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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

59th PLENARY SESSION
(Venice, 18-19 June 2004)

SESSION REPORT

1. Adoption of the agenda

The agenda was adopted as it stood.

2. Communication by the Secretariat

At the opening of the Plenary session, Mr Buquicchio apologised for the absence of the President of the Venice Commission, Mr La Pergola, who was unable to be present for health reasons.

Mr Buquicchio informed the Commission about new members that have been appointed on behalf of Bulgaria, Estonia and “the former Yugoslav Republic of Macedonia”.

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 Torbjorn Froymsnes, Permanent Representative of Norway to the Council of Europe and Chairman of the Ministers' Deputies.

In his statement, Ambassador Froymsnes first informed the Commission about the results of the Foreign Ministers' meeting that took place in Strasbourg from 12 to 13 May. He particularly referred to the adoption of Protocol 14 to the ECHR, the importance of an effective implementation of the reform of the European Court of Human Rights by all member States and the importance of the third Summit, to be held from 16 to 17 May 2005, to determine the future work and role of the Council of Europe. Ambassador Froymsnes also spoke of the possible Council of Europe contribution to the fight against terrorism and organized crime at both European and international levels and about the intention to focus future work of the organization on providing assistance more specifically to Chechnya, Moldova, South Caucasus, South-East European countries and Turkey.

Next, Ambassador Froymsnes spoke of the Norwegian priorities for the Council of Ministers' presidency. He began by emphasising the realistic nature of the established political ambitions among which he cited reinforcement of the activities of the organisation in the field of human trafficking, gaining of a broad international support for the European Convention on Cybercrime and ensuring a stronger interaction between the Council of Europe and other intergovernmental organisations, in particular the OSCE and the European Union. He also stressed the importance Norway attaches to developing the role of the Council of Europe in conflict-prevention and to the promotion of intercultural and interreligious dialogue.

4. Co-operation with the Parliamentary Assembly

The Commission held an exchange of views with Mr Serhiy Holovaty, member of the Committee on Legal Affairs and Human Rights, on co-operation with the Assembly.

In his address, Mr Holovaty informed the Commission about the work done by the Assembly's Committee on Legal Affairs and Human Rights and its Monitoring Committee since the Commission's last session.

With regard to the Monitoring Committee, he spoke about the resolution on the honouring of obligations and commitments by Albania in which the Assembly decided to keep the monitoring process open and, should future elections not be conducted freely and fairly, reconsider the Albanian delegation's credentials. He also raised the question of the opposition parties' protests in Armenia and said that in its report, the Monitoring Committee requested the authorities to submit a report on its actions in response to the Assembly's January resolution, in the absence of which it would reconsider the Armenian delegation's credentials.

Mr Holovaty also mentioned that a memorandum of the Chair concerning Latvia was submitted to the Bureau, proposing the continuation of the post-monitoring dialogue and a review of the situation at the end of the year.

He also informed the Commission about the reports adopted by the Committee on Legal Affairs and Human Rights, which covered Turkey's implementation of decisions of the European Court of Human Rights and the human rights situation in Kosovo and in Chechnya. He outlined reports in preparation, such as Mr Frunda's report on the concept of "nation", Ms Wohlwend's report on cross-border crime in Europe and Mr Bruce's report on political prisoners in Europe.

Finally, Mr Holovaty said that in relation to Mr Akcam's introductory memorandum on abolition of restrictions on the right to vote in general elections, the Legal Affairs Committee decided to request an opinion on this matter from the Venice Commission.

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

Mr Gianfranco Martini, member of the Congress of Local and Regional Authorities of the Council of Europe, reported on the CLRAE's activities. He first informed the Commission that during its 11th plenary session (Strasbourg, 25–27 May 2004) the CLRAE elected Mr Di Stasi as its new President.

Mr Martini referred next to the CLRAE's work on the draft European Charter on Regional Autonomy. He also said that in its future activities, the CLRAE will give priority to monitoring progress in developing local democracy in Armenia, Georgia, Russia and South-East Europe.

He also spoke about the reports under preparation within the Congress (such as a report on the direct election of Mayors).

To conclude, Mr Martini reported on positive results of the CLRAE's field agencies, and informed the Commission that two new agencies will soon be opened in Albania and in Mostar.

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

Mr Alomar, Governor of the Development Bank of the Council of Europe (CEB), recalled that the Bank is the only international financial institution in Europe with an exclusively social vocation. In 2003, the Bank pursued its efforts in favour of the transition countries where the needs in the social field are still considerable. Among numerous projects financed by the Bank, Mr Alomar mentioned the project on deported persons in Lithuania, the project in favour of orphanages in Romania, and the project for

the Roma population. He also informed the Commission about the Bank's projects for the period 2005 – 2009, and spoke about its future geographical and social action.

Particular mention was also made of the need to strengthen the cooperation with other international organisations with the same vocation and complementary objectives. Mr Alomar also pointed out the importance of the Venice Commission's work towards strengthening the democratic constitutional and institutional framework for the success of the CEB projects.

The Commission expressed its commitment to further co-operation with the Development Bank of the Council of Europe.

