



Strasbourg, 9 April 2010

CDL-PV(2010)001*
Or. Bil.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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

82nd PLENARY SESSION
(Venice, Friday, 12 March (9.30 a.m.) –
Saturday, 13 March 2010 (1.00 p.m.))

82^{ème} SESSION PLÉNIÈRE
(Venise, vendredi 12 mars (9h30) -
samedi 13 mars 2010 (13h00))

SESSION REPORT
RAPPORT DE SESSION

TABLE OF CONTENTS/TABLE DES MATIERES

1.	Adoption of the Agenda	3
2.	Communication by the President	3
3.	Communication by the Secretariat	3
4.	Report of the meeting of the Enlarged Bureau	3
5.	Co-operation with the Committee of Ministers	4
6.	Co-operation with the Parliamentary Assembly	4
7.	Co-operation with the Congress of Local and Regional Authorities of the Council of Europe	5
8.	Follow-up to earlier Venice Commission opinions	6
	<i>Amicus curiae brief on the Law on "the cleanliness of the figure of high functionaries of the Public Administration and Elected Persons of Albania"</i>	<i>6</i>
	<i>Amicus curiae brief in the cases of Sejdić and Finci v. Bosnia and Herzegovina (Applications no. 27996/06 and 34836/06) pending before the European Court of Human Rights</i>	<i>6</i>
	<i>Opinion on the draft amendments to the Law on Occupied Territories of Georgia</i>	<i>7</i>
	<i>Joint Opinion by the Venice Commission et OSCE/ODIHR on the draft law on Assemblies of the Kyrgyz Republic</i>	<i>7</i>
	<i>Opinion on the compatibility of the laws "Gasparri" and "Frattini" of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media</i>	<i>7</i>
	<i>Serbia</i>	<i>8</i>
	<i>Ukraine</i>	<i>8</i>
9.	Azerbaïdjan	9
10.	Bulgaria	10
11.	Georgia	11
12.	Moldova	12
13.	Monténégro	13
14.	Serbie	14
15.	Slovak Republic	15
16.	Turquie	15
17.	Ukraine	17
18.	Autres développements constitutionnels	17
	- <i>Suède</i>	<i>17</i>
	- <i>Kirghizistan</i>	<i>18</i>
	- <i>Nepal</i>	<i>18</i>
	- <i>Portugal</i>	<i>19</i>
	- <i>Ouzbékistan</i>	<i>19</i>
19.	Report of the meeting of the Sub-Commission on the Judiciary	19
20.	Report of the meeting of the Council for Democratic Elections	20
21.	Adoption of the annual report of activities 2009	21
22.	Other business	21
23.	Dates of the next sessions	21
	LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS	22

1. Adoption of the Agenda

The Venice Commission adopted the agenda as it appears in document CDL-OJ(2010)001ann.

2. Communication by the President

Mr Buquicchio informed the Venice Commission that Mr Markert had been appointed its Secretary.

Mr Buquicchio welcomed two new members to the Venice Commission, Mr Mario Fernandez Baeza from the Constitutional Court of Chile and Mr Fathi Abdennadher, President of the Constitutional Court of Tunisia. He also welcomed Ms Berit Aaviksoo, Professor of Constitutional Law in Tartu, substitute member for Estonia, and Ms Radhia Ben Salah, substitute member for Tunisia.

A list of the President's recent activities can be found in document [CDL\(2010\)029](#).

3. Communication by the Secretariat

Mr Markert thanked the members for their congratulations on his appointment as Secretary of the Venice Commission.

He informed the Venice Commission that Mexico became a member in February 2010.

4. Report of the meeting of the Enlarged Bureau

Mr Buquicchio informed the Commission about the results of the meeting of the Enlarged Bureau, which took place on 11 March 2010. The aim of this meeting was to discuss the working methods of the Venice Commission and the role of the Scientific Council. A working group composed of the President and the Vice-Presidents of the Venice Commission, the President of the Sub-Commission on working methods and the Secretary met in Paris on 1 March 2010 to discuss these points and make proposals. They pointed out that one of the main issues regarding the working methods of the Venice Commission was a lack of time for plenary sessions since they only lasted one and a half days, which may be too short a time to cover the Venice Commission's agenda. They therefore discussed the possibility of extending the plenary session to Saturday afternoons and to consider beginning the plenary sessions at 9 a.m. rather than at 9.30 a.m. They also agreed that the Venice Commission should consider reducing the number of presentations made and the allotted time provided for each of them.

With respect to opinions and in order to avoid having several rapporteurs intervening for the same opinion, the rapporteurs were invited to agree between themselves who should present the opinion and what should be said.

