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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

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

**95<sup>th</sup> PLENARY SESSION**  
**Venice, Scuola Grande di San Giovanni Evangelista,**  
**Friday, 14 June 2013 (9.00 a.m.) -**  
**Saturday, 15 June 2013 (1.00 p.m.)**

**95<sup>e</sup> SESSION PLÉNIÈRE**  
**Venise, Scuola Grande di San Giovanni Evangelista**  
**Vendredi 14 juin 2013 (9h00) -**  
**Samedi 15 juin 2013 (13h00)**

**SESSION REPORT**  
**RAPPORT DE SESSION**

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## **1. Adoption of the Agenda**

The agenda was adopted as it appears in document CDL-OJ(2013)003annrev.

## **2. Communication by the President**

Mr Buquicchio informed the Commission about his recent activities, which are listed in document [CDL\(2013\)026](#).

He also informed the Commission that the President of the Constituent Assembly of Tunisia had requested an opinion of the Venice Commission concerning the draft constitution of Tunisia. He further told the Commission that an Egyptian delegation would participate in the session to exchange views on the draft legislation concerning NGOs.

## **3. Communication by the Secretariat**

Mr Markert recalled that a revised annotated agenda had been sent the week before the session to take into account recent developments with respect to Tunisia and Egypt.

## **4. Co-operation with the Committee of Ministers**

Ambassador Matthew Johnson, Permanent Representative of the United Kingdom to the Council of Europe underlined the quality of the Commission's work and its ability to address specific country situations alongside thematic issues. He also emphasised the importance of the Venice Commission's work especially in its monitoring activities concerning Azerbaijan and Hungary. Ambassador Johnson stated that the Venice Commission could also play its part in the field of the fight against corruption by creating and protecting independent judiciaries, increasing access to and participation in democracy and putting in place the legal frameworks required for predictable decision-making. He stressed that it is important that the Council of Europe shows that the Commission's work is relevant to Europe's 800 million citizens.

Ambassador Claus von Barnekow, Permanent Representative of Denmark to the Council of Europe, referring to the Warsaw declaration adopted by the Third Summit of Heads of State and Government of the Council of Europe, underlined the importance of the establishment of accountable democratic institutions for the efficiency of democracy and good governance and stressed that the Committee of Ministers had asked the Member States to keep following the opinions adopted by the Venice Commission.

Mr Evan G. Reade, Consul General, Deputy Permanent Observer of the United States of America to the Council of Europe, explained that the United States of America was pleased to become a member of the Venice Commission and that the 95<sup>th</sup> Plenary Session was the first Plenary session in which the United States participated as a member. He underlined the importance of the Venice Commission's expertise for the transition to democracy for many states especially in Eastern Europe. Mr Evan G. Reade introduced the newly appointed members of the Venice Commission from the United States and stated that the United States of America believes in its positive contribution to the work of the Venice Commission.

## **5. Co-operation with the Parliamentary Assembly**

Mr Christopher Chope, Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe provided information on recent activities of the Parliamentary Assembly. Draft Protocol 15 to the European Convention on Human Rights, which gives effect to certain provisions of the Brighton Declaration, had been presented to the Parliamentary Assembly for examination and the Assembly had approved the draft in

Opinion No. 283 (2013) adopted on 26 April 2013. Protocol No. 15 will be open for signature of the member States on 24 June 2013.

Mr Chope informed the Commission that the Committee on Legal Affairs and Human Rights was currently preparing reports *inter alia* on threats to the Rule of Law in Council of Europe member states, on corruption as a threat to the rule of law and on keeping political and criminal responsibility separate.

## **6. Co-operation with the Congress of Local and Regional Authorities of the Council of Europe**

Mr Lars O. Molin, Chair of the Monitoring Committee of the Congress, pointed out that the Congress, during its March session, had adopted a new resolution on post-monitoring of local and regional elections. He stated that the resolution aims at developing the political dialogue with national authorities in order to implement the Recommendations of the Congress, but also implies strengthening the link between the Congress' work and the Venice Commission. He underlined that the Congress systematically used the opinions provided by the Venice Commission during their monitoring visits and that it was agreed that the national member of the Venice Commission be included in the list of interlocutors that the Congress draws up for each monitoring visit.

Mr Molin also informed the Commission that the next meeting of the Monitoring Committee will take place in Tbilisi in Georgia on 3 July and that it would discuss reports on local and regional democracy in Hungary, Albania, Denmark, Ukraine and Ireland.

## **7. Follow-up to earlier Venice Commission opinions**

The Commission was informed on the follow-up to:

- *Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan* ([CDL-AD\(2011\)035](#))

The Secretariat informed the Commission that on 15 February 2013, a series of worrying amendments to the Code of Administrative Offenses, the Law on Grants, the Law on Freedom of Religion and the Law on Non-Governmental Organisations had been passed by the Parliament of Azerbaijan. These amendments entered into force in March 2013.

According to the new amendments, which go against the recommendations of the Venice Commission, NGOs are required to notify the authorities of all grants above 200 Azerbaijani manats (approximately €200). Failure to notify the authorities on time may result in a fine of up to 2500 manats (approximately €2500) for individuals and up to 7000 manats (approximately €7000) for organisations. Donations should also be reported to the authorities. The amendments also stipulate that funds which are not properly reported to the authorities can be confiscated.

- *Opinion on the practice of blanket resignation of Ministers in the Federation of Bosnia and Herzegovina* ([CDL-AD\(2012\)021](#))

The Commission was informed that, in its decision adopted in relation to a specific case of the pre-signed resignation of a Minister of the Federation of Bosnia and Herzegovina (FBiH), the Constitutional Court of FBiH largely followed the conclusions of the Venice Commission contained in the opinion it adopted in 2012 on the issue of blanket resignation of ministers.

In particular, the Court found that a letter marked as "resignation", signed and given to a political party by one of its members upon his or her appointment as minister would restrict freedom of opinion and expression of the person concerned and would enable political

parties to exercise undue control on the ministers' activity. In the Court's view, a pre-signed resignation, which is not the expression of a free will of the person at the time of the resignation, is problematic from the standpoint of the principles of democracy and rule of law and cannot produce legal effects on the authorities of FBiH.

- *Joint opinion on the Electoral Code of Bulgaria* ([CDL-AD\(2011\)013](#))

The joint opinion of the Venice Commission and the OSCE/ODIHR was adopted at the June 2011 Plenary session .

The Code was modified in February 2013. The amendments improved the transparency of the election administration's decisions, by establishing a mandate to broadcast sessions and keep a public database on appeals procedure. There are also important improvements to the rights of national observers. However, as stated on many occasions by the Venice Commission and the OSCE/ODIHR, the introduction of changes to the Code in February 2013, hence, two months before the anticipated parliamentary elections of May 2013, could affect the stability of the system. Moreover, several key recommendations that stem from the joint Venice Commission - OSCE/ODIHR 2011 opinion remain unaddressed, mainly as concerns the lack of balance between political parties in the appointment of chairpersons and secretaries at all levels of the election administration; the need to reinforce criteria concerning political party and campaign financing, mainly regarding sanctions; the achievement of further pluralistic media access and coverage; the rights of minorities, mainly on the use of their mother tongue during electoral campaigns and in electoral material; the deprivation of voting rights, which should be further defined to apply only to persons convicted of a serious crime; finally, remedies against electoral results should be improved

- *Opinion on the Draft Amendments to the Organic Law on Courts of General Jurisdiction of Georgia* ([CDL-AD\(2013\)007](#))

The Commission was informed that, following a certain number of modifications, the Amendments to the Law on "Common Courts" had been submitted to Parliament, which adopted them on 1 May 2013 after overriding the presidential veto.