7. Co-operation with ODIHR

Ambassador Strohal underlined that ODIHR and the Venice Commission shared the principle that democracy inseparably rests on the rule of law and that both had constantly worked towards making democracy irreversible.

ODIHR and the Venice Commission had experienced a very good co-operation, particularly in the electoral field; they now ought not only to co-ordinate, but also to join their efforts in order to avoid any discrepancy in their respective positions and avoid a sort of “forum shopping” on the part of States. It was necessary to focus on the follow-up to the respective recommendations, both on the level of the experts and on the political level.

In the future, co-operation was to intensify as regards legislative assessments, particularly in the field of freedom of religion and belief. Joint work will also take place on the electoral database.

Professor Jeremy Gunn presented the work of the ODIHR Panel of Experts on Freedom of religion and belief and in particular the “Guidelines for Legislative Reviews affecting Religion or Beliefs”, prepared by the Panel in co-operation with the Venice Commission (CDL(2004)061). He explained that these guidelines were to assist the Panel in assessing draft legislation in this area, which it was called upon to do increasingly often, and were to be made available to governments, so that the latter would become acquainted with the basic standards which ODIHR uses as a reference.

Ms Flanagan presented the comments which she had prepared on a previous version of these guidelines (CDL(2004)062), and which had been taken into account substantively in the preparation of the final version. She expressed her appreciation of the quality of the work carried out by ODIHR in this area and underlined the need on the one hand to address the overlapping issue of freedom of expression and on the other hand to continue updating the guidelines in order for them to reflect the evolving case-law of the European Court of Human Rights.

The Commission took note of Ms Flanagan's comments on the draft guidelines (CDL(2004)062) and endorsed the OSCE/ODIHR Guidelines for Legislative Reviews affecting Religion or Beliefs (CDLM(2004)061).

8. Co-operation with the OSCE

Mr Mifsud Bonnici informed the Commission about his participation in the Human Dimension Seminar organised by the OSCE/ODHIR from 12 to 14 May 2004 in Warsaw. The seminar was devoted to "Democratic institutions and Democratic Governance". Mr Mifsud Bonnici said his intervention related to essential aspects of democracy. In his view, it was necessary to develop a "culture of democracy" at all levels, and strive towards its generalisation.

9. Albania

a) Mr Tuori presented his comments (CDL(2004)049) on constitutional aspects of the "Draft Law on the criteria and conditions to be established for the reorganization of the administrative territorial division of the Republic of Albania" (CDL(2004)030). With respect to this draft, the Venice Commission had been asked to examine a problem of hierarchy of norms while the substance of the draft law would be examined by local government experts of the Council of Europe. Mr Tuori's conclusion was that under the Albanian Constitution the laws adopted by special majority were not to be considered as *leges superiores* with respect to other laws and that the draft did not require a special majority under Art. 81 of the Albanian Constitution.

Mr Omari agreed. The draft law did not fall under any of the provisions of Art. 81 requiring a special majority.

The Commission adopted its "Opinion on constitutional aspects of the draft law on the criteria and conditions to be established for the reorganisation of the administrative territorial division of the Republic of Albania" as it appears in CDL-AD(2004)019.

b) Mr Lapinskas presented his comments (CDL(2004)069) on the amendments (CDL(2004)047) to the Law on the status of former political prisoners (CDL(2004)046). He referred to the experience of Lithuania, where there had been many prisoners during the Soviet period, as possibly useful for Albania.

Mr Paczolay, presenting his comments (CDL(2004)070) noted that this was not only a legal issue. Nevertheless the principle of non-discrimination was important in this respect and there was relevant case law of the Hungarian Constitutional Court.

The Commission took note of the comments by Mr Lapinskas and Mr Paczolay on the amendments to the Law on the status of former political prisoners in Albania.

10. Armenia

Mr Malinverni informed the Commission of the results of a meeting which had taken place between himself and Ms Flanagan, on the one hand, and Messrs Torossian, Vice Speaker of the Armenian National Assembly, and Harutunian on the other hand concerning the Armenian Law on the procedure of conducting gatherings, meetings, rallies and demonstrations. In the light of Mr Torossian's wish to submit detailed arguments on the reasons underlying the Armenian choices in this field, the rapporteurs proposed to postpone the examination of the draft opinion until the next Plenary Session.

The Commission postponed the examination of the draft opinion on the Law on the procedure of conducting gatherings, meetings, rallies and demonstrations (CDL(2004)027) and invited Mr Torossian to submit his written comments before the end of summer 2004.

Mr Torossian informed the Commission that the new draft Constitution was in preparation. The majority had initially waited for the opposition to join the work of the parliamentary commission charged with the constitutional revision, but had now decided to proceed without it. The new draft was expected to be completed and submitted to the Venice Commission by the end of June/beginning of July. Similarly, the revised draft electoral code was expected to be finalised and submitted to the Commission by the end of June/beginning of July. Mr Torossian expressed his wish that the opposition would decide to join work on these important reforms. He further informed the Commission that the draft amendments to the Armenian Law on Political Parties would be finalised by October 2004.

