions had been reshuffled to make them more "operational" and certain chapters improved to reflect the different points of view voiced by the rapporteurs, the sub-commission was now in a position to propose that the Commission adopt it. He added that the draft report took note of the tendency in recent years for most international organisations working on human and minority rights, be it in the Council of Europe, the OSCE or the United Nations, to warn governments against the systematic exclusion of non-nationals from minority rights. For the sub-commission this did not mean that all non-nationals should always be placed on an equal footing with nationals when it came to granting rights and facilities to members of minority groups. In fact citizenship should no longer be considered as an essential part of the notion of "minority", a legally binding definition of which was neither desirable nor seriously envisageable at the international level. Instead, it should be viewed as a condition giving access to certain rights. This approach, recommended by the rapporteurs and the sub-commission, was more likely to guarantee that minority rights were well and truly human rights, as it avoided making an

artificial distinction between the two. Mr Bartole accordingly proposed that the Commission adopt the revised draft text presented by the sub-commission.

As an expert who had taken part in the preparation of the report, Mr Franz Matscher pointed out that rather too much guidance had perhaps been taken from United Nations practice, which emphasised the universal nature of human and minority rights and relied mainly on the principle of non-discrimination to guarantee people's right to a specific identity. Personally, even though he would have liked to see certain questions examined more closely, he was ready to support the draft report and its conclusions.

At the initiative of Mr Aivars Endzinš, a discussion ensued concerning the scope of the conclusion in the third indent of paragraph 142, and whether it referred to any countries in particular. Mr Giorgio Malinverni and Ms Mirjana Lazarova Trajovska said that this had not been the rapporteurs' intention. The state succession context referred to could arise in different regions of Europe, such as the former Soviet Union or the former Yugoslavia. Mr Torfason wondered if it covered not only state succession but also restored independence. Other minor changes to the text of the conclusions in the third indent under paragraph 142 were proposed.

The Commission adopted the draft report on non-citizens and minority rights (CDL-AD(2007)001). It instructed the Secretariat, in co-operation with Mr Bartole, to prepare the final draft, including the latest changes.

Mr Bartole announced that the Secretariat had presented a handy draft compendium to the sub-commission of the relevant passages from the Commission's reports and opinions concerning the protection of minorities (CDL-MIN(2006)005). The members of the sub-commission were invited to examine it and submit any suggestions for additions by 15 February 2007. The Secretariat would finalise the document, including any additions, in time for the 70th plenary session in March 2007 and place it on the Commission's Internet sites.

13. Kyrgyzstan

The Minister of Justice of Kyrgyzstan, Mr Marat Kaipov, presented a request made by President Bakiev to the Venice Commission, to examine the text of the new Constitution of the Kyrgyz Republic. This text continued to provide for a strong position of the President, but changed the rules for the election of Parliament, with half the seats now to be filled on the basis of proportional representation, giving Parliament the right to elect the Government and facilitating the impeachment of the President.

Ms Cholpon Baekova underlined the need to reach a compromise on the new Constitution in order to end civil strife. However, the new and hastily prepared text contained many ambiguities and the provisions on the transition towards the full implementation of the new Constitution were unclear. The Constitutional Court could not solve these issues, since a number of positions in the Court were not filled as a result of which the Court lacked a quorum.

Mr Kaipov said that the President did his part by nominating candidates to the Court and agreed that there were gaps in the transitional provisions.

The Commission asked the rapporteurs (Messrs Fogelklou and Holovaty and Ms Nussberger) to prepare, following a visit to the country, a draft Opinion on the new Constitution for adoption at its next session.

14. Mexico

Mr Alfonso Oñate Laborde, representative of the Supreme Court of Mexico, informed the Commission about the "white book on judicial reform". He explained that the reform started in 2003, headed by the Mexican Supreme Court, which called on the legal community to present proposals for reform. 11,000 proposals were received, which were discussed by 32 expert groups and resulted in a white book that provided a framework for debate. It was the first time that such a large scale effort was made in Mexico and its objectives were to increase judicial independence, enhance efficiency and improve access to justice. An in-depth criminal law reform was also introduced to, inter alia, increase transparency and render the judiciary more professional as well as enhance access to justice by ethnic minorities who were monolingual. A consensus was reached and presented to the legislative and executive branches of Government. The efforts for reform were public and the information is available on the official website of the Supreme Court of Mexico:
http://200.38.86.53/PortalSCJN/RecJur/ReformaJudicial1/LibroBlancoReformaJudicial/

15. Montenegro

Mr Tuori recalled that in June 2006, Montenegro, upon declaring its independence, stated its intention to adopt a new Constitution, which was also called for by the Parliamentary Assembly in its Resolution 1514(2006).