In the part of the law concerning media coverage of court proceedings, several Venice Commission recommendations had been taken on board, notably concerning the power of courts to limit audio and video recording in order to protect the rights and the identity of victims and witnesses. However, the issue of protection of personal data did not seem to have been addressed, at least in this law.

As concerned the composition of the High Council of Justice (HCJ), there were several improvements: the President of Georgia no longer appoints members of the Council; 8 judges are elected by the Judicial Conference on a proposal from the judges themselves; the Parliament elects 6 members of the Council chosen from among representatives of the civil society. However, some recommendations had not been followed: the Law provides for a two-thirds majority for the elections of the parliamentary component of the HCJ but adds an anti-deadlock mechanism in respect of four members only; the adopted text gives competence to the new HCJ over pending cases; the amendment which provided that upon enactment of the law "authority of the members of the High Council of Justice, except the chairman of the Supreme Court, is terminated" has not been deleted as recommended; however the law provides that a judge member whose mandate shall be terminated upon enactment of the law, is authorised to be a candidate in the election to be held after the entry into force of the law. Three judges made use of this right during the election which took place on 10 June and two of them were re-elected. All judge members have been elected. The election of non-judges members by Parliament was imminent.

- *Opinion on the Draft new Constitution of Iceland* ([CDL-AD\(2013\)010](#))

The Commission was informed that, on the basis of its recommendations, a number of changes to the Constitutional Bill had been proposed during the last meetings of the Parliament of Iceland before the end of its term. However, the Constitutional Bill was not discussed further when it became clear that the process could not lead to the expected revision of the Constitution. Nevertheless, as suggested by the Venice Commission itself, a law was adopted changing the procedure for revising the Constitution, removing the need for two subsequent parliaments to adopt the constitutional revision. This amendment, which needs to be adopted for a second time by the newly elected parliament, would make it possible for the new parliament to amend the Constitution and give it more time to address the recommendations and criticism raised in respect of the Constitutional Bill.

- *Joint Amicus Curiae Brief for the Constitutional Court of Moldova on the compatibility with European Standards of Law No. 192 of 12 July 2012 on the prohibition of the use of symbols of the totalitarian communist regime and of the promotion of totalitarian ideologies of the Republic of Moldova* ([CDL-AD\(2013\)004](#))

In March 2013 the Venice Commission and OSCE/ODIHR adopted a joint amicus curiae brief for the Constitutional Court of Moldova on Law of 12 July 2012 on the prohibition of the symbols of the totalitarian communist regime and of promoting the totalitarian ideologies. In this brief, the Commission and OSCE/ODIHR stressed that it was the task of the Constitutional Court to rule on the constitutionality of this law; they expressed the view that while a ban on the use of communist symbols was not, as such, contrary to international standards, the law under consideration presented certain shortcomings in terms of legality and proportionality of the interference. In particular, the impact on the existing and legally registered political parties appeared disproportionate.

On 4 June 2013 the Constitutional Court of Moldova issued its judgment and, sharing the views of the Venice Commission and the OSCE/ODIHR, it considered that the law in questions lacked clarity and foreseeability; it subsequently annulled several articles of the Law.

## **8. Montenegro**

Mr Ranko Krivokapic, Speaker of the Parliament of Montenegro, informed the Commission about the progress made in the reform of the constitutional provisions on the judiciary, following the Opinion on two sets of draft amendments to the constitutional provisions relating to the judiciary of Montenegro adopted at the December 2012 Plenary session ([CDL-AD\(2012\)024](#)).

Mr Krivokapic praised the good co-operation between Montenegro and the Venice Commission. Together, they had tried to find innovative solutions to improve the independence of the judiciary while, at the same time, ensuring accountability and legal responsibility in Montenegro. The parliamentary working group had finalised its work on the reform, but three provisions remained open, with alternative proposals, on the Judicial Council, on the Supreme State Prosecutor and on the Constitutional Court. The amendments currently under discussion included anti-deadlock mechanisms, which should be a key part of the reform. The Montenegrin Parliament would examine this matter before the summer recess and Mr Krivokapic requested the Venice Commission's opinion as a matter of urgency.

**In view of the urgency, the Commission authorised the rapporteurs to transmit the draft Opinion to the Montenegrin Parliament, prior to the October Plenary Session.**



## 9. Azerbaijan

The Commission was informed on progress of work on the opinion on the Draft Law on Protection from Defamation of Azerbaijan (see document [CDL-REF\(2013\)022](#)). It took note that, following a visit of the Rapporteurs to Baku on 10-11 April 2013, preliminary comments and recommendations had been sent to the authorities of Azerbaijan, who had committed to submit, before the end of June 2013, a revised version of the draft law taking into account the rapporteurs' comments and in line with the ECHR standards, including the case-law of the European Court of Human Rights. A working meeting with the authorities would be organised during the summer period in order for them to further improve the draft law.

The Commission was furthermore informed that, in spite of the steps taken in the above-mentioned framework, on 14 May 2013 the Parliament of Azerbaijan had adopted amendments to the Criminal Code and the Code of Administrative Offences introducing harsh penalties (including imprisonment) for defamation and insult posted on the internet. These worrying developments were not in line with the commitments undertaken by Azerbaijan, in the context of the execution of two important ECtHR judgments against Azerbaijan, to decriminalise defamation.

In view of the above, it was stressed that the Venice Commission opinion, to be adopted during its October plenary session, would contain a comprehensive assessment of the overall legal framework, including criminal law provisions, pertaining to defamation in Azerbaijan. Ambassador Claus von Barnekow, Permanent Representative of Denmark to the Council of Europe, expressed the Committee of Ministers' full support for this approach.

## 10. Hungary

Mr Tuori presented the draft opinion on the Fourth Amendment to the Fundamental Law of Hungary pointing out that raising to the constitutional level numerous provisions, which were usually enacted at the legislative level, could only be explained by reference to earlier Constitutional Court decisions. Even if several provisions were only enabling clauses, they were a clear reaction to previous decisions of the Constitutional Court and part of a consistent policy, which had started with amendments to the previous Constitution and the Transitional Provisions. The rich case-law of the Court had been repealed *en bloc*. The powers of the Constitutional Court to review budgetary laws had been further restrained. The Fourth Amendment thus made a mockery of constitutional review.

In a situation where the Government enjoyed a two-thirds majority in Parliament and controlled most state institutions, checks to the governmental majority were especially important. The Constitution should enjoy a special status and a wide legitimacy but it seemed that in Hungary there was no longer any distinction between constitutional and ordinary politics. The rapporteurs however welcomed that, as a reply to the draft opinion, the Government had announced that it would propose to amend the Fundamental Law and legislation in three areas: a) the abolition of the system of transfers of cases b) the abolition of the special tax in case of unexpected expenses stemming from court judgements and c) the extension to 90 days of the 30-days limit for the Constitutional Court to answer requests from ordinary courts. However, this new deadline was still too short and these amendments did not address the main criticism relating to the role of constitutional control in Hungary.