11. Azerbaijan

In the absence of the rapporteurs, Ms Barnstedt and Mr Klučka, Mr Dürr presented the draft opinion (CDL(2004)057) on the draft Rules of Procedure of the Constitutional Court of Azerbaijan (CDL(2004)056), which had been requested by the President of the Court, Mr Abdoullayev, in January. In 2002, the Commission had already given an opinion (CDL-AD(2002)005) on the draft Law on the Constitutional Court. The law had been adopted in December 2003 (CDL(2004)005). In February 2004, a seminar on effective case-management in Baku had provided an opportunity for the rapporteurs to discuss the issues to be dealt with in the Rules of Procedure with the Court.

In their comments (CDL(2004)068 and CDL(2004)067 respectively), the rapporteurs welcomed the text as being concisely and coherently drafted and as fitting into the

classical triad of constitution, law on the court and rules of procedure drafted by the court itself. Nevertheless, the rapporteurs made the following remarks:

- (a) The distribution of powers between the Plenum of the Court, the President and the judges could be regulated by general clauses. This would allow items to be covered which had not been or could not have been envisaged during the drafting of the rules.
- (b) In order to be in compliance with the principle of the independence of the judges, the draft opinion suggested that in respect of business trips where there were no costs for the Court involved and where the trip did not take place during court sessions, the judges only notify their business trips to the President of the Court rather than have to seek his approval.
- (c) Especially as concerns the procedure in the chambers the Rules should be more explicit.
- (d) On the other hand the Rules of Procedure should avoid repeating principles already set out in the constitution and the law on the constitutional court.

With regard to paragraph 9 of the draft opinion, Messrs Cardoso da Costa and Sanchez Navarro pointed out that there was no general principle that a constitutional court should have a large autonomy to decide on its rules of procedure, especially when this could touch the rights of parties to the proceedings. The autonomy of the Court rather related to the inner functioning of the court.

The Commission adopted the opinion on the draft rules of procedure of the Constitutional Court of Azerbaijan with amendments (CDL-AD(2004)023).

Messrs Hamilton and Vogel presented their comments (CDL(2004)044 and 045) on the law on political parties in Azerbaijan (CDL(2004)043). The rapporteurs had raised the following points: The definition of political parties was inappropriate. According to the guidelines on political parties (CDL-AD(2004)007rev), the membership in political parties should not be restricted to citizens but should be open to non-citizens and stateless persons residing in the country as well. Article 4 of the draft law prohibited any change of the constitutional order as a goal of a political party. Peaceful change of the constitution should, however, be possible. The provisions on registration and liquidation of political parties (Art. 12-16) as well as on the prohibition of foreign political parties should not be abused. The rules on incompatibilities were very wide ranging making membership in political parties not only impossible for members of the judiciary and the ombudsman but also prosecutors, many employees of the state owned media, etc. These restrictions have to respect the principle of proportionality. The Law also provided that all donations to political parties have to be published and no donations can be accepted from mass movements and other organisations. This rule was deemed to be too restrictive as well. The prohibition for trade unions to donate to political parties was one-sided because there was no similar rule for the employers' institutions. This might infringe upon ILO

conventions. Apart from these points, the draft law was well written. The criticism expressed should not detract from the merits of the Draft Law.

Mr Luchaire requested whether it was necessary to be a member of a political party to stand for election in Azerbaijan. Mr Husseyinov replied that this was not necessary.

The Commission adopted the opinion on the Law on Political parties of the Republic of Azerbaijan (CDL-AD(2004)025).

12. Bosnia and Herzegovina

Mr Tuori informed the Commission about progress in the restructuring of the ombudsman institutions in Bosnia and Herzegovina (see document CDL(2004)028rev). At the initiative of the Venice Commission, a meeting had taken place in Strasbourg on 19 April 2004, which had been attended by representatives of the working group set up by the BiH Council of Ministers with a view to preparing the reform (the group is currently composed of a representative of the Minister of Human Rights and Refugees, the three Human Rights Ombudsmen of Bosnia and Herzegovina, the three Ombudsmen of the Federation of Bosnia and Herzegovina, the two Ombudsmen of the Republika Srpska and representatives of the Ministries of Justice of the State and the two Entities). The participants had agreed in essence that, after a transitional period during which one state-level and two entity-level institutions would co-exist, there would be a single ombudsman institution for the whole territory of BiH, composed of one ombudsman and two deputies, each appointed from the constituent peoples and rotating on the position of ombudsman. An outline plan of restructuring had been further submitted to the Commission, which was now waiting for the detailed plan on which it would provide its opinion.

13. Georgia

Mr Malinverni informed the Commission of the seminar on the constitutional organisation of the state held in Tbilisi on 18-19 May (see doc. CDL(2004)039). The seminar dealt with issues of the separation of powers and territorial organisation. Shortly after the seminar the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) had asked the Venice Commission to prepare an opinion on the draft constitutional law on the status of Adjara (CDL(2004)058). The draft opinion prepared by Messrs Malinverni and Vogel (CDL(2004)059) welcomed the fact that the autonomy of Adjara was about to get a more precise constitutional basis thanks to the envisaged constitutional law. Nevertheless the draft had a number of weaknesses. In particular, it regulated in detail questions of the internal organisation of the autonomous region, which should be left to the region itself, and provided for numerous possibilities for interference by the central authorities.