Messrs Tuori and Bradley were subsequently requested by Parliamentary Assembly to act as Eminent Lawyers and to prepare a report on the conformity of the legal order of the Republic of Montenegro with the Council of Europe standards, which they submitted in September 2006. In their report, they considered that the new status of Montenegro requires substantial constitutional reform to be achieved urgently, both for technical reasons (adjustments following the new status, state of emergency and armed forces to be added) and for substantial reasons (the level of protection of human rights being insufficient due to the non applicability of the Human and Minority Rights and Fundamental Freedoms of the State Union; the provisions on courts of law and public prosecutors not being in conformity with European standards).

A draft Constitution had been prepared by a group of experts mandated by the Montenegrin Parliament. This text, which had no formal status but would serve as the basis of the work of the recently-constituted constitutional board, had been discussed by a delegation of the Venice Commission at a round-table held in Podgorica on 28 November 2006 in the presence of all the members of the constitutional board, the ombudsman, a representative of the expert group and representatives of OSCE, OSCE/ODIHR and the OSCE High Commissioner on National Minorities. The Venice Commission delegation had emphasised the need for a broad consensus and for a meaningful public debate on the constitutional reform. For this reason, the delegation was of the opinion that the reform would need a certain time to be carried out. The adoption of a new text appeared preferable to amendments to the 1992 Constitution. At the round table, the areas of human rights, minority rights and the judiciary had been addressed in particular. Two areas which required attention were the division of labour between the Constitutional Court and the Supreme Court and the discrepancies in the wording of the human rights provisions.

The atmosphere had been very constructive and the level of the discussions had been very high.

Mr Neppi Modona, who had also participated in the round table, pointed out that the current situation concerning the appointment of judges by Parliament was not in conformity with European standards. The procedure of appointment and the composition of the Judicial Council required careful consideration. However, the Montenegrin political forces all seemed to agree

on the need for the direct involvement of Parliament, which was due to their open mistrust in the judiciary. In order to overcome this problem, Mr Neppi Modona indicated that it could be advisable to envisage a one-time appointment procedure with some involvement of the Parliament (but with sufficient guarantees, in primis the need for a qualified majority for the election) to be put in a transitional provision.

Mr Petit, representative of OSCE/ODIHR, also expressed his view that the discussions at the round table had been of a high quality. Disagreements on political, symbolic matters did not seem to negatively affect the substantial discussions. However, it was important to leave sufficient time for the reform to be accomplished, as a broad consensus of both the political forces and civil society were the best guarantee for the future democratic development of Montenegro. OSCE/ODIHR would not prepare an opinion on the constitutional reform but wished to be kept informed of the developments.

Mr Ranko Krivokapic, Speaker of the Parliament of Montenegro, reiterated the willingness of Montenegro to co-operate with the Venice Commission and its eagerness to become a member of the Council of Europe as soon as possible. He agreed with the Venice Commission delegation's assessment of the expert text and recognised that some work was needed in order to improve it. The work of the constitutional board had been suspended pending the decisions of the Constitutional Court (of 6 and 15 December 2006) but was now going to be resumed. As soon as a first draft was ready, it would be sent to the Venice Commission and a new round table would be organised in Montenegro.

Mr Holovaty, in his capacity as rapporteur of the Monitoring Committee of PACE on the matter of accession of Montenegro to the Council of Europe, stressed the importance of a good Constitution for Montenegro and expressed his reservations as to the possibility of this country becoming a full member of the Council of Europe prior to the completion of the constitutional reform.

Mr La Pergola recalled, in this context, that Montenegro had always co-operated in an excellent manner with the Venice Commission and that it had accomplished much progress in a few years, which testified in favour of that country's commitment to the values of the Council of Europe.

