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

**58th PLENARY SESSION**  
(Venice, 12-13 March 2004)

**SESSION REPORT**

**1. Adoption of the agenda**

The agenda was adopted as it stood.

**2. Communication by the secretariat**

On opening the plenary session, the meeting chair, Mr Van Dijk, apologised for the absence of the President of the Venice Commission, Mr La Pergola, who was unable to be present for health reasons.

The Commission paid tribute to the victims of the Madrid bombings; a minute's silence was observed by all participants.

Mr Van Dijk went on to welcome Kirghizstan's recent accession to the Venice Commission, and greeted the new member, Ms Baekova. He took the opportunity to remind participants of the interest shown in the Venice Commission by other non-European countries, such as Korea, Mexico and Chile.

**Pending a decision by the Committee of Ministers on Israel's request for membership of the enlarged Agreement, the Commission decided to invite this country to attend all the plenary sessions of the Venice Commission as an observer.**

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

Within the framework of its co-operation with the Committee of Ministers, the Commission held an exchange of views with Ambassador Johannes C. Landman, Permanent Representative of the Netherlands to the Council of Europe, and with Ambassador James Sharkey, Permanent Representative of Ireland to the Council of Europe.

In his statement, Ambassador Landman, Chairman of the Ministers' Deputies, spoke of the importance of democratic stability and the constitutional heritage as cornerstones of the Council of Europe. Of particular importance in this context was the expertise provided by the Venice Commission in the fields of electoral and constitutional justice. He also referred to the work done by the Venice Commission in Georgia.

Ambassador Landman went on to stress the need to implement the Code of Good Practice in Electoral Matters at national level. He also spoke of the importance which the Netherlands government attached to reform of the European Court of Human Rights and to interaction between the Council of Europe and other intergovernmental organisations.

Next, Ambassador Sharkey spoke in the context of the Irish presidency of the European Union. He began by emphasising the Council of Europe's role in propagating democratic values, and more specifically, the role of the Venice Commission in developing Europe's democratic heritage. He cited as examples Romania, the case of minorities in Croatia and judicial reform in Bulgaria. He also referred to co-operation between the European Union and the Venice Commission in the Balkans.

Ambassador Sharkey went on to speak of the urgent solution expected in Moldova, in connection with the frozen conflict in Transnistria, saying that this was another area where the Venice Commission had demonstrated its capacity for co-operation with the OSCE and the European Union.

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

The Commission held an exchange of views with Mr Peter Schieder, President of the Council of Europe's Parliamentary Assembly, and with Mr Erik Jurgens, member of the Committee on Legal Affairs and Human Rights, on co-operation with the Assembly.

In his address, Mr Schieder thanked the Venice Commission for its impressive achievements that year, and in particular the work done in association with the Parliamentary Assembly. He outlined future initiatives to be carried out by the Assembly, such as a possible dialogue with Liechtenstein following the constitutional review; he also raised the question of Belarus' reintegration into the organisation as a special guest.

Next, Mr Schieder raised the subject of post-monitoring dialogue in Latvia, with regard to the Russian minority in particular. He also said that the Council of Europe and the Principality of Monaco had reached an agreement on most of the commitments which the Principality would be expected to honour when it joined the organisation.

Mr Jurgens spoke in terms of the Venice Commission's possible participation in various future Assembly debates vis-à-vis member states or in the context of reform of the European Court of Human Rights.

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

Mr Giovanni di Stasi, President of the Chamber of Regions of the Congress of Local and Regional Authorities of the Council of Europe, reported on the CLRAE's activities. Particular mention was made of various reforms under way in member states (such as Georgia and Armenia). He also reported on the election observation missions carried out that year by the Congress.

Mr di Stasi further informed the Commission of the topics that would be addressed at the CLRAE's forthcoming Spring session (Strasbourg, 22-24 March 2004). Among the issues to be discussed at this session were the social rights of migrants, increased support for the Roma communities, the main challenges for social cohesion in towns and cities and the strengthening of civic rights by regional ombudsmen. Attention would also be given during the session to social cohesion in border regions and to social cohesion as an instrument for reducing tensions in South-East Europe and the Caucasus.