Mr Vogel added that the draft did not provide a clear financial basis for the autonomy.

In the discussion several members supported the conclusions of the draft opinion while suggesting some changes, questioning in particular the possibility for the President of Georgia to dismiss the Council of Ministers of Adjara without consulting the Supreme Council of Adjara.

The Commission adopted the “Opinion on the draft Constitutional Law of Georgia on the status of the autonomous Republic of Adjara”, as it appears in document CDL-AD(2004)018.

14. Moldova

Mr Hamilton introduced his draft opinion (CDL(2004)029) on events in Moldova relating to a demonstration on 25 January 2004. The Secretary General of the Council of Europe requested this opinion. The opinion does not aim at establishing the facts or interfering in pending legal procedures, but focuses on legal texts already examined by the Commission. The ban on the demonstration imposed by the municipality was upheld by the Court of Appeal and the case is pending before the Supreme Court. This case confirms the problems of compatibility of the law with Articles 10-11 ECHR and the need to amend it and to interpret it in conformity with the principle of proportionality.

The Commission decided to postpone to its next session its discussion on the possibility to deal with concrete cases such as this. If the Commission affirms that it is competent to deal with the present matter, it will proceed to address its substance.

15. Romania

Mr Malinverni introduced the draft opinion (CDL(2004)054) on the draft Romanian law concerning support for Romanians living abroad (CDL(2004)053). He explained that the draft complied with the applicable European standards, which had been codified by the Venice Commission in its “Report on the preferential treatment of national minorities by their kin-States” of October 2001 (CDL-INF(2001)19), from which the draft law had drawn specific inspiration. The draft could be improved on two points in particular: first, the entitlement of Romanians abroad to study in Romania and to benefit from the related facilities, which currently covers all levels and forms of education, needed to be genuinely linked with the nature of these studies (Romanian culture and language); second, their entitlement to free accommodation in Romania needed to be made dependent on the same low-income conditions as apply in respect of ordinary Romanian students.

Mr Matscher and Mr Paczolay underlined that it was preferable but not mandatory under international law that the implementation of this law be made through bilateral negotiations and agreements.

Mr Aurescu explained that this draft law had been inspired by the lessons learned in the context of the Hungarian/Romanian controversy surrounding the adoption of the so-called Status Law. It was to be implemented through bilateral instruments, which would be reviewed by the Minister of Foreign Affairs at bilateral venues, according to the Romanian Law on Treaties of February 2004. He added that in his view there was no risk of establishing discriminatory practices, as the benefits provided under the law would be made available to any other person, of non-Romanian ethnic background wishing to study in Romania and in Romanian. As regarded free accommodation, Mr Aurescu would suggest that the low-income requirement be added.

The Commission adopted the opinion on the draft law concerning support for Romanians living abroad (CDL-AD(2004)020) subject to the editorial amendments ensuing from the discussions.

The Commission held an exchange of views with Mr Hazaparu, President of the Romanian Foundation for Democracy through Law. Mr Hazaparu presented the recent revision of the 1991 Constitution of Romania, adopted with a view to facilitating its accession to organisations such as the European Union and the North Atlantic Treaty Organisation. The new provisions modified some aspects of the legislative procedure (in particular, those concerning urgency orders); restricted the scope of parliamentary immunity; transformed the Supreme Court into the High Court of Cassation and Justice but brought no changes with regard to the role and functions of the Public Prosecutor. The revision also touched upon the role and structure of the Supreme Judicial Council and broadened the Constitutional Court's jurisdiction. The latter now also has the power to decide on the distribution of powers between State authorities as well as on the constitutionality of international agreements.

16. Serbia and Montenegro

a) Revised Draft law on the exercise of rights and freedoms of national and ethnic minorities in Montenegro

Mr Bartole presented the draft consolidated opinion (CDL(2004)036) on the revised draft law on the exercise of the rights of national and ethnic minorities in Montenegro (CDL(2004)040). The draft law was generally in line with European standards and in certain respects even went beyond them. According to Article 14.2 of the revised draft law, in municipalities where the population belonging to a national minority accounts for 5% of total inhabitants, the language of that minority shall be in official use. Such possibility is not provided for either in the Constitutional Charter of the State Union of Serbia and Montenegro or in the Montenegrin Constitution. Mr Bartole also pointed out the need to clarify whether the term "official use of language" has the same meaning as the term "official language".

Mr Bartole went on to stress the importance of the position of the draft law in the hierarchy of norms in Montenegro in the context of an effective judicial protection of guaranteed minority rights.

Mr Aurescu informed the Commission about the expert meeting that had taken place in Podgorica on 16 March 2004. It was particularly useful in order to fully understand the specific situation of minorities in Montenegro. He agreed with Mr Bartole on the good quality of the draft, but stressed the importance of adding the reference to the Constitutional Charter of the State Union of Serbia and Montenegro in Article 1 of the draft law, and clarifying the issue of terminology in accordance with the Framework Convention on National Minorities. Particular mention was also made of the representation rights of minorities. With respect to the implementation of this right, Mr Aurescu pointed out the importance of the manner in which the census is conducted.