Several other members expressed their view that Montenegro had proved its commitment to achieving the new status through democratic means and to conforming to European standards.

Mr Tuori recalled that the accession of Montenegro to the Council of Europe was a political decision, which was not within the responsibility of the Venice Commission. However, he considered that the past and present attitude of the Montenegrin authorities towards co-operation with the Venice Commission enabled an optimistic approach as to the outcome of the constitutional reform process and that it was inappropriate to precipitate.

Mr Buquicchio recalled that Montenegro had already been a member of the Council of Europe for three years as a federated republic of the State Union of Serbia and Montenegro. Its commitment to the Council of Europe's values had been constant. The reform of the Constitution appeared, nevertheless, necessary and needed undoubtedly to be included in the post-accession commitments.

16. Serbia

Mr Christoph Grabenwarter noted that only preliminary discussions would take place during this session and that the reporting members would present a draft opinion at the forthcoming March session. He would therefore focus on the human rights part of the new Constitution, which was

long and detailed. He noted that the system of limitations was not very clear with both a general clause and specific limitations contained in the individual articles.

Mr Tuori added that there were contradictions in the articles on territorial organisation. On the one hand, quite unusually, a right to regional self-government was proclaimed, on the other, regional autonomy was not filled with substance, not even for Kosovo.

Ms Hanna Suchocka welcomed the balanced composition of the Constitutional Court and the strong role of the Judicial Council in the new Constitution. Nevertheless, Parliament retained the power to appoint judges and the rules on the states of war and of emergency were not sufficiently detailed.

Mr Jan Velaers questioned whether the Constitution really granted substantial autonomy to Kosovo. The rule that international treaties had to comply with the Constitution made an a priori control of treaties by the Constitutional Court imperative. Procedures for constitutional amendments were excessively complex.

In the discussion, the constitutional guarantees for local self-government were positively assessed. It was underlined that the UN legal regime for Kosovo could not be ignored.

The Commission asked the reporting members (Messrs Grabenwarter, Jowell, Ms Suchocka, Messrs Tuori and Velaers) to prepare a draft Opinion on the new Constitution for adoption at its next session.

17. Ukraine

Draft law on Cabinet of Ministers and Central Public Executive Authorities of Ukraine (CDL(2006)099)

Mr Tuori recalled that a previous draft Law on the Cabinet of Ministers of Ukraine had been examined by the Commission earlier in 2006. The draft Law which was now under examination was an improvement on the previous one but still contained problematic provisions, notably on the ground of the lack of a constitutional basis for matters such as the controlling powers over Crimea, the general qualifications of the ministers, the dismissal from office of the ministers and the termination of the cabinet in case of resignations of more than one third of the members. The limitation of the powers of the Ombudsman to obtain information from the cabinet was also problematic.

Mr Holovaty explained that this draft had been prepared by the President; another draft Law had been prepared by the Parliament, and it had now been decided that the two needed to be merged into a single draft law.

This was an extremely sensitive Law, and indeed seven previous drafts had been vetoed by President Kuchma.

The Commission took note of the comments by Mr Tuori on the draft Law on the Cabinet of Ministers and Central Public Executive Authorities of Ukraine and decided to resume consideration of this matter at the Plenary Session of March, after obtaining more information on the progress in the procedure in Ukraine.

Two draft laws on the judiciary (CDL(2006)096) and on the status of judges (CDL(2006)097)

Ms Suchocka, one of the rapporteurs, told the Venice Commission that these two draft laws were a step in the right direction, but that there were outstanding issues that needed to be dealt with in order for the laws to be in line with Council of Europe standards. Issues that needed to be addressed included the separation of powers, for instance the role of the Council of Judges seemed to be overlapping with that of the Ministry of Justice. There were too many different institutions and organisations that were allowed to take part in plenary meetings of the courts, even in those of the Supreme Court and the provision allowing this should be deleted. Other issues that needed to be clarified included the capacity of a court to provide a lower court with clarification in the application of the law.

With respect to the appointment of judges, Ms Suchocka pointed out that the role of the Parliamentary Assembly in this respect should be the subject of a future opinion by the Venice Commission.