To conclude, Mr di Stasi spoke of the vital contribution made by the Venice Commission to the quality of the CLRAE's work.

## **6. Albania**

### *a) Comments by MM Solyom and van Dijk on the draft Law of Albania on Recognition, Restitution and Compensation of Property*

Mr Solyom presented his comments (CDL(2004)012) on the draft law of Albania on the identification, restitution and compensation of property. Article 181 of the Albanian Constitution called for the adoption of a law on expropriations and confiscations effected prior to the entry into force of the Constitution. Various constitutional courts in other countries had addressed the issue of the restitution of property expropriated under the Communist regime, on the basis of the principle of equal rights. The new democratic constitutions did not have retrospective effect and any expropriations effected prior to their adoption would thus normally remain in force. States, however, were free to decide whether they wished to award compensation and if so, how much, with due regard for the principle of equality. Overall, the draft law was in keeping with international standards. A few amendments would seem to be in order, however. For example, the word "recognition" should be deleted from the title of the draft law and a list should be drawn up of any laws and other legal instruments under which expropriations had been effected, and which would now give rise to compensation.

Mr van Dijk presented his comments (CDL(2004)011) on the said law. Although his conclusions either echoed or complemented those made by Mr Solyom, the reasoning behind them was different. Mr van Dijk's comments were concerned with the compatibility of the draft with the European Convention on Human Rights. While, in general, the draft did not give rise to any objections, a number of provisions did nevertheless need revising, such as those relating to the right of access to the courts.

Mr Gotsev referred to the positive experience in Bulgaria, which had restored all property still in existence at the time when the law on restitution was adopted. By contrast, Mr Jambrek noted that in Slovenia, the restitution process had proven long and arduous.

Mr Omari told the Commission that the draft was already before Parliament. It was important, therefore, that the opinion reach the Albanian authorities quickly.

**The Commission endorsed the comments made by MM Solyom and van Dijk on the draft law of Albania on the recognition, restitution and compensation of property (CDL-AD(2004)9), and decided to forward them to the Albanian authorities.**

*b) Recommendations on the electoral law and electoral administration in Albania*

Mr Jurgens presented the draft version of the joint recommendations made by the Venice Commission and the OSCE/ODIHR on the electoral law and electoral administration in Albania (CDL-EL(2004)002; cf. CDL(2004)009). He said that a final version would be prepared in agreement with the ODIHR and members of the Council for Democratic Elections and sent to the Albanian authorities.

**The Commission decided that the final version of the joint recommendations made by the Venice Commission and the OSCE/ODIHR on the electoral law and electoral administration in Albania would be sent to the Albanian authorities.**

## **7. Armenia**

*a) Conference organised in co-operation with the Armenian National Assembly on “constitutional reforms in Armenia” (Yerevan, 20-21 January 2004)*

Mr Tuori recalled that the process of constitutional reform in Armenia had been a lengthy one. After the failure of the referendum in May last year, in order to re-launch the process, a conference had been organised in Yerevan on 20-21 January 2004 by the Armenia National Assembly in co-operation with the Commission. The Commission was represented by Messrs Tuori, Endzins, Colliard, Nascimbene and Masters.

The insufficient involvement of the opposition and of the public had been identified as the main reason for the failure of the previous reform process. Accordingly, both the opposition and the civil society had been invited and had indeed attended the conference. The level of constitutional argumentation in the course of the conference had been very high, and the atmosphere had been very constructive.

It was expected that the draft constitutional amendments would be finalised and submitted to the Commission for expertise by the end of April 2004. A final opinion thereon would then be expected by October 2004. It was expected that the referendum would be held at the beginning of 2005.

*b) Co-operation with Armenia on revision of the electoral code*

The secretariat reported on co-operation with Armenia with regard to revision of the electoral code, and in particular on the seminar on electoral reform in Armenia, held in Yerevan from 24 to 29 February 2004.