Mr Đerić agreed with the draft consolidated opinion and the comments made by the rapporteurs, in particular with regard to judicial protection of the rights guaranteed by the draft law. In this respect, he pointed out that in the last 50 years or so, a prevalent interpretation in Montenegro as well as in Serbia was that a constitutional complaint is only allowed if there is not any other remedy, thus making it a purely theoretical possibility.

b) Information on the state of constitutional reform in Serbia and Montenegro

Mr Đerić, substitute member for the State Union of Serbia and Montenegro, informed the Commission that the government has adopted a first draft proposal for a new Constitution of Serbia. The last institution of the State Union whose creation was provided for by the Constitutional Charter – the Court – has also been recently established.

Mr Ivočić, member of the Council for Constitutional Issues of Montenegro, said that the opposition was still boycotting Parliament and was not prepared to take part in the process of constitutional revision. The Council for Constitutional Issues is still working on a report to be submitted to the Parliament's Constitutional Committee, focusing mainly on the procedural aspects of the revision: whether to proceed towards amending the constitution or towards drafting a new constitution.

Mr Ivočić also mentioned that a conference on constitutional reform could be organised in Podgorica in early autumn 2004, in co-operation with the Venice Commission.

The Commission decided to :

- **adopt the opinion on the exercise of the rights of national and ethnic minorities in Montenegro (CDL-AD(2004)026);**
- **further co-operate with the Montenegrin authorities in the field of the constitutional revision process.**

17. Turkey

Mr Kiklinç informed the Commission that the Constitutional Court of Turkey had made proposals to reform the organisation and jurisdiction of the Court (document CDL(2004)033) for two reasons. On the one hand, it had to cope with its increased workload and, on the other hand, it wanted to reduce the number of Turkish cases before the European Court of Human Rights by dealing with them on the national level. The Court had transmitted its proposal to the Government and to Parliament. Two main objections had been raised against the proposal: the election of a part of the judges by Parliament would politicise the Court and the introduction of an individual complaint would convert the Constitutional Court into just another instance of appeal. At the symposium at the occasion of the 42nd anniversary of the Court in April, its Chairman, Mr Bumin, had however refuted these arguments pointing out that Parliament also participates in the election of judges in other countries without politicising these courts. The role of the Constitutional Court was to protect human rights and the individual complaint would be the most efficient way to achieve this goal.

Mr Paczolay presented the draft opinion (CDL(2004)034) pointing out that the proposal concerned only amendments on the constitutional level. Several questions would have to be dealt with on the level of legislation. The amendments had two main thrusts, to change the organisation of the Court and to introduce the individual complaint. As to the organisation, the introduction of two chambers raised the problem of co-ordination between them. This would have to be a task of the plenary session of the court. In his draft opinion he did not share the view that there was a danger of politicising the Court by electing four out of 17 judges by Parliament. The minimum age of 50 years for judges was probably too high. The individual complaint to the Constitutional Court was to be welcomed. However, its limitation to those constitutional rights which are also covered by the European Convention on Human Rights was very unusual and should be reconsidered.

Mr Kiklinç suggested making small amendments in paragraphs 8 and 11 in order to clarify the reasons for the proposal made by the Court. In addition he suggested deleting paragraph 26 of the draft opinion given that the existing Law on the Organisation and the Trial Procedure of the Constitutional Court already provided for the destitution of a judge, e.g. in case of prolonged unjustified absence from office. In the name of the President of the Court, Mr Bumin, he thanked Mr Paczolay for the clear and precise report.

Mr Cardoso da Costa suggested changing paragraph 18 of the draft to the effect that the report would admit possible differences in constitutional and legislative interpretation but that this was not true in all cases. Furthermore he insisted that the appointment of the members of the Constitutional Court by Parliament not only did not politicise the Court but rather added to the legitimacy of the Court.

Mr Özbudun clarified that the present proposal had been made by the Constitutional Court itself. It was yet unclear whether it would find support in Parliament given the

opposition of the highest courts to the introduction of the individual complaint to the Constitutional Court.

Mr Paczolay agreed to the amendments suggested by Messrs Kiklinç and Cardoso da Costa.

The Commission adopted the opinion on the Constitutional Amendments relating to the Constitutional Court of Turkey with slight amendments (CDL-AD (2004)024).

Mr Özbudun informed the Commission on the constitutional reform package, which had been passed by the Turkish Parliament. One of the Articles abolished the death penalty in times of war and - now on the constitutional level - also in cases of terrorism. This opened the way for the ratification of Protocol 13 to the European Convention on Human Rights by Turkey. Another important element was that now Article 90 of the Constitution provides for the priority of international human rights treaties over conflicting national law, thus placing them on a level between the constitution and ordinary law. Until this amendment, international treaties had been incorporated on the level of ordinary law and conflicts had to be resolved by the rules of *lex specialis* and *lex posterior*. The third major amendment concerned the abolition of the state security courts. Even though these courts were no extraordinary courts but had been provided for by the Constitution itself, they had been criticised because of the participation of military judges. In recent years, the procedure of these courts had already been assimilated to that of ordinary courts. The fourth important element had been an amendment to Article 10 of the Constitution providing for affirmative action in favour of women. Taken together these amendments were a significant step towards full democratic rule in Turkey.