The Minister of Foreign Affairs of Hungary, Mr Janos Martonyi, insisted that 95 per cent of the contents of the Fourth Amendment were already part of the Transitional Provisions, which had been annulled by the Constitutional Court for purely formal reasons and had to be included in the Fundamental Law. The risk oriented approach of the draft opinion did not distinguish between risk and reality. According to the opinion of the independent experts mandated by the Hungarian Government, the Commission's draft opinion was imputing motives. Only the most negative scenario had been taken into account. It would not be possible to separate enabling



clauses from the implementing legislation. Mr Martonyi insisted that there would be political repercussions following this opinion. A useful neutral examination by the Venice Commission would thus become part of a wider political game. Hungary was a vibrant democracy with deeply democratic roots. It was true that the Hungarian political system was based more on competition than on consensus. Some provisions of the Fourth Amendment were indeed reactions to decisions by the Constitutional Court but did not overrule them. As concerned the 'communist past', there was no collective guilt, penal sanctions could be imposed in individual proceedings only and these proceedings provided the required guarantees. The new provisions against hate speech to be introduced on the basis of the Fourth Amendment were not of penal character. They would enable members of minority groups themselves to take civil action against hate speech. The dignity of the Hungarian Nation was traditionally protected by Hungarian legislation. The restrictions on media advertisements during electoral campaigns did not limit any other forms of political advertisements (brochures, Internet). Financial power should not be able to determine the result of elections.

Mr Martonyi pointed out that in many countries there was no Constitutional Court at all and the Court had already shown it could work efficiently also under the Fourth Amendment. The previous case-law of the Constitutional Court had not been annulled, its effects remained. In a recent decision, the Court itself had found that it was able to refer to this case-law. The proposals by the Hungarian Government had been taken into account in the revised draft opinion but this had not resulted in an appropriate change in the conclusions, which remained unbalanced. The main problem in the conclusions was the sentence that the Fourth Amendment would perpetuate problems of the independence of the judiciary. However, the system of transfers of cases would be abolished and the powers of the President of the National Judicial Office had already been reduced. The Hungarian Judiciary was independent. The adoption of the opinion should be postponed.

In the discussion, the importance of constitutional justice was underlined and the insistence of the independent experts on the sovereignty of the constituent power was recalled. The rapporteurs agreed that the word 'overruling' of the decisions of the Constitutional Court was not precise enough and proposed a new wording on the ordinary judiciary.

The Danish and UK Ambassadors informed the Commission that the Committee of Ministers followed the situation in Hungary closely. The opinion of the Venice Commission would become the basis for a constructive dialogue. Mr Gussetti pointed out that the European Commission had expressed its expectation that the problems identified in the opinion of the Venice Commission be addressed.

**The Commission adopted the opinion on the Fourth Amendment to the Fundamental Law of Hungary ([CDL-AD\(2013\)012](#)).**

## 11. Monaco

M. Scholsem présente le projet d'avis sur l'équilibre des pouvoirs dans la Constitution et la législation de la Principauté de Monaco, établi à la demande de l'Assemblée parlementaire, tel qu'amendé à la suite des discussions qui ont eu lieu lors de la Sous-Commission sur les institutions démocratiques.

M. Scholsem explique que la Constitution de Monaco est une Charte octroyée ; c'est une constitution qui s'éloigne du schéma des monarchies européennes contemporaines

dans la mesure où les fonctions du Prince ne sont pas uniquement protocolaires et où il n'existe pas de système de responsabilité ministérielle par lequel le gouvernement est responsable des actes du monarque. M Scholsem indique que les amendements apportés en

sous-commission ont eu pour objet d'une part de corriger des erreurs de fait et d'autre part de remanier les conclusions pour rendre plus nettes les critiques formulées dans l'avis. Les points positifs demeurent bien évidemment dans la conclusion (notamment l'existence du Tribunal suprême, le fonctionnement consociatif des institutions, le climat consensuel qui règne à Monaco, et certaines pratiques non consacrées dans la Constitution) ; la conclusion souligne cependant la place trop importante réservée au Prince dans l'exécutif et dans le législatif - car bien que non élu, il est en mesure de bloquer l'adoption d'une loi - , l'absence de contreséjour par un ministre dont la responsabilité pourrait être engagée, l'importance de constitutionnaliser les principes démocratiques qui ont fini par être acceptés dans la vie politique actuelle de Monaco et signale des réformes nécessaires (définir plus clairement les domaines relevant de la loi et des ordonnances et modifier les règles de révision constitutionnelle).

M. José Badia, Conseiller de Gouvernement pour les Relations Extérieures de Monaco, salue l'analyse à laquelle se sont livrés les rapporteurs et le fait qu'ils se sont attachés à appréhender les institutions monégasques dans le cadre des spécificités uniques de Monaco et se sont intéressés, au-delà de la lettre de la Constitution et des autres textes normatifs, à la réalité des pratiques et de la vie publique. Il rappelle que ces spécificités uniques expliquent et justifient le régime constitutionnel particulier de Monaco qui a été reconnu par le Conseil de l'Europe dès 2004 au moment de l'adhésion de la principauté. Il déclare qu'il est vrai que Monaco n'est pas un régime parlementaire : c'est une monarchie héréditaire, constitutionnelle et démocratique. Il conteste d'une part certaines assertions contenues dans le projet d'avis et d'autre part qu'il existe un régime idéal unique dans lequel le gouvernement peut être renversé par la (ou les) assemblée(s) parlementaire(s). Enfin, il réaffirme solennellement la volonté, partagée par l'ensemble des pouvoirs publics et la population, du maintien *ne varietur* de la répartition des pouvoirs telle qu'elle résulte de la Constitution du 17 décembre 1962, révisée en 2002, sur la base de laquelle Monaco a été admis au Conseil de l'Europe.

M. Anselmi, délégué aux affaires juridiques, concentre son intervention sur la question de la répartition des matières dévolues à la loi et au règlement et conteste que le partage entre le domaine de la loi et celui des actes réglementaires n'apparaisse pas clairement. Il indique que les conclusions amendées en sous-commission selon lesquelles « Monaco n'est pas une démocratie » et « le cadre institutionnel actuel ne fournit pas de garanties suffisantes à assurer la responsabilité démocratique » ne sont pas acceptables.

M. Philippe Narmino, Directeur des Services judiciaires de Monaco, rappelle la spécificité de son statut : il n'appartient pas au gouvernement car à Monaco la justice est autonome sur le plan administratif ; la justice est indépendante et l'équilibre des pouvoirs est assuré ; le peuple monégasque, les résidents, les acteurs économiques, l'institution princière, tous se déclarent satisfaits de l'organisation actuelle des pouvoirs publics.

Enfin, M. Laurent Nouvion, Président du Conseil National de Monaco, se déclare choqué par les parties de l'avis visant à démontrer que Monaco n'est pas un Etat démocratique ; Monaco est atypique et les monégasques tiennent plus que tout à cette identité atypique ; Monaco est un système de démocratie quasi-directe et personne ne souhaite la mise en place d'un système de démocratie parlementaire. Lors des récentes élections, toutes les listes ont fait campagne sur le maintien du modèle existant qui a montré son efficacité.

En réponse à une demande de la délégation monégasque, M. Buquicchio indique que les commentaires écrits des autorités monégasques seront publiés et rendus publics (cf. [CDL-REF\(2013\)031](#)).

Une discussion s'engage au sujet des amendements qui ont été apportés en sous-commission.

Lors des débats, certains membres de la Commission font valoir que la Constitution de Monaco n'est pas démocratique et qu'il convient de le dire explicitement car il ne faut pas qu'il puisse

être reproché à la Commission de Venise d'appliquer un double standard. Les rapporteurs rappellent que l'avis ne porte pas uniquement sur la Constitution mais plutôt sur l'ensemble Constitution-législation-pratique et qu'en outre, comme dans tous ses avis, la Commission devrait tenir compte des particularismes de Monaco. Des propositions de modification des conclusions de l'avis sont avancées, dans le sens de les durcir ou bien de les modérer.