As part of the co-operation with the Armenian authorities in electoral matters, related to the monitoring of commitments by the Parliamentary Assembly and the Committee of Ministers, one member of the secretariat and two experts from the Venice Commission, Messrs Masters and Krennerich, had visited Yerevan in order to provide assistance, together with the OSCE/ODIHR, with future electoral reform.

This seminar followed on the joint recommendations made by the Venice Commission and the OSCE/ODIHR on the electoral law and electoral administration in Armenia (CDL-AD(2003)021).

The participants were representatives of the legislative, executive and judicial authorities (Constitutional Court), the central electoral commission, political parties, NGOs and international organisations. The seminar, covering the entire electoral process (before, during and after the ballot) sought to highlight the points that needed to be changed in order to ensure that electoral law and electoral administration complied with European standards in future.

The seminar had produced a number of new joint recommendations, which would be forwarded to the Armenian Parliament.

**8. Azerbaijan**

*a) Opinion on the rules of procedure of the Constitutional Court of Azerbaijan*

The secretariat informed the Commission that the law on the Constitutional Court of the Republic of Azerbaijan, a draft version of which had been the subject of a Venice Commission opinion, had been adopted on 23 December 2003. The main achievement and novelty of the new law was that it introduced the possibility of direct individual applications to the Constitutional Court. This was bound to have an impact on the Court's workload and working methods. The Constitutional Court had therefore asked the Commission to organise a training seminar for the Court's legal staff, who, under the new law, were to play a key role in handling cases. This seminar had been held on 26 and 27 February 2004 and had provided an opportunity for a highly constructive exchange of views and experience on methods of managing and processing cases. The Constitutional Court had also asked the Commission for an opinion on the draft rules of procedure of the Constitutional Court, which were currently in preparation.

*c) Recommendations on the electoral law and electoral administration in Azerbaijan*

Mr Jurgens presented the draft version of the joint recommendations made by the Venice Commission and the OSCE/ODIHR on the electoral law and electoral administration in Azerbaijan, as adopted by the Council for Democratic Elections (CDL-EL(2004)007; cf. CDL(2003)047).

**The Commission endorsed the recommendations on the electoral law and electoral administration in Azerbaijan (CDL-AD(2004)16), and decided to forward them to the Azerbaijani authorities.**

## **9. Bosnia and Herzegovina**

### *a) Draft opinion on the draft amendments to the Constitution of the Federation of Bosnia and Herzegovina*

The secretariat presented Mr Scholsem's comments on the draft amendments to the Constitution of the Federation of Bosnia and Herzegovina. The Commission had been asked twice by the Constitutional Committee of the Parliament of the Federation of Bosnia and Herzegovina to comment on the draft amendments to the Federation's Constitution with regard to provisions on local authorities. Mr Scholsem's initial remarks had been taken into account by the Constitutional Committee in the second draft, which it had submitted for comments.

The constitutional amendments submitted were very important in the particular context of Bosnia and Herzegovina; they sought to redefine the distribution of local powers within the federated entity of the Federation of Bosnia and Herzegovina between the federation, the cantons and the municipalities. Mr Scholsem's comments related mainly to the need to harmonise and clarify as far as possible relations between the various levels of authority (federal, cantonal and municipal), in that the drafts submitted sought to replace the original competencies vested in the cantons with residual competencies, in favour of the municipalities which therefore should now enjoy proper fiscal powers. Mr Scholsem notes in his opinion that while the second set of draft constitutional amendments submitted to the Commission broadly incorporated his initial comments, there was nevertheless a need to clarify this last point further.

Mr Sadikovic confirmed the unique and complex nature of the federal structure adopted by Bosnia and Herzegovina, which remained a vexed issue, and referred to a recent proposal to abolish the Federation of Bosnia and Herzegovina as a federated entity.

Mr di Stasi told the Commission that the Council of Europe's Congress of Local and Regional Authorities was preparing a report on the state of local self-government in Bosnia and Herzegovina.