Mr James Hamilton, the other rapporteur, added that the two laws were very elaborate and detailed, however certain gaps remained, such as the lack of a provision for judges to be legally represented in disciplinary proceedings against them. There were also redundancies in the laws, for instance both refer to the independence of the judiciary when the reference by one would be largely sufficient. Although there were many bodies to protect judicial independence, the complexity of the system was counterproductive. There was no body equivalent to a high judicial council, the legislative and executive had the power to appoint and to dismiss judges, but this power was not clearly defined.

Both rapporteurs were looking forward to receiving the amended versions of these two laws. The opinion on these laws should be adopted at the March session.

Mr Serhiy Holovaty explained that the drafting of these two laws had been delayed, since the adoption of the Ukrainian Constitution in 1996. He said that the Venice Commission, in its opinion, should differentiate between ordinary law and issues that should be considered in a future constitutional reform. The reason for which the legislation was so detailed was due to the Ukrainian legal heritage. Mr Holovaty explained that the Parliamentary Committee and the Judiciary were now in favour of these laws, even the President, the Cabinet and society at large agreed that something needed to be done with the status of the judiciary.

A National Forum for the discussion on these laws will be held in February 2007, before the new constitutional reform takes place in Ukraine. This conference will be gathering together the judiciary, the council of judges, the executive, the Chamber of the President, experts of the Council of Europe and the Venice Commission.

The Commission asked the reporting members (Ms Suchocka and Mr Hamilton) to finalise their draft Opinion on the draft laws on the judiciary and on the status of judges for adoption at its next session.

18. Other constitutional developments

France

Mr Pierre Mazeaud, President of the French Constitutional Council, reported on developments in the case-law of the Constitutional Council concerning the implementation of European directives. Under the French Constitution (Art. 55) duly ratified treaties took precedence over

French law. However, the Constitutional Council did not verify the conformity of laws with treaties when examining appeals on constitutionality. Under Art. 88-1 of the Constitution, introduced in 1992, a special place was reserved for European integration: community law was incorporated into domestic law, as distinct from international public law. The Constitutional Council had decided in December 2004 that transposing directives into domestic law was a constitutional obligation. Accordingly, it was not competent to verify the constitutionality of a legislative provision transposing an unconditional and specific (directly applicable) provision of a directive. When a law transposing a directive was brought before it, it could declare it void if it was clearly incompatible with community law or in conflict with fundamental constitutional principles. On 30 November 2006, for example, it had set aside certain provisions of a law transposing the 2003 directive on gas and electricity as manifestly incompatible with the principle of free competition.

Mr Ladenburger emphasised the role played by the Constitutional Council in the proper implementation of community directives in French law.

Latvia

Mr Endzinš informed the Commission that Latvia's Constitutional Court had celebrated its 10th jubilee a week ago and that a conference had been organised in co-operation with the Venice Commission, the Latvian Constitutional Court and the German Foundation for International Legal Co-operation (IRZ) on the Role of the Constitutional Court in the Protection of the Values Enshrined in the Constitution. The event brought together the chairpersons of several constitutional courts, judges and legal experts to discuss the protection of individual rights by constitutional courts, constitutional review from the perspective of several states and amendments made to constitutions of countries that had joined the EU.

19. Constitutional developments in Observer States

Israel

Mr Dan Meridor informed the Venice Commission about two recent important cases in Israel. The first concerned the use of government immunity against a claim brought by a number of Palestinians for compensation for events that occurred during the intifada. The court decided that government immunity against such a claim was unconstitutional and should be lifted to allow those concerned to file a claim for damages. The second case concerned the disengagement in Gaza. Israelis that were relocated brought a claim for full compensation for having had to leave Gaza. Under the law, they were allowed compensation for this relocation, but in reality, those that were relocated only received partial compensation. The court decided that the law needed to be amended in order to allow full compensation.

20. E-Democracy

Mr Trocsanyi informed the Commission about the first meeting of the Ad hoc Committee on E-Democracy (CAHDE) in Strasbourg on 18 and 19 September 2006. The CAHDE decided, among other issues, to collect the information on different e-Democracy projects developed in the Council of Europe member States. By 1 December 2006, contributions from 17 countries were received. The CAHDE also discussed possible co-operation with other sectors of the Council of Europe including the Venice Commission. The second plenary meeting of CAHDE should be held towards the end of 2007.