The Enlarged Bureau would like to consult members on the Venice Commission's working methods and in this respect invited them to send the Secretariat written contributions within the next few weeks regarding their view on how to improve the organisation of the plenary sessions.

The Venice Commission was also informed that the composition of the Scientific Council would be considered once its role and tasks were determined. Proposals included the codification of the "jurisprudence" of the Venice Commission, which was already done with respect to election and constitutional justice matters brought together in a number of codes of good practice, guidelines and *vademecums* as well as in matters concerning minorities and ombudspersons.

Other tasks had also been suggested and the First Vice-President, Mr Helgesen, called for further ideas from the members of the Venice Commission for the possible role of the Scientific Council.

Members were invited to send their proposals on the working methods of the Commission and on the role of the Scientific Council in writing to the Secretariat.

5. 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 Dragana Filipović, Permanent Representative of Serbia and Ambassador Andrey Tehov, Permanent Representative of Bulgaria.

Ambassador Filipović spoke of the good co-operation between the Venice Commission and the Committee of Ministers and said that this co-operation was important, especially in the context of the current reform process of the Council of Europe and the European Court of Human Rights, discussed at the Ministerial Conference held in Interlaken, Switzerland on 18-19 February 2010. She said that the Venice Commission's role was already important in enhancing the Council of Europe's image on a European and international level and had the reputation for being independent as a legal and not a political body. She informed the Venice Commission that the Committee of Ministers very much welcomed the membership of Mexico to the Venice Commission. She also said that there was a good co-operation between Serbia and the Venice Commission and that Serbia was committed to continuing this co-operation.

Ambassador Tehov informed the Venice Commission that he had known about its existence from the very outset in 1990, as he was present when the project was presented to Bulgaria by Mr La Pergola. He stressed that the Venice Commission's work was important and that the Committee of Ministers would continue to support it. He informed the Venice Commission that one of the main pillars of Mr Jagland's reform of the Council of Europe was to raise the organisation's political profile. The Committee of Ministers saw a role for the Venice Commission in its provision of constitutional assistance, as some of the problems, and even conflicts, could be solved by constitutional means, with the full agreement of the countries concerned. He underlined that the Committee of Ministers was very interested in the election standards adopted by the Venice Commission over the years, notably those pertaining to political parties.

Mr Buquicchio agreed that it was not only important for the Venice Commission to be an independent body, but also to be seen as such. He reminded participants that the Venice Commission had already provided technical assistance for the settlement of ethno-political or even purely political conflicts and had worked together with other organisations in this context, notably the EU, the UN and the OSCE in order to propose constitutional, as well as technical solutions to pressing issues.

6. Co-operation with the Parliamentary Assembly

Mr Lluís Maria de Puig, former President of the Parliamentary Assembly, informed the Venice Commission that during its session, on 25-29 January 2010, the Assembly debated, among others, two reports, which were a good example of the fruitful co-operation between the Venice Commission and the Assembly. The first report was on the functioning of democratic institutions in Bosnia and Herzegovina and the other was on the same topic in Albania. As regards Bosnia and Herzegovina, the Assembly shared the concern of the Venice Commission with respect to the absence of constitutional reform. In this respect, the Assembly invited the Bosnian authorities to start discussions on amendments to the Constitution, in accordance with the

recommendations made by the Venice Commission, with a view to adopting a package of reforms before the legislative elections of 2010 take place. As regards Albania, the Assembly deplored the current political crisis, which started after the legislative elections, and invited the Albanian authorities to start the reform process in close co-operation with the Venice Commission.

Mr de Puig informed the Venice Commission that the Presidential Committee of the Assembly visited Tirana at the end of February in order to help end the boycott of the work of the Parliament by the opposition. He said that members of the delegation had encouraged the political leaders to turn to the Venice Commission for an expertise on the possibility of opening ballot boxes. Other reports of the Assembly, where it co-operated with the Venice Commission, concerned the "Freedom of religion and other human rights of non-Muslim minorities in Turkey and the Muslim minority in Thrace (Eastern Greece)" and "Judicial corruption" (see items 16 and 19). Yet others included the report of the Political Commission on the electoral threshold and other aspects of electoral systems affecting the representation of parliaments in member states of the Council of Europe and the report by the Commission on equality, on increasing the representation of women in politics by the electoral system. The work of the Assembly in this area continued, especially with a new proposal for a recommendation on financing election campaigns.

Mr Holovaty, member of the Committee on Legal Affairs and Human Rights, who spoke for the first time in his capacity as representative of the Assembly within the framework of the co-operation between the Assembly and the Venice Commission, said that with respect to Bosnia and Herzegovina, a hearing on that subject would take place on 17 March with all the political forces of that country. He informed the Venice Commission that if the situation remained unchanged