#### **The Commission**

- **adopted the opinion on the draft amendments to the Constitution of the Federation of Bosnia and Herzegovina (CDL-AD(2004)14);**
- **emphasised its willingness to provide any technical support which may be required in the proposed constitutional reform.**

### *b) Opinion on "the status and rank of the Human Rights Ombudsman of Bosnia and Herzegovina"*

Mr Vogel informed the Commission that at the request of the Human Rights Ombudsman of Bosnia and Herzegovina, he had prepared an opinion on the Status and rank of that institution. The main question underlying this request was that of the level of remuneration of the three State

ombudsmen. In fact, they are currently equated to the Chair of the Presidency of the Council of Ministers of Bosnia and Herzegovina, while the Ombudsmen of the Entities are equated to Supreme Court judges, which entails a significantly higher level of remuneration.

On the basis of a comparative study which the Commission had previously carried out in the context of a similar request by the Ombudsmen of the Federation of Bosnia and Herzegovina, it had to be concluded that the choice of equating the State Ombudsman to a high public officials was not contrary to any European standards. Nevertheless, consistency had to be ensured in the status and rank – and subsequent remuneration – of all Ombudsman institutions in Bosnia and Herzegovina.

**The Commission adopted the opinion on the status and rank of the Human Rights Ombudsman of Bosnia and Herzegovina (see CDL-AD (2004) 006) and decided to forward it to the authorities of Bosnia and Herzegovina.**

## 10. Georgia

### a) *Draft opinion on amendments to the Constitution*

Mr Dutheillet de Lamothe presented the draft opinion prepared on the basis of the contributions submitted by Messrs Bartole, Malinverni, Torfason, Zahle and himself. The draft opinion had been put together within the space of a week and sent to the Georgian authorities with a view to the imminent adoption of the constitutional amendments. Under these amendments, Georgia was to move from a purely presidential system to a French-style “semi-presidential” system, ie a parliamentary system with a dual executive, the President of the Republic and the Government, and the possibility for the President to act as arbitrator in the event of a dispute between the Government and the Parliament, through dissolution. The exercise had not been entirely successful, however. The text lacked consistency and too much power remained vested in the President. A number of provisions which had been prepared rather hastily needed revising. The constitutional reform had already been adopted but the Venice Commission could contribute to a review of the text after the parliamentary elections in Georgia.

Mr Eörsi, as the rapporteur on Georgia for the Parliamentary Assembly’s Monitoring Committee, felt it was a pity that the constitutional reform had been rushed through and suggested returning to the text after the elections. While the move from a presidential system to a semi-presidential system was to be welcomed, there must be no diminution of the powers vested in Parliament.

**The Commission took note of the opinion on the draft amendments to the Georgian Constitution, as set out in document CDL-AD(2004)008.**

### b) *Exchange of views with Ms Burdjanadze, Speaker of the Georgian Parliament*

Ms Burdjanadze, Speaker of the Georgian Parliament, said that the Georgian people were pinning their hopes on the country’s new leaders. There was a real risk of anarchy and failure of the rule of law due to the problem of corruption, which was rife. It had thus been important to act swiftly and to amend the Constitution so that the post of Prime Minister could be created. It was obviously difficult to carry out a radical overhaul of the constitutional system in a short period of time. The amendments adopted were not without flaws, therefore, and steps would

have to taken later to complete the state reform. Any imbalance between the various authorities, and in particular any imbalance to the detriment of Parliament, should be rectified. The adopted text should therefore be regarded as a provisional one and dialogue with the Venice Commission was expected to continue after the parliamentary elections. The Venice Commission's comments on the immunity of judges and the need for a single ballot on the composition and programme of the government had already been taken into account. There should be no doubt as to what the end result would be, namely a constitution that was fully compliant with international standards and the development of a proper democracy governed by the rule of law.

**The Commission reiterated its commitment to further constitutional co-operation with Georgia after the elections.**

c) *Draft opinion on the relationship between freedom of expression and defamation with respect to unproven defamatory allegations of fact*

Mr Steinberger presented the *amicus curiae* opinion prepared by Mr Nolte in response to a request from the Georgian Constitutional Court on the relationship between freedom of expression and defamation with respect to unproven defamatory allegations of fact. The Georgian Constitutional Court had asked the Commission for an opinion on the relationship between freedom of expression, as enshrined in Article 19.2 of the Georgian Constitution, and the penalty for defamation, as provided for in Article 18.2 of the Georgian Civil Code.