Il est procédé à un vote sur deux formulations alternatives du paragraphe 99 de l'avis.

A la suite de cette modification, les autorités monégasques demandent que soit clarifié ou supprimé le §102, mais cette demande est rejetée.

**La Commission adopte l'avis sur l'équilibre des pouvoirs dans la Constitution et la législation de la Principauté de Monaco (CDL-AD(2013)018).**

## 12. Ukraine

### - *Draft opinion on the constitutional amendments on the Judiciary of Ukraine*

Mr Tanchev presented the draft opinion on the Constitutional amendments on the Judiciary of Ukraine, as amended at the meeting of the Sub-Commission on the Judiciary on 13 June 2013. The draft Opinion dealt with two separate texts: the draft Law on the Amendments and the proposed Changes to the Constitution of Ukraine made by the Constitutional Assembly, which had not yet taken the form of a legislative text.

The Amendments were to be welcomed. However, there were some issues that should be reconsidered, such as the issue of the immunity of judges, which should be reduced to functional immunity in the long run, and the issue of the dismissal of judges for breach of oath, which should be replaced by the dismissal for having committed a specific offence.

The changes proposed would be a welcome addition to the Amendments, notably aspects of the right to a fair trial derived from Article 6 ECHR and the powers of the Supreme Court to ensure the uniform application of the law.

Mr Andriy Portnov, Adviser to the President of Ukraine, explained that the recommendations made in the draft opinion would be taken into account and that the draft law was going to be submitted to Parliament soon. He explained that Ukraine had several main goals to meet this year, which included following the recommendation of the EU to reform the High Council of Justice and eliminating political bodies from the system of the appointment of judges.

Mr Valeriy Pysarenko, Chairman of the Committee on Judicial Policy at the *Verkhovna Rada* of Ukraine, explained that his Committee deals with the changes to the Constitution. He said that the draft law was a reflection of the direction the reform in Ukraine was taking and that the Ukrainian authorities would do their utmost to take the Venice Commission's recommendations into account.

Mr Kivalov explained that the Venice Commission had adopted many opinions on Ukraine over the years and that this had set a direction for the reform in the country, notably for the judiciary. He said that all the proposals would be taken into account by the Ukrainian authorities.

**The Venice Commission adopted the Opinion on the draft Law on the Amendments to the Constitution, strengthening the independence of judges (including an explanatory note and a comparative table) and on the Changes to the Constitution proposed by the Constitutional Assembly of Ukraine, with modifications (CDL-AD(2013)014).**

- *Joint Opinion by the Venice Commission and the OSCE/ODIHR on draft amendments to the Electoral legislation of Ukraine*

Mr Paczolay introduced the opinion, stating that the Ukrainian authorities had launched the electoral reform following the conclusions of the meeting of the Council of the European Union on Ukraine, held in December 2012. The Council of the EU stated that the signature of the association agreement with Ukraine would depend on three main reforms: the electoral reform, judicial reform and the implementation of the European Court of Human Rights' judgments concerning people in detention, in what was a clear reference to the high-level politicians in prison.

The draft reform introduced only limited amendments to the electoral legislation. A comprehensive electoral reform, which would imply amending and harmonising the different pieces of electoral legislation, would have been necessary. This would include further revision of the legal framework and the incorporation of the remaining recommendations of previous OSCE/ODIHR reports and joint OSCE/ODIHR/ Venice Commission opinions. There were, nevertheless, several improvements, such as the introduction of criteria for the establishment of single-mandate districts, the transparency of the CEC, the limits to changes in voter registration, the requirements on reporting on campaign funds and the provisions to ensure more equitable coverage of the elections by the media. However, key issues and recommendations raised in prior joint opinions of the Venice Commission and the OSCE/ODIHR, as well as in OSCE/ODIHR final reports remained unaddressed in the draft laws. Consideration would need to be given to addressing these recommendations before the draft laws were submitted to Parliament. Among them, the mixed system of 225 single-mandate districts and 225 proportional representation mandates had been retained in the draft, although the last parliamentary elections stated that most interlocutors complained about the electoral system, which re-introduced deficiencies already noted when it was previously used. Limitations on the right to be a candidate, which exclude anyone convicted regardless of the severity of the crime committed and the five-year residency requirement for candidates, which is excessive and unreasonable, among many others issues, need to be changed. Finally, in five electoral districts, the result of the elections was not valid and there was a need to repeat elections. A draft law had been prepared for repeating the elections, although it had some shortcomings in relation to the training requirements for election commission members.

Ms Inna Yemelyanova, First Deputy Minister of Justice of Ukraine, pointed out the complexity of following certain recommendations, such as the five-year residency requirement for candidates, which was established by the Constitution itself and was not a legal issue. The requirement to increase plurality in electoral administration and, at the same time, reduce the number of members of District Electoral Commissions was also problematic. Similarly, further clarifications should be provided concerning the composition of DEC's and the GRECO recommendations concerning the financing of campaigns.

**The Commission adopted the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft amendments to the Laws on Election of People's Deputies and on the Central Election Commission and on the Draft Law on Repeat elections of Ukraine ([CDL-AD\(2013\)016](#)).**

- *Draft opinion on the law on national referendum in Ukraine*

Mr Paczolay presented the draft opinion on the law on national referendum in Ukraine, pointing out that it mainly focussed on the issue of the organisation of constitutional referendums by popular initiative. He welcomed the adoption of a new law on referendum which replaced a 1991 text. In his opinion this piece of legislation was long overdue, since the adoption of a new Constitution of Ukraine in 1996.

The law provided detailed regulation of national referendums in Ukraine. However, the main concern of the rapporteurs underlined by Mr Paczolay was the possibility given by the text of the new law to bypass the parliament and adopt constitutional changes by a referendum. This was contrary to the previous recommendations of the Venice Commission concerning constitutional reforms and organisation of referendums in Ukraine.

According to the opinion there were other shortcomings in the adopted law in such areas as the respect for the principle of equality between supporters and opponents of the referendum, the composition of referendum commissions and the financing of referendum campaigns. Provisions of the law on registration of voters and on the role of mass media during the referendum campaign should be significantly improved.

Ms I. Yemeliyanova, Vice-Minister of Justice of Ukraine, thanked the rapporteurs for their text and said that she agreed that some of the provisions of the law should be improved. However, she did not agree that the Rada was completely excluded from the constitutional process in the case of the constitutional referendum on popular initiative. Such referendums are called on the basis of a Presidential decree, which could be challenged by MPs in the Constitutional Court. Ms Yemeliyanova was of opinion that the law protected in a balanced way both the rights of the supporters and the opponents of referendums.

Mr Tuori reminded the Commission that the issue of constitutional referendums had previously been debated on several occasions. In his opinion the proposed text reflected the position of the Venice Commission and he proposed to adopt the text without amendments.

**The Commission adopted the opinion ([CDL-AD\(2013\)017](#)) on the law on national referendum of Ukraine drawn up, at the request of the Parliamentary Assembly of the Council of Europe, on the basis of comments by Mr Paczolay, Mr Sanchez Navarro and Mr Tuori.**

### 13. Georgia

Mr Esanu presented the joint opinion on the draft law of Georgia on a Temporary State Commission on Miscarriages of Justice as amended following discussion by the Sub-Commission on the Judiciary at its meeting of 13 June 2013.