18. Ukraine

Mr Hamilton introduced his comments (CDL(2004)060fin) on the draft Law on the Public Prosecutor's Office of Ukraine (CDL(2004)052). His comments were critical since the draft did not really bring Ukraine closer to European standards in this field. The purpose of the draft seemed to maintain the traditional system of an overly strong and centralised Prokuratura while improving some details. The draft was partly based on a draft constitutional amendment which had been criticised both by the Commission and the Constitutional Court of Ukraine and not adopted by the Ukrainian parliament.

Ms Suchocka said that her comments (CDL(2004)048fin) were in full agreement with Mr Hamilton's comments (CDL(2004)060). The Commission had already criticised an earlier draft and it was disappointing that this criticism had not been taken into account.

Mr Holovaty congratulated the rapporteurs on their excellent work. The issue of the Prokuratura was a major problem in the countries of the CIS where this institution still exercised excessive powers. To be more useful to the PACE he suggested consolidating the comments by the rapporteurs into a single opinion. This opinion should be given a

more general character, setting forth the applicable principles in this area and not be limited to Ukraine.

In the ensuing discussion some members underlined the differences in the situation in the former socialist countries in this respect.

The Commission endorsed the comments by Ms H. Suchocka (CDL(2004)048fin) and Mr J. Hamilton (CDL(2004)060fin) on the draft Law on the Public Prosecutor's Office of Ukraine and instructed the Secretariat to prepare a consolidated opinion for adoption at its next session.

As regards the draft opinion (CDL(2004)063) on the draft Law on the concept of the state ethnic policy of Ukraine (CDL(2004)050), Mr Matscher explained that the Commission had already examined the previous law, which was in many respects similar to the new draft.

Certain points remained problematic. In particular, the following issues needed to be addressed: the unspecified legal status of this law, the restriction of the State ethnic policy to Ukrainian citizens, the lack of reference to self-government and proportional representation of national minorities in elected bodies and the lack of reference to the need to comply with the European standards codified by the Venice Commission in respect of protection of Ukrainians abroad.

The Commission adopted the opinion on the draft law on the conception of the State ethnic policy of Ukraine (CDL-AD(2004)021).

Mr Matscher presented the draft opinion (CDL(2004)065) on the draft law amending the law on national minorities in Ukraine (CDL(2004)066), which had been prepared on the basis of the two drafts previously examined by the Commission and taking partly into account the Commission's opinion thereon (CDL-AD(2004)013). While the new draft law was generally to be regarded as an improvement, certain aspects, such as the unclear position of this law in the Ukrainian hierarchy of norms, the citizenship requirement in the general definition of "national minorities", the possibility of using the minority language only in dealings with the local authorities (and not also with the judiciary and the regional bodies), the unclear extent of judicial protection of minority rights and the lack of fair representation of minorities in legislative bodies at the local, regional and national levels, remained problematic.

The Commission adopted the opinion on the latest version of the draft law amending the law on national minorities in Ukraine (CDL-AD(2004)022).

19. Other constitutional developments

- *Algeria*

The President of the Constitutional Council of Algeria, Mr Bedjaoui, informed the Commission that the experience with constitutional control was still young in Algeria. The Constitutional Council was pluralistic both in the composition of its nine members (four members elected by the legislative branch, two elected by the judicial branch and three appointed by the executive branch of power) and their background (politicians, lawyers and professors) thus allowing for debate in the Council. The members have a non renewable mandate of six years and are bound by strict rules on incompatibility. The decisions of the Council are final and binding erga omnes. Its main objective is to ensure the supremacy of the Constitution. It is entrusted to control the regularity of elections and to review the constitutionality of laws and regulations. However, only the President of the Republic and the presidents of the two chambers of Parliament are entitled to appeal to the Council. This had resulted in a relatively low number of cases decided so far (21 opinions, 6 decisions and one interpretation). Being limited in its activity because of the narrow scope for appeal, the Council had however been courageous in its jurisdiction in furthering human rights. A constitutional revision might enlarge the scope of jurisdiction of the Council by giving the right to appeal also to the Parliamentary minority.

Mr Bedjaoui expressed the hope that his presence was just the beginning of a fruitful co-operation between Algeria and the Venice Commission. Back in Algiers he would take the necessary steps asking his Government to seek the membership of Algeria with the Commission. Mr Buquicchio replied that the values of the Council of Europe, democracy, human rights and the rule of law were indeed universal values, which the Venice Commission intended to share especially with countries of the southern shores of the Mediterranean.

- *Chile*

Mr Colombo Campbell, President of the Constitutional Court of Chile, informed the Commission that the origins of constitutional justice in Chile date back to 1925 when the then adopted Constitution gave judges the possibility to declare unconstitutional legislation as inapplicable inter partes. The Constitutional Tribunal had been established in 1971 but suspended its activity in 1973 due to the troubled political situation at the time. The Tribunal had been re-established in 1980. Its activity was based on the principles of independence and autonomy. No appeal against its decisions could be brought to any other state body. It enjoyed financial autonomy and bore no political responsibility. In a difficult political context, the Constitutional Court had contributed to the pacification of political life.