Although it related to Georgian law, this question raised the more general issue of the compatibility of a general law provision with the Constitution, an issue that had already been dealt with both by courts in individual Council of Europe member states and by the European Court of Human Rights.

A comparative study of the experience of other courts which had grappled with similar issues suggested that the rule in question should be interpreted narrowly, in such a way as to apply only to situations that were compatible with freedom of expression.

A general principle could be said to emerge from numerous European court decisions (in particular, a House of Lords ruling in the case of *Reynolds v. Times Newspaper Limited*, which contained a detailed statement of the legal considerations involved), namely that persons who spoke or acted in a defamatory manner must show that the allegations were true, as the reputation of others was a legitimate restriction on freedom of expression. There were, however, some exceptions to this general rule, such as instances where it was in the public interest to know about such allegations, in which case the principle of freedom of expression would prevail over the principle of protection of reputation and would exempt the author from having to prove these allegations.

The request from the Georgian Constitutional Court was the first *amicus curiae* request made to the Commission which, by virtue of its statute and the framework for its co-operation with constitutional courts and equivalent bodies, was ideally placed to furnish arguments based on comparative law and case-law.

The President of the Georgian Constitutional Court thanked the Commission for this opinion and emphasised the important role that the Commission played in his court's work.

**The Commission adopted the opinion on the relationship between freedom of expression and defamation (CDL-AD(2004)11), and decided to forward it to the Georgian authorities.**

## **11. Moldova**

### *a) Information concerning the legal provisions on freedom of assembly in Moldova*

The secretariat informed the Commission of an inquiry made by the Secretary General of the Council of Europe concerning the legal provisions on freedom of assembly in Moldova, in the wake of recent moves by the Moldovan authorities.

In 2002, at the request of the Secretary General of the Council of Europe, the Venice Commission had given an opinion on the law of 1995 on the organisation and conduct of assemblies, as amended by the law of 26 July 2002. The task then had been to compare the provisions of that law with the relevant European standards, and the Commission had found, *inter alia*, that the law was far too restrictive.

There was, it seemed, a connection between this law and the disputed actions by the Moldovan authorities.

The secretariat was taking all the necessary steps to obtain official information on the actions which had taken place in Moldova. On the basis of the information currently being gathered, MM Hamilton and Grabenwarter were willing to draft a reply to the Secretary General.

**The Commission authorised the rapporteurs to send a reply to the Secretary General at the earliest opportunity.**

### *b) Recommendations on the electoral law and electoral administration in Moldova*

Mr Jurgens presented the draft recommendations on the electoral law and electoral administration in Moldova, prepared on the basis of comments made by Mr Krennerich, the OSCE-ODIHR, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe. Mr Jurgens asked for the Venice Commission's approval so that the secretariat could finalise the document in consultation with the OSCE-ODIHR and forward it as soon as possible to the Moldovan authorities; the joint opinion would be formally adopted in June.

**The Commission decided that the final version of the joint Recommendations made by the Venice Commission and the OSCE/ODIHR on the electoral law and electoral administration in Moldova would be sent to the Moldovan authorities.**

## 12. Serbia and Montenegro

### a) *Information on the state of constitutional reform in Serbia and Montenegro*

Mr Krivokapic, Speaker of the Montenegrin Parliament, explained that Montenegro was now an equal partner in the State Union of Serbia and Montenegro. In his view, this Union was, domestically speaking, a confederation, which could not survive economically. Montenegro's Constitution needed to be brought into line with the Constitution of the State Union and the Parliament had set up a council of experts in constitutional matters which was to submit a report to Parliament's Constitutional Committee, focusing mainly on aspects of this harmonisation procedure. This report would be forwarded to the Venice Commission. The opposition was still boycotting Parliament and was not prepared to take part in the process of harmonising the Constitution with the Constitutional Charter of the State Union.