The preamble of the draft Law states that “*after the parliamentary election of October 1, 2012 thousands of Georgian citizens, foreigners or stateless persons have filed complaints to the executive authorities and Parliament of Georgia stating that in 2004-2012 they were unlawfully and/or unjustly convicted of criminal offences*” and the draft Law on the Temporary State Commission on Miscarriages of Justice is intended to provide a mechanism to determine the cases of these people.

The draft amended opinion stated that the very idea of a process of massive examination of possible cases of miscarriage of justice by a non-judicial body raised issues as regards the separation of powers and the independence of the judiciary as enshrined in the Georgian Constitution.

Therefore the draft amended opinion underlined that:

- the Venice Commission and the Directorate for Justice and Human Dignity (DJHD) did not take a position on whether in fact there were miscarriages of justice in Georgia nor on whether such miscarriages of justice were of a systemic nature and require the creation of a special mechanism;



- any decision on the determination of the criminal charges against plaintiffs having suffered a miscarriage of justice must be adopted by a court;
- it is essential that no special “chamber for miscarriage of justice” be specially created in order to re-examine the cases sent back to the judiciary by the State Commission.

The opinion further gave a number of recommendations aimed at clarifying certain provisions (in particular those concerning the temporal scope of the competence of the State Commission) and at depoliticising as far as possible the State Commission.

Mr Alexandre Baramidzé, Deputy Minister of Justice of Georgia, expressed the Government of Georgia’s gratitude and satisfaction that in general the Venice Commission understood the problems of the Georgian judiciary and the challenges the Georgian government and society face to reforming the judiciary. He asked for the withdrawal of certain remarks in the opinion deemed ambiguous by his authorities, he asked for advice on an anti-deadlock mechanism and explained that the creation of a special “chamber for miscarriage of justice” would not inevitably be contrary to the Georgian constitutional provision that bans “special courts”. A discussion ensued.

**The Commission adopted the joint opinion by the Venice Commission and the Directorate for Justice and Human Dignity of the Directorate General of Human Rights and Rule of Law (DGI) on the draft law of Georgia on a Temporary State Commission on Miscarriages of Justice([CDL-AD\(2013\)013](#)).**

#### **14. Bosnia and Herzegovina**

Mr Vardzelashvili presented the draft opinion on the draft law on the Courts of Bosnia and Herzegovina to the Venice Commission. This draft had been amended at the meeting of the Sub-Commission on the Judiciary on 13 June 2013.

The creation of a new High Court of Bosnia and Herzegovina in this draft law, replacing the appellate division of the Court of Bosnia and Herzegovina as a separate court of appeal, was regarded as a practical step in the right direction. However, it gave rise to a number of issues. For instance, the draft law should ensure that there was no overlapping with the law on the High Judicial and Prosecutorial Council of BiH. In addition, providing for a representation in the new High Court of the Constituent Peoples and of others living in the territory of BiH was a problematic issue in the judiciary, as the principle of independence and impartiality should prevail over considerations of ethnic representation. Also, the creation of an appellate panel within the new High Court should be avoided, as this seemed to copy what was already criticised in the structure of the Court of BiH.

Mr Srđan Radulj, Deputy Minister of Justice of BiH, explained that the law on Courts of BiH was an important step forward in the reform of the judiciary of BiH. He said that one of the main issues affecting the reform was the problem in defining criminal jurisdiction. Similar provisions to the ones in the draft law already exist in the current law introduced by the Office of the High Representative in BiH; they have created jurisdictional confusion with respect to the courts on the Entity and at the State level etc. In addition, the current provisions on what constitutes certain crimes were not clearly defined and created legal uncertainty. He believed that the best solution to provide more clarity would be for the Court of BiH to have jurisdiction on State-level crimes and leave the rest to the Entities and the Brčko District.

Discussions followed on the nature of the new High Court of BiH and the fact that the Venice Commission understood it to be a separate appellate body at the State level and not a Supreme Court. Although the creation of a Supreme Court at the State level would be desirable, it was premature and impracticable for the moment, as the laws were not sufficiently harmonised for such a Court to work effectively. With respect to criminal jurisdiction, although

the provision in the draft law was well intentioned, its formulation was unclear and gave rise to different interpretations. With respect to the Ministry of Justice's competence over the budget, it was important to note that it was a powerful tool to control courts and could easily be used to curb their independence. Although the draft law did not seem to give much power to the Ministry of Justice to interfere in the Courts' budget, it was not entirely clear what this power covered (i.e. other laws may provide for further safeguards or on the contrary, provide the Ministry with more powers).

Ms Paola Pampaloni, Acting Director and Head of Unit C1 of the European Commission, explained that this draft opinion was an important contribution to the EU-BiH Structural Dialogue on Justice, the aim of which was to ensure that the laws on the judiciary in that country are harmonised so as to be in line with European standards. She said that the Venice Commission's readiness to assess the reform of the state-level judiciary was a reassurance for all stakeholders that a new, valuable and relevant technical contribution would be available. During its last session, the European Commission underlined that the Law on Courts of BiH and the Law on the HJPC should be harmonised and that the latter would soon be sent to the Venice Commission for an opinion.

**The Venice Commission adopted the Opinion on the draft law on the Courts of Bosnia and Herzegovina ([CDL-AD\(2013\)015](#)).**

## 15. Mexico

Mr Darmanovic presented the opinion on the electoral legislation of Mexico, which had been requested by the President of the Mexican Federal Electoral Institute (IFE), Mr Leonardo Valdés Zurita. The legislation included a number of positive elements and has evolved in order to introduce freer and fairer elections in Mexico. Notably, the electoral legislation had reinforced the powers of the IFE and the Electoral Court of Mexico, established mechanisms for overseeing of public funding of political parties, declared the importance of freedom of expression, distributed equal media time among political parties and ensured a higher presence of women in politics through the establishment of quotas. However, there were several aspects which could be improved, such as the simplification of the legislation, which was too complex; reconsidering the ban on re-election of parliamentarians; establishing in a clearer and more concise manner the limits to expenditure by political parties, avoiding long lists and different categories in the type of expenditure to be considered; clearly defining the scope of the prohibition of electoral campaigning and the position of individuals who were not candidates nor members of political parties in this respect; reviewing the provisions concerning the prohibition of denigration of political parties or candidates, as they may lead to the censoring of any statements which were critical of the government or call for constitutional change, although this was the very essence of democratic debate. Media pluralism should be further improved and the promotion of the participation of minorities in elections should also be furthered.

Mr Tanchev pointed out that, concerning the annulment of an election, percentages for annulling congressional and senatorial elections should be reviewed to make them coherent and there should be a possibility to annul presidential elections in case of substantial violations on polling day.

Mr Leonardo Valdés Zurita, President of the Federal Electoral Institute of Mexico thanked the Venice Commission and confirmed that the new electoral reform was now under discussion. The opinion would therefore be very useful for the Mexican authorities.