Mr Colombo Campbell pointed out that his Government would soon take the necessary steps to establish formal co-operation with the Venice Commission. Mr Omari welcomed this development.

- *Republic of Korea*

Mr Lee informed the Commission on the procedure of impeachment of President Roh Moo-hyun. Article 65 of the Constitution provided that if the President "violated the Constitution or other laws in the performance of official duties, the National Assembly may pass motions for ... impeachment." A required two thirds majority in Parliament had adopted such a motion, alleging that the President had violated the electoral legislation by inducing public support for a political party. Given that the President was the representative of the people, the Constitutional Court had to decide whether the President had "grossly violated" the legislation and whether his case had to be seen as a betrayal of the people. However, the Court came to the conclusion that the acts of the President did not result in such a betrayal and invalidated the impeachment. During the impeachment proceedings the Court had to face a grave security problem. Public pressure even resulted in serious illness of one of the judges.

Furthermore, Mr Lee pointed out that the Republic of Korea was still in a transitory phase of democracy. Therefore, the European experience was very important for Korea. The Korean Constitutional Court had been established following the European model. Its President, Mr Young-Chul Yun, had strong faith in the relationship with the Venice Commission. He intended to come to Venice in October. Given that the President of the Constitutional Court was strongly in favour of accession, the process of accession to the partial agreement was likely to have a positive outcome towards the end of the year. The Chair, Mr. Omari, welcomed the interest of Korea in the Venice Commission and underlined that the Korean experience was also of interest for Europe.

- *Portugal*

Mr Cardoso da Costa informed the Commission about recent constitutional amendments in Portugal, which widened the legislative powers of the autonomous regions Açores and Madeira. Furthermore, in order to enable ratification of the future EU Constitution, the amendments placed EU law implicitly above even the national constitution. This latter amendment had been discussed very controversially in Portugal before its adoption.

Asked by Mr Martini whether, following the failed referendum on regionalisation in 1998, new attempts were made to introduce regions throughout the country (in addition to the existing autonomous regions of the Açores and Madeira), Mr Cardoso da Costa replied that currently an administrative decentralisation was under way, which might in practice bring about similar effects without formally establishing regions.

- *Southern Africa*

Mr Chaskalson, President of the Constitutional Court of South Africa, thanked the Venice Commission for its continued support of South Africa and the Southern African region during the past ten years. Since the fall of Apartheid, South Africa was in a process of democratisation and institution building. The judiciary in South Africa but also in the

region in general had an important role to play in this process. Based on their sound commitment to development, the judiciary had to restrain any abuse of power. The Venice Commission had assisted in the organisation of a number of regional conferences of the highest courts of the region. This process had culminated in the creation of the Southern African Judges' Commission (SAJC), which united the chief justices of the Southern African region. They were united in a firm commitment to democracy and the rule of law. Their action, however, was often hampered by extreme conditions. While senior judges were generally well trained, junior officials were poorly equipped. Pursuing the principles of the rule of law, democracy and the independence of the courts, the goals of the SAJC were to promote co-operation among the courts, to promote and protect welfare and dignity of judges, to establish a website, to provide assistance to courts and to promote cooperation among judicial training institutions, to arrange colloquia to exchange with other similar institutions in Africa and elsewhere, to encourage the publication and dissemination of judgments and the use of information technology, and generally to promote the interests of the judiciaries of the member countries. The statute of the SAJC expressly provided for co-operation with the Venice Commission. This co-operation was important not only for South Africa but for the whole region.

Mr Omari assured Mr Chaskalson that the Venice Commission would continue its co-operation with the SAJC. Mr Buquicchio pointed out that the co-operation with Southern Africa had only been possible due to generous voluntary contributions from Switzerland and for the last two years, Norway.

20. Report of the Meeting of the Council for Democratic Elections (17 June 2004)

Mr Hjörtur Torfason informed the Commission about the results and conclusions of the meeting. In particular, he informed the Commission that the Committee of Ministers, at ministerial level, decided to support the Code of Good Practice in Electoral Matters through a political declaration.

Mr Hjörtur Torfason and Mr Vulchanov (OSCE/ODIHR) underlined that the co-operation between the Venice Commission and OSCE/ODIHR in electoral matters is very fruitful and should continue in the future.

The Commission was invited to adopt:

- the joint recommendations of the Venice Commission and OSCE/ODIHR on the electoral law (CDL(2002)141) and the electoral administration in Moldova (CDL-EL(2003)015rev), including a few amendments introduced by the Council for Democratic Elections;

The Commission adopted the joint recommendations of the Venice Commission and OSCE/ODIHR on the electoral law and the electoral administration in Moldova, subject to confirmation by OSCE/ODIHR on the amendments introduced by the Council for Democratic Elections.

- the joint recommendations of the Venice Commission and OSCE/ODIHR (CDL-EL(2004)002rev) on the electoral law (CDL(2004)009) and the electoral administration in Albania; an amendment was approved subject to agreement of OSCE/ODIHR.