### b) *Draft law on the exercise of rights and freedoms of national and ethnic minorities in Montenegro*

Mr Aurescu informed the Commission that the Montenegrin authorities were in the process of preparing a law on the exercise of the rights of national and ethnic minorities in Montenegro. He and Mr Bartole had prepared preliminary comments on a first draft law, in view of a working meeting which would take place in Podgorica on 16 March 2004. The expertise would be completed after the meeting and the matter would be brought back before the Commission in June 2004.

The draft law was generally in line with European standards. Certain areas in which an improvement would be possible had been nevertheless identified; these concerned notably the diverse terminology used throughout the draft law and the inclusion in the definition of "national minority" of the notions of citizenship and belonging to a kin-State.

The draft law recognised collective rights. In the opinion of several members of the Commission, recognition of collective rights, to the extent that it was not detrimental to individual rights, was not contrary to international law, although the latter did not currently go as far as recognising collective rights.

**The Commission took note of the preliminary comments of Mr Aurescu and Mr Bartole on the draft law on the exercise of the rights of national and ethnic minorities in Montenegro, and instructed the Secretariat to prepare a consolidated opinion taking into account the results of the meeting of 16 March 2004 for its next Plenary Session.**

## 13. Ukraine

Professor Matscher informed the Commission that Ukraine was in the process of amending its law on national minorities. Several drafts had been prepared and discussed, including the two which had been submitted to the Commission. A fruitful working meeting had taken place in Strasbourg on 12 January 2004 with the participation of CoE experts, including himself and consultants to Directorate General II of the CoE, representatives of the Ukrainian State Committee on Nationalities and Migration, of the Legislation Institute of the Verkhovna Rada, and members of the Office of the OSCE High Commissioner on National Minorities.

Two areas in which an improvement appeared necessary had notably been identified: the indication of the position of this law in the hierarchy of laws in Ukraine and the guidelines to be given as regards secondary legislation to be issued in application of this law.

The Ukrainian authorities were currently working on a draft law which would combine the two previous drafts and would then submit it to the Commission for expertise.

**The Commission adopted the opinion on two draft laws amending the law on national minorities in Ukraine (see CDL-AD (2004)013) and decided to forward it to the Ukrainian authorities.**

#### **14. Other constitutional developments**

- *Chile*

The Commission held an exchange of views with Mr José Luis Cea Egaña, President of the 6<sup>th</sup> World Congress of Constitutional Law, on the possibilities for co-operation between Chile and the Commission.

Mr Cea Egaña proposed establishing co-operation between the State, the Chilean Constitutional Court and Chilean universities on the one hand, and the Venice Commission on the other. He also said that he would back Chile's accession to the Venice Commission in talks with the Chilean government.

Mr Cea Egaña went on to speak about the 6<sup>th</sup> World Congress in Santiago, the theme of which had been "constitutionalism: old concepts, new worlds". Five hundred experts from over 64 countries had attended this congress, including some 180 constitutional experts from South American countries. Six plenary sessions and thirteen workshops had been held, enabling participants to discuss more than 200 written contributions.

Mr Buquicchio spoke of the advantages of accession by Chile, a country that was firmly embarked on the road to democracy.

#### **15. Adoption of the draft annual activity report for 2003**

**The Commission adopted the annual activity report for 2003, as it appears in document CDL(2004)008.**

#### **16. The future of democracy**

- *High Level Group*

Mr Mifsud Bonnici informed the Commission about his participation on behalf of the Commission in the work of the High Level Group on the Future of Democracy. He underlined the importance for the Council of Europe to identify the standards of democracy and ensure that they be duly implemented. Assistance by older democracies in favour of younger ones was also important. The group had so far identified a number of key-features, including the need to train the young in democracy and the rule of law, democracy as an all-pervading

method, the importance of free elections, the obsolescence of certain institutions, the need to fight corruption.

- *Parliamentary Assembly Recommendation N° 1629*

Certain of these key-features were reflected in the PACE recommendation 1629(2003) on “Future of democracy: strengthening democratic institutions”, and both Mr Mifsud Bonnici and Mr Tuori put emphasis on the need to achieve democracy through the constitution, the legal and political culture and civil society.

Ms Err underlined that the need to achieve a gender-balanced representation in the decision-making processes was also very important.