**The Commission adopted the opinion of the Venice Commission on the Electoral legislation of Mexico ([CDL-AD\(2013\)21](#)).**



## 16. “The former Yugoslav Republic of Macedonia”

Mr Kask presented the joint opinion on the electoral code of “the former Yugoslav Republic of Macedonia”. He reminded the Commission that on 17 August 2012, the OSCE/ODIHR and the Venice Commission had provided informal comments on the draft laws amending the Electoral Code and on Amending and Supplementing the Law on Political Party Financing of “the former Yugoslav Republic of Macedonia”, following the request from the Ministry of Justice on 10 July 2012. In addition, in October 2011, a previous Joint Opinion on the Electoral Code of April 2011 had been adopted by the OSCE/ODIHR and the Venice Commission ([CDL-AD\(2011\)027](#)) and another former Joint Opinion had been adopted on the 2008 amendments to the Electoral Code ([CDL-AD\(2009\)032](#)).

The November 2012 amendments to the Electoral Code had been adopted against the background of the lack of political consensus and co-operation between the government, the opposition and various other interested groups. The Venice Commission and the OSCE/ODIHR stressed the importance of an inclusive process and a constructive dialogue among all political forces and stakeholders in any further amendments to the Electoral Code. However, the amendments introduced had improved the previous Electoral Code. The most important amendments adopted after the last Joint Opinion touched upon the issue of the separation of the state and political parties, registration of candidates, media, political party and campaign finance reporting and auditing, clarifications on the right to vote and to be elected.

Nevertheless, many issues still needed to be addressed, as recommendations made in earlier opinions had not been followed. This was the case notably with regard to thresholds for campaign donations, publication and tabulation of election results, complaints and appeals procedures, the turnout requirement in presidential elections and the system and arrangements for out-of-country voting.

**The Commission adopted the joint opinion of the Venice Commission and the OSCE/ODIHR on the Electoral Code of “the Former Yugoslav Republic of Macedonia” ([CDL-AD\(2013\)020](#)).**

## 17. Tunisia

- *Avis conjoint sur la loi n°2008-37 du 16 juin 2008 relative au Comité supérieur des droits de l'homme et des libertés fondamentales de la République de Tunisie, de la Commission de Venise et de l'OSCE/BIDDH*

M. Huseynov, rapporteur, informe la Commission que le projet d'avis porte sur une loi datant de 2008, suite à une demande adressée par le ministère des Droits de l'Homme et de la Justice transitionnelle à l'OSCE/BIDDH et à la Commission de Venise. Cette demande fait partie, dans le cadre du processus de réforme engagé en Tunisie au lendemain de la révolution, d'une plus ample réflexion visant à mettre en place, en conformité avec les normes internationales pertinentes, une institution de protection des droits de l'homme moderne, indépendante et efficace. Le cadre juridique établi pour le fonctionnement du Conseil supérieur des droits de l'homme et des libertés fondamentales contient de nombreuses sources de préoccupation et devrait être revu en profondeur. Le projet d'avis relève notamment l'absence de réelles garanties d'indépendance ainsi que pour la pluralité et la diversité de ses membres et la quasi-subordination du Conseil supérieur au Président de la République. L'absence d'indépendance touche les principaux aspects du fonctionnement du Conseil : la sélection et le recrutement de ses membres ou encore leur révocation, les pouvoirs, plutôt limités, du Conseil et ses méthodes de travail, les limitations affectant son action et celle de ses membres, l'absence d'immunité dans l'exercice de leurs fonctions, l'insuffisance de ressources humaines et financières et d'instruments de travail adéquats, l'absence d'indépendance dans le recrutement du personnel.

M. Ben Achour tient à faire remarquer dans ce contexte que - tel qu'il est précisé dans le projet d'avis - le projet de Constitution élaboré par l'Assemblée nationale constituante (ANC) reconnaît l'instance des droits de l'homme en tant qu'instance constitutionnelle indépendante et que des dispositions spécifiques sont consacrées aux principes fondamentaux, aux missions attribuées à cette institution et aux règles de base régissant son fonctionnement.

Mme Err souligne l'importance, dans le contexte spécifique d'un pays en voie de transition démocratique, de l'inclusion dans la future Constitution de garanties efficaces pour l'indépendance, la stabilité et les pouvoirs de l'institution nationale des droits de l'homme.

**La Commission adopte l'avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur la loi n°2008-37 du 16 juin 2008 relative au Comité supérieur des droits de l'homme et des libertés fondamentales de la République de Tunisie (CDL-AD(2013)019).**

En outre, la Commission est informée de la demande du Président de l'ANC pour un avis sur le projet de Constitution dont la version finale a été présentée par l'ANC le 1<sup>er</sup> juin 2013. Etant donné l'urgence du calendrier du processus constitutionnel en Tunisie, la Commission autorise les rapporteurs à envoyer leurs observations sur le projet de Constitution avant la prochaine session plénière.

Dans ce contexte, M. Ben Achour apporte des informations complémentaires au sujet des derniers développements liés au processus constitutionnel et notamment sur les débats en cours en Tunisie autour de la version finale du projet de Constitution.

## **18. Prohibition of so-called Propaganda of Homosexuality**

Ms Flanagan presented the draft opinion which had been drafted following a request from the Chair of the Committee on Equality and Non-discrimination of the Parliamentary Assembly of the Council of Europe. The opinion underlined that the statutory provisions, which are examples of a wider phenomenon to introduce prohibition of "propaganda of homosexuality" in several Council of Europe member States, especially in Central and Eastern Europe, were problematic from the perspective of the applicable standards, in particular the European Convention on Human Rights.

The opinion stressed that the provisions under consideration were not formulated with sufficient precision and that the terms used therein, such as "propaganda", "aggressive propaganda" "promotion" etc. were too ambiguous to reach the standard of "foreseeability" as a requirement of the criteria "prescribed by law". The opinion also pointed out that the domestic courts have failed to mitigate this ambiguity through consistent interpretations.

After having emphasised that the prohibitions under consideration were not limited to sexually explicit content or obscenities, the opinion stressed that they were blanket restrictions aimed at legitimate expressions of sexual orientation and that "public morality" and "protection of minors" as justifications for the prohibitions under consideration, failed to pass the essential necessity and proportionality tests as required by the ECHR. It reiterated that homosexuality, protected under the European Convention, cannot be deemed contrary to morals by public authorities and that there was no evidence that expressions of sexual orientation would adversely affect minors.

Finally, it was underlined that the prohibition of "homosexual propaganda", as opposed to "heterosexual propaganda" amounted to discrimination on the basis of the content of speech about sexual orientation because of the lack of any reasonable and objective criteria to justify

the difference of treatment in the application of the right to freedom of expression and assembly.

During the discussions, the Secretary General's critical statement, on 13 July 2013, on legislation in the Russian Duma prohibiting "propaganda of non-traditional sexual relations" among minors was referred to and the urgency of the adoption of the opinion was underlined.

Ms Suchocka, having regard to the sensitiveness of the issue under examination, proposed the postponement of the adoption of the draft opinion to October Session, following the discussion on "children's rights" which should be taken into account in the context of the discussion on propaganda of homosexuality.

Ms Bilkova, Mr Clayton and Mr Tuori in particular, stressed that the future discussion on children's rights was not a sufficient reason to adjourn the adoption of this opinion and such a postponement could be badly perceived and give rise to criticism.

Ambassador Claus von Barnekow, Permanent Representative of Denmark to the Council of Europe, reminded that there was currently a thematic debate on LGBT rights before the Committee of Ministers of the Council of Europe and emphasised the urgency of the adoption of the opinion.