The Commission adopted the joint recommendations of the Venice Commission and OSCE/ODIHR on the electoral law and the electoral administration in Albania, including an amendment, subject to confirmation by OSCE/ODIHR.

- the questionnaire on the use of referendums (CDL-EL(2004)003rev2, including the amendments by the Council for Democratic Elections).

A few further amendments were accepted, in order to underline in particular the distinction between abrogative and other referendums.

The Commission adopted the questionnaire on the use of referendums (CDL-EL(2004)003rev2), with a few amendments.

21. Report of the Meeting of the Sub-Commission on the Protection of Minorities

Mr Malinverni informed the Commission that a working group composed of himself and Messrs Van Dijk and Matscher had organised a meeting in Strasbourg on 28 May 2004, during which they had discussed the question whether it is still appropriate to include the criterion of citizenship in the general definition of “national minorities” or whether it is more appropriate to adopt an article-by-article approach. Representatives of the other major international bodies dealing with minority protection - notably the Advisory Committee on the Framework Convention for the Protection of National Minorities; the Group of Experts on the European Charter for Regional or Minority Languages; the OSCE High Commissioner on National Minorities and the UN Sub-Commission on Human Rights – had participated in this brainstorming. The working group would now prepare a study aimed at identifying the specific minority rights and the criterion/a (such as long-standing lawful residence) which could, if appropriate, replace the citizenship one. Such work would be carried out in consultation with the above-mentioned international bodies.

22. Report of the Meeting of the Sub-Commission on International Law

Mr Conostas informed the Commission about the request by the PACE Committee on Legal Affairs and Human Rights to prepare an opinion on the human rights situation in Kosovo. The Committee had requested the opinion of the Commission on three specific issues: what State or other entity is responsible under international law for the protection of human rights in Kosovo; whether some form of agreement between the Council of Europe and the international authorities in Kosovo could place them, along with the Provisional Institutions of Self-Government, within the jurisdiction of the European

Court of Human Rights and whether this solution would have genuine practical value; whether it would be preferable to establish some form of local human rights chamber.

A working group composed of Messrs Helgesen, Malinverni, Nolte, Scholsem and Van Dijk would visit Kosovo and prepare a draft opinion on this matter, possibly for the October session.

23. Co-operation with the International Association on Constitutional Law (IACL)

Mr Michel Rosenfeld, Former President of the International Association of Constitutional Law (IACL), informed the Commission that the IACL Conference in Chile in January 2004 had provided an opportunity to envisage closer contacts between the Venice Commission and IACL, which was very interested to co-operate with the Commission. Both bodies were based on the same principles and complemented each other. Their co-operation would be mutually beneficial. The draft co-operation agreement (CDL(2004)071) provided for mutual representation at each other's meetings. In practice, seminars and conferences could be organised jointly at the regional and international level. The IACL could also be a vector to spread the knowledge about the work of the Venice Commission.

Mr Matscher inquired whether it was necessary to conclude a formal agreement in order to co-operate with IACL. Mr Buquicchio replied that the Venice Commission had already concluded similar co-operation agreements with the Association of Constitutional Courts using the French Language (ACCPUF), with the Groupe de recherche sur le droit et la transition (GRDT - University of Auvergne) and the Conference of Constitutional Control Organs of Countries of Young Democracy (CCCOCYD). IACL and the Venice Commission were indeed complementary. The agreement would serve to spread the constitutional heritage in other regions. Mr Cardoso da Costa supported the conclusion of the agreement.

The Commission approved the co-operation agreement between the International Association of Constitutional Law and the Venice Commission (CDL(2004)071rev).

24. Other business

High Level Group on the Future of Democracy

Mr Mifsud Bonnici informed the Commission about the progress in the work of the High Level Group on the Future of Democracy. The group had so far met three times and discussed written contributions submitted by experts. Following its last meeting in March 2004, the Group adopted a draft Green paper on the Future of Democracy in Europe. This document came up with suggestions for reforms that could improve the quality of democracy in Europe and make it more legitimate in the future. The group is expected to meet one last time before the end of the year.

25. Date of the next session

The Commission confirmed that its 60th plenary session would be held on 8 and 9 October 2004. The meetings of the sub-committees will take place as usual on the day before the plenary session while the meeting of the Council for Democratic Elections will take place on Saturday afternoon, after the plenary session.

The Commission confirmed the dates of the Sessions for 2005:

62nd Plenary Session	11-12 March
63rd Plenary Session	10-11 June
64th Plenary Session	21-22 October
65th Plenary Session	16-17 December

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AZERBAIJAN/AZERBAIDJAN	Mr Lätif HUSEYNOV
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BOSNIA AND HERZEGOVINA/ BOSNIE-HERZEGOVINE	M. Cazim SADIKOVIC
BULGARIA/BULGARIE :	Mr Anton STANKOV
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Ms Dzenana HADZIOMEROVIC, Legal Adviser

ROMANIA/ROUMANIE

Mr Dan HAZAPARU, President, Romanian Foundation for Democracy through Law

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Mr Arthur CHASKALSON, President, Constitutional Court of South Africa

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