**The Commission adopted the opinion on the possible follow-up to Recommendation 1629(2003) of the Parliamentary Assembly on “Future of democracy: strengthening democratic institutions” (CDL-AD (2004)015) and decided to forward it to the Committee of Ministers.**

**17. Report of the 3<sup>rd</sup> meeting of the Joint Council on Constitutional Justice (10 March 2004)**

Mr Solyom reported on the results and conclusions of the 3<sup>rd</sup> meeting of the Joint Council on Constitutional Justice, held in Venice on 10 March 2004. Thirty-four Constitutional Courts and equivalent bodies had been represented. The Joint Council invited the courts’ liaison officers to ask the Venice Commission for studies in comparative constitutional law and case-law, relating to the cases before their courts. The Venice Commission had already given the Georgian Constitutional Court an *amicus curiae* opinion. The Joint Council had also taken note of the important exchange of information between participating courts through the Venice Forum.

The Joint Council had been informed of numerous seminars and conferences organised in association with the Constitutional Courts since the previous meeting, and had taken note of the future programme. It had also welcomed the co-operation with regional institutions encompassing constitutional courts and equivalent bodies in southern Africa, French-speaking countries and the CIS.

The secretariat presented the 2003/1 versions of the CODICES database and a provisional edition of the Internet version of CODICES. The database contained over 4,000 decisions representing more than 50,000 pages of text.

The Joint Council had also been informed of the forthcoming publications in the special edition of the Bulletin of Constitutional Case-Law; it had been decided, *inter alia*, to grant the request by the Chair of the Conference of European Constitutional Courts to publish a special edition on the theme of the next Conference, namely the criteria for imposing restrictions on human rights.

Ms Huppmann, liaison officer for the Austrian Constitutional Court, had been elected co-president of the Joint Council on behalf of the liaison officers for a two-year term. At the invitation of the Constitutional Court of Azerbaijan, the next meeting of the Joint Council on Constitutional Justice would be held in Baku in 2005.

**18. Report of the meeting of the Council for Democratic Elections (11 March 2004)**

*a) Opinion on the draft ACEEEO Convention on election standards, electoral rights and freedoms*

Mr Grabenwarter presented the draft opinion on the draft ACEEEO convention on election standards, electoral rights and freedoms (CDL(2003)057). He said that the draft convention was a major step towards harmonising electoral law. A number of points needed to be revised; in particular, the principle of proportionality should be clearly affirmed. Mr Grabenwarter reminded participants that the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe had recommended that the Committee of Ministers convert the Venice Commission's Code of Good Practice in Electoral Matters into a convention (CDL-AD(2002)OJ23rev).

Mr Baglay said that a convention had already been adopted within the framework of the Commonwealth of Independent States. It would be helpful to review the draft ACEEEO convention in preparation for a new Council of Europe convention.

Mr Buquicchio said that the possibilities for adopting a binding instrument would have to be considered on the basis of the evaluation of the implementation of the Code of Good Practice in Electoral Matters.

**The Commission adopted the opinion on the draft ACEEEO convention on election standards, electoral rights and freedoms (CDL-AD(2004)010).**

*b) Report on the compatibility of remote voting and electronic voting with Council of Europe standards*

Mr Grabenwarter presented the revised version of the draft report on the compatibility of remote voting and electronic voting with Council of Europe standards. This study was based on replies to the questionnaire prepared by the Multidisciplinary Ad Hoc Group of Specialists on legal, operational and technical standards for e-enabled voting. In theory, remote voting (postal or electronic voting), including in a non-supervised environment, was in keeping with Council of Europe standards (Article 3 of the Additional Protocol to the ECHR and the Code of Good Practice in Electoral Matters). Safeguards needed to be provided, however, with regard to secrecy of the ballot, transparency and reliability.

**The Venice Commission adopted the report on the compatibility of remote voting and electronic voting with the standards of the Council of Europe (CDL-AD(2004)012), and decided to forward it to the Multidisciplinary Ad Hoc Group of Specialists on legal, operational and technical standards for e-enabled voting (IP1-S-EE).**

*c) Report on media monitoring during election observation missions*

Mr Jurgens said that the Council for Democratic Elections had prepared a report on media monitoring during election observation missions (see document CDL-EL(2004)005). This document would be revised on the basis of the OSCE/ODIHR document, which had itself been revised, and on which the report commented, expanding on the aspects relating to human rights.