21. Study on remedies for the excessive length of proceedings

Mr van Dijk recalled that the study had been submitted to the Commission at its June Plenary Session. It had now been finalised, taking account of the updates provided by Commission members at the request of the rapporteurs.

The study contained a survey of the existing national legislation, an outline of the case-law of the European Court of Human Rights in respect of both Article 6 and of Article 13, and proposals for the improvement of the existing legislation in the light of the case-law. These took into consideration in particular the different issues arising in the context of civil/administrative and criminal proceedings.

The study did not offer universal solutions, but was meant to assist States and the Committee of Ministers in finding adequate solutions to this important and almost universal problem.

Mr Aurescu underlined the importance of this study, and recalled that it had originated in a proposal by the Romanian authorities. Hopefully, the study would represent a useful working tool for State authorities and for the Committee of Ministers. The conclusions of the study confirmed the position previously expressed by the Venice Comission, that restitutio in integrum was preferable to compensation.

Mr Matscher recalled that almost all Council of Europe member States experienced this problem, albeit in different degrees. This was also true for the European Court of Human Rights. While the report suggested some remedies, the root causes of the problem needed to be tackled and it was imperative to do so; he encouraged the European Commission for Efficiency of Justice (CEPEJ) to pursue its efforts in this field.

The Commission adopted the study on remedies for the excessive length of proceedings (CDL-AD(2006)036).

22. Report of the Meeting of the Sub Commission on Human Rights (14 December 2006)

Mr Helgesen informed the Commission that a very comprehensive report on the existing legislation on blasphemy, religious insults and inciting religious hatred had been carried out in a very short period of time by the Working group. This report would now be sent to all the members of the Commission, who were required to confirm its accuracy as concerns their respective country and if necessary make additions to it by 15 February 2007. The Working group would send a more detailed questionnaire in respect of certain countries of particular interest. Consideration of this interesting matter would be resumed in March 2007.

23. Report of the Meeting of the Sub Commission on the Judiciary (14 December 2006)

Ms Suchocka reported that the Sub-Commission on the Judiciary had held its first meeting to discuss the Venice Commission's position on judicial appointments. The discussion took place on the basis of the Secretariat memorandum contained in document CDL-JD(2006)001, which presented an overview of the matter based on previous opinions of the Commission. One reason to discuss this topic was the mandate given by the Committee of Ministers of the Council of Europe to the Consultative Council of European Judges (CCJE) to elaborate an opinion on the structure and role of the Judicial Service Commission or equivalent body and to consult the Venice Commission on this issue.

The Sub-Commission found that in Europe, a variety of different systems for judicial appointments existed, and that no single model could apply to all countries. In older democracies, systems existed in which other state powers sometimes had a decisive influence on judicial appointments. Such systems might work well in practice and allow for an independent judiciary because these powers were restrained by legal culture and traditions, which had grown over a long period of time.

New democracies, however, did not have the chance to develop such traditions that can prevent abuse. Therefore, the Sub-Commission was of the opinion that in new democracies explicit provisions were needed as a safeguard. The prevailing model for such a guarantee was the establishment of a Judicial Council or Judicial Service Commission, which should be endowed with constitutional guarantees for its independence.

A balance needed to be struck between judicial independence and self-administration on the one side and the necessary accountability of the judiciary on the other, in order to avoid the negative effects of corporatism within the judiciary. In this context, it was necessary to ensure that required disciplinary procedures against judges were carried out effectively and were not marred by undue peer restraint.

The Sub-Commission was of the opinion that judicial appointments were not an appropriate subject for a vote by Parliament because the danger that party politics prevail over the objective merits of a candidate could not be excluded (a distinction had to be made between judges of ordinary courts and constitutional courts in this respect).

The Sub-Commission decided to discuss the composition of the Judicial Council in detail at its next meeting on the basis of a revised version of document CDL-JD(2006)001.

24. Other business

There was no discussion on this item.

25. Date of the next session and confirmation of sessions 2007

The Commission confirmed the date of its 70th Plenary Session: 16-17 March 2007.

The others sessions for 2007 were confirmed as follows:

71st Plenary Session	1-2 June
72nd Plenary Session	19-20 October
73rd Plenary Session	14-15 December

Sub-Commission meetings will take place as usual on the day before the Plenary Sessions.

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