**The Commission adopted the Opinion on the prohibition of so-called Propaganda of Homosexuality in the light of recent legislation in some member States of the Council of Europe (CDL-AD(2013)022).**

## 19. Egypt

Mr Paczolay informed the Commission that in March 2013, thanks to the intervention of Mr Stavros Lambrinidis, EU Special Rapporteurs on Human Rights, he and the Deputy Secretary had travelled to Cairo to meet with the Minister of Justice in order to provide input in the preparation of the draft law on civic work organisations of Egypt. Mr Paczolay had subsequently prepared a report on "Standards and legislation relating to Freedom of Association and Non-Governmental Organisations" (CDL(2013)017) which had been sent to the Egyptian authorities. The Presidency of Egypt was not preparing a draft law and has sought the Venice Commission's opinion on it.

The draft opinion expressed the view that the draft law represented an improvement compared to previous versions, but still presented problems that needed to be addressed, notably as concerned the restrictions to fund-raising activities of NGOs and the monitoring of foreign NGOs. This draft opinion would be an interim one, as the Egyptian Presidency had expressed their willingness to continue to work on the draft law and to take into account the Venice Commission's suggestions.

Mr Khaled al-Qazzaz, President Morsy's Secretary on Foreign Affairs, expressed the appreciation of the Egyptian Presidency and government for the draft opinion on the Egyptian NGO legislation, which they found professional, objective, impartial and very useful.

Mr al-Qazzaz stressed that Egypt was undergoing an historic moment; building a strong vibrant free civil society was vital for preserving the gains of the revolution and for further development. Egypt suffered from a deep state bureaucracy and a very complex legal framework that was mostly based on the previous, more restrictive, constitution. The new NGO draft law thus aimed at protecting the civil society from existing restrictive laws. The recent conviction of 43 NGOs workers was an example of the repressive current criminal legislation. The government wished to maintain communication and inclusiveness of all stakeholders. They intended to encourage transparency in the flow of money in and out of the country, while avoiding restrictive controls.

Under the new NGO law, the supervision of civil society entities would be the responsibility of a political appointee, the Minister of Insurance and Social Affairs. The new legislation encouraged transparency. National security issues would be regulated by other legislation; the government agency would thus have no power of control other than its role as an administrative body. Moreover, the Co-ordinating Committee, which represented a consolidated unit responsible for the registration and follow-up procedures, included members of civil society. It was composed in that way with the hope of evolving into an independent body similar to the Charity Commission in the United Kingdom where civil society organises itself independently and efficiently. Mr al-Qazzaz added certain clarifications of the specific meaning of concepts such as ‘funding’ and ‘donations’ in Egyptian law.

Based on the discussions with local and international experts (including the Venice Commission) the Shura Council had agreed to add a preamble to the law clarifying and emphasising the content of freedom of association, including the right of association without registration. Further clarifications would remove much ambiguity, preventing potential loopholes and misinterpretations.

On a final note, Mr al-Qazzaz emphasised that his presence in Venice was an attempt to positively engage with the international community. The Egyptian Presidency and Government wanted to create a new environment in Egypt that would enable engagement and exchanges on the international level, while respecting their cultural contexts. They hoped that the new NGO law would provide new grounds for an open relationship with international NGOs and for a solution to the court verdict against NGOs in Egypt. Indeed, the new environment provided by the new legislation would allow for the operation of international NGOs in Egypt. The new Administration had recognised the good legacy of the German foundation Konrad-Adenauer-Stiftung, and licensed its operation in Egypt before the court verdict. It also appreciated the constructive role played by similar international NGOs whose work is geared towards Egypt’s development.

Ms Cleveland expressed the view that the draft NGO law raised several concerns which deserved a deeper analysis. In her view, it was premature to adopt the opinion.

After discussion, the Commission decided to adopt the interim opinion, and to revert to the issues raised by the draft law within the framework of the future exchanges with the Egyptian authorities.

**The Commission adopted the interim opinion on the draft law on Civic Work Organisations of Egypt (CDL-AD(2013)023).**

## 20. Romania

The Secretariat provided information on the participation of a Venice Commission delegation, in Bucharest on 8-9 May 2013, in a Conference, organised by the civil society Constitutional Forum, to take stock of the civil society proposals for the revision of the Romanian Constitution. The Venice Commission had in this way answered an invitation to exchange views, in the light of the relevant standards, on the proposals gathered during a one-month consultation process throughout the country. Subsequently, the Forum submitted its final report to the Parliament’s commission for the revision of the Constitution.

The Commission was further informed that, as part of the assistance provided, at the request of the Romanian Prime Minister, in the process of constitutional reform, a meeting with the representatives of the Parliament’s commission for the revision of the Constitution and of Romania’s main political forces would take place in Bucharest on 4-5 July 2013.

## **21. Co-operation with Latin America**

Ms Carmen Alanis informed the Commission on the progress made on the transfer of the VOTA database to the Electoral Tribunal of the Federal Judiciary of Mexico, which is on-going. There was a notable improvement in the solving of technical problems related to the transfer and capture of data in the new interface, as well as on the programming of the webpage. The content had also improved, as a new section in Spanish had been included and indexation of new texts was being added currently. The process of updating texts was on-going. Further technical improvements, as well as updates, would take place until the database was launched during the meeting of October 2013 in Mexico.

The Commission was also represented at the Technical Committee preparing ISO 17582, the draft quality electoral management standard and in particular the meeting which took place in Punta Cana on 11-12 April 2013. The Venice Commission had been invited to act as a Category "A" Liaison with the Organization of American States, on the creation of an ISO standard for electoral organisations (Electoral Management Bodies and Electoral Courts). The meeting was attended by representatives from Argentina, Costa Rica, the Dominican Republic, Germany, Mexico, Russia, the United Arab Emirates, the United States, the International Institute for Democracy and Electoral Assistance (International IDEA) and the Organization of American States (OAS).

A meeting will take place next October or at the beginning of November on the topic of the Study on the implementation of Human Rights treaties in domestic law, with a special focus on Latin America. Other Latin American countries with an interest in the Venice Commission and in the work of the Sub-Commission on Latin America will attend this event.

Mr Urviola informed the Commission on the International Conference on Individual access to Constitutional Justice, which took place in Arequipa, Peru, on 30-31 May 2013. Constitutional Courts and/or Supreme Courts of Argentina, Brazil, Bolivia, Chile, Colombia, the Dominican Republic, Ecuador, Guatemala, Paraguay, Peru, Uruguay and Venezuela were present and debates were very lively and enriching. Most of the Constitutional Courts and courts of equivalent jurisdiction present expressed their wish to accede to the WCCJ.

## **22. Coopération avec d'autres pays**

### *- Maroc*

The Commission was informed about the latest activities organised in Morocco in the framework of the Council of Europe Joint Programme strengthening democratic reform in the Southern Neighbourhood.

### *Coopération avec Ministère de la Solidarité, de la Femme, de la Famille et du Développement Social*

Les 24 et 25 avril 2013, une délégation du Conseil de l'Europe, menée par Mme de Guillenchmidt, a rencontré les autorités marocaines et la société civile en vue de la mise en place de l'Autorité chargée de la Parité et de la Lutte contre toutes les formes de discrimination et du Conseil consultatif de la Famille et de l'Enfance.

Cette visite a fait suite à la demande d'assistance faite, à la Commission de Venise, par Mme Hakkaoui, Ministre de la Solidarité, de la Femme, de la Famille et du Développement Social, pour la mise en place de l'Autorité chargée de la Parité et de la Lutte contre toutes les formes de discrimination et du Conseil consultatif de la Famille et de l'Enfance.

La délégation a organisé des auditions des Commissions scientifiques créées à cet effet, a rencontré le Médiateur du Royaume et le Conseil national des droits de l'Homme, ainsi que la société civile. Mme la Ministre Hakkaoui a rencontré la délégation.