**19. Report of the meeting of the Sub-Commission on Democratic Institutions (11 March 2004)**

Mr Malinverni presented the document prepared by MM Vogel and Tuori, entitled “Guidelines on legislation on political parties: some specific issues”, as adopted by the sub-commission on democratic institutions (CDL-DEM(2004)001rev). This document followed on those already adopted by the Venice Commission with regard to the prohibition and financing of political parties (CDL-IN(2000)001 and CDL-INF(2001)008). It contained eight principles, and an explanatory report which referred extensively to recent decisions handed down by the European Court of Human Rights.

**The Commission adopted the guidelines and explanatory report on legislation on political parties: some specific issues (CDL-AD(2004)007).**

**20. Co-operation with the International Association of Constitutional Law**

The Commission held an exchange of views with Ms Cheryl Saunders, president of the International Association of Constitutional Law. An association of constitutional law experts established in 1991, the IACL sought to facilitate exchanges of views on constitutional issues and to promote constitutionalism among its members, mainly through regional meetings and an international meeting every four years, the most recent of which, in Santiago, Chile in 2004, had proved a success. More broadly, the association aimed to develop dialogue between the various constitutionalists worldwide. There was, however, a problem with the funding of such programmes.

Ms Saunders further emphasised the association’s desire to develop knowledge of comparative constitutional law. In addition, it now had to find a permanent office and introduce some form of electronic link, with the Venice Commission’s website being cited as an example.

Ms Saunders said that the purpose of her visit to Venice was therefore to propose co-operation between the Venice Commission and the IACL. The two organisations complemented one another in their work, so co-operation would be beneficial. It might be useful, for example, to organise exchanges of information, sharing of expertise, networks and contacts.

Mr Buquicchio said that although they had very different goals, the International Association of Constitutional Law and the Venice Commission were both working in the same field, and that the Commission was in favour of such co-operation.

A proposal for co-operation between the International Association of Constitutional Law and the Venice Commission would be submitted at the next plenary session of the Venice Commission.

**21. Other business**

**22. Date of the next session**

The Commission confirmed that its 59<sup>th</sup> plenary session would be held on 18 and 19 June 2004. The meetings of the sub-committees and the meeting of the Council for Democratic Elections would take place as usual on the day before the plenary session.

## LIST OF PARTICIPANTS

### **ALBANIA/ALBANIE :**

M. Luan OMARI

### **ANDORRA/ANDORRE :**

M. François LUCHAIRE

### **ARMENIA/ARMENIE :**

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Mr Mats EINARSSON, Chairman of the Group of the Unified European Left

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**APPENDIX II**

**AGENDA/TABLE OF CONTENTS**

1. Adoption of the agenda .....	1
2. Communication by the Secretariat .....	1
3. Co-operation with the Committee of Ministers .....	2
4. Co-operation with the Parliamentary Assembly .....	2
5. Co-operation with the Congress of local and regional Authorities .....	3
6. Albania.....	3
7. Armenia .....	4
8. Azerbaijan.....	5
9. Bosnia and Herzegovina.....	6
10. Georgia .....	7
11. Moldova.....	9
12. Serbia and Montenegro .....	10
13. Ukraine .....	10
14. Other constitutional developmenets.....	11
15. Adoption of the draft Annual Report of activities for 2003.....	11
16. The future of democracy .....	11
17. Report of the 3 <sup>rd</sup> Meeting of the Joint Council on constitutional Justice (10 March 2004).....	12
18. Report of the meeting of the Council for Democratic Elections (11 March 2004).....	13
19. Report of the meeting of the Sub-Commission on Democratic Institutions (11March 2004).....	14
20. Co-operation with the International Association of Constitutional Law.....	14
21. Other Business.....	14
22. Date of the next session.....	14
LIST OF PARTICIPANTS .....	15