Les projets de lois seront soumis à l'analyse de la Commission de Venise au mois de juillet, avant d'être présentés à la session parlementaire d'automne.

#### *Deuxième Atelier interculturel sur la démocratie*

Le Secrétariat informe la plénière des résultats du 2<sup>e</sup> Atelier interculturel sur la démocratie "Le nouveau constitutionnalisme du monde arabe : les processus d'élaboration des constitutions dans un contexte de changement" organisé par la Commission de Venise et l'Association marocaine de droit constitutionnel à Marrakech les 14 et 15 mai 2013.

Cette activité a réuni des rédacteurs de constitutions venus d'Algérie, d'Egypte, de Jordanie, de Libye, de Mauritanie, du Maroc, de Tunisie et du Yémen, qui ont échangé leurs expériences dans le domaine de la réforme constitutionnelle. Parmi d'autres sujets, ils ont comparé les approches utilisées dans la révision de leurs constitutions respectives, de même que la procédure utilisée pour leur élaboration et leur adoption ainsi que la mise en pratique des dispositions constitutionnelles à travers une nouvelle législation. La Commission de Venise est convaincue qu'un tel dialogue pourrait être extrêmement utile non seulement pour les pays concernés mais également pour les constitutionnalistes en général.

M. A. Lamghari exprime sa satisfaction avec la qualité des interventions des rapporteurs et souligne l'excellente coopération entre le secrétariat de la Commission de Venise et l'Association marocaine du droit constitutionnel dans le cadre de ce projet.

Ce séminaire a eu lieu dans le cadre du programme de l'Union européenne « Renforcer la réforme démocratique dans les pays du voisinage méridional » et a reçu le soutien du Ministère des Affaires étrangères de la Norvège. La Fondation Hanns-Seidel a également contribué à l'organisation de cet événement majeur.

#### *Autres activités*

La Commission est informée que ses représentants ont participé au séminaire sur l'initiative législative populaire organisé par l'Assemblée parlementaire du Conseil de l'Europe et le parlement du Maroc à Rabat le 15 mai 2013.

### **23. Information on constitutional developments in other countries**

#### **- Turkey**

Mr Özbudun informed the Commission on the constitution-drafting process currently underway in Turkey. He underlined that the conciliation commission in charge of the drafting of a new constitution had been carrying out its work since October 2011 with equal political party participation and that they had agreed on more than 50 articles of the draft constitution.

However, the adoption of the unanimity rule rendered the work of the commission more difficult and it was unrealistic to expect the conciliation commission to finalise its work in the short term since Turkey is entering into a period of local and national elections.

Mr Özbudun also stressed that the presidential system proposed by the ruling party was rather a superpresidential system not supported by the public opinion.

Concerning the recent public assemblies having taken place in several cities in Turkey, Mr Özbudun explained that the use of force by police officers at the beginning of public

assemblies had aggravated the situation, but that the events had now a tendency to calm down. He also explained that the demonstrators had a legitimate fear concerning an interference of the public authorities in their secular way of life but he was personally not alarmed at the moment by such concern. He also emphasised that the recent events in Turkey were not comparable to the assemblies which had taken place in Tahrir square in Egypt.

Mr Buquicchio informed the Commission that he had been invited to the European Parliament on 26 June for a discussion on the constitution making process in Turkey.

#### **24. Constitutional Justice**

Mr Buquicchio informed the Commission that in the afternoon of 15 June, the enlarged Bureau of the World Conference on Constitutional Justice would meet. The Bureau was composed of representatives of regional and linguistic groups of Constitutional Courts and equivalent bodies and certain individual Courts. The topic of the meeting would be the preparation of the 3<sup>rd</sup> Congress of the World Conference which would take place in Seoul, Republic of Korea, on 28 September – 1 October 2014. Since the adoption of the Statute of the World Conference, 71 Courts had already become members of this body, for which the Venice Commission acted as the Secretariat.

#### **25. International Conference on Political Party Regulation in the Southern Neighbourhood (Bucharest, October 2013)**

The Commission was informed on progress in the organisation of an International Conference on Political Party Regulation in the Southern Neighbourhood which will take place in Bucharest on 18-19 October 2013.

Representatives from Algeria, Egypt, Jordan, Libya, Morocco, Tunisia, Yemen and possibly other countries would be invited to this activity which will concentrate on three main subjects: registration of political parties, financing of political parties and participation of parties in elections.

The event is co-organised by the Ministry of Foreign Affairs of Romania and the Venice Commission. OSCE/ODIHR and different bodies of the Council of Europe, such as the PACE, and specialised services such as GRECO would also be invited to participate in this event.

Mr Mihai informed the Commission that the University of Bucharest was in charge of preparing the draft agenda of the event and invited the members of the Commission interested in participating in this important event to contact the Secretariat.

#### **26. Conference on “The European legal standards and the scope of the discretion of powers in the member states of the Council of Europe” (Yerevan, 3-4 July 2013)**

Mr Harutyunyan informed the Commission that this conference would take place in the framework of the Armenian Presidency of the Committee of Ministers of the Council of Europe. The Conference would explore the scope of admissible discretion under the rule of law. Delegations from more than 30 countries were expected. The Conference would also be the occasion for the presentation of the book “New Millenium Constitutionalism: Paradigms of Reality and Challenges”. Mr Harutyunyan invited the members of the Venice Commission to participate in the Conference.

#### **27. Study on Children’s rights in Constitutions**

Mr Helgesen informed the Commission on the progress made in relation to the study on children’s rights in constitutions, under preparation at the request of the Parliamentary Assembly. The study, which will mainly address the specific question formulated by the



Parliamentary Assembly in its request, namely how can children's rights be included in national constitutions with a view to promoting their effective implementation, will draw up guidelines and recommendations for member states.

Mr Helgesen underlined the importance of the study as the Venice Commission's contribution to the Council of Europe programme "Building a Europe for and with Children" and stated that the aim was to present this study to the specialised Ministerial Conference devoted to children's rights which will take place in March 2014. He further indicated that, during its first meeting, the group of rapporteurs had agreed on the future content and outline of the study, as well as on the steps to be taken with a view to finalising it and enabling its adoption in due time for the 2014 Ministerial Conference.

## **28. Report of the meeting of the Council for Democratic Elections (13 June 2013)**

The President of the Council informed the Commission that, during the meeting of 13 June 2013, the Council for Democratic Elections had examined the opinions on Mexico and Ukraine (referendum) and the joint opinions by the Venice Commission and the OSCE/ODIHR on "the former Yugoslav Republic of Macedonia" and Ukraine (Electoral Code), which were dealt with under items 12, 15 and 16. The Council had further discussed the list of questions and had decided to launch a new study concerning voters list and nationals living abroad in view of avoiding possible manipulation of votes.

## **29. Other business**

There was no other business.

## **30. Dates of the next sessions**

The schedule of remaining sessions for 2013 was confirmed as follows:

96 <sup>th</sup> Plenary Session	11-12 October 2013
97 <sup>th</sup> Plenary Session	6-7 December 2013

The Commission confirmed the schedule of sessions for 2014 as follows:

98 <sup>th</sup> Plenary Session	21-22 March 2014
99 <sup>th</sup> Plenary Session	20-21 June 2014
100 <sup>th</sup> Plenary Session	17-18 October 2014
101 <sup>st</sup> Plenary Session	12-13 December 2014

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

[Link to the list of participants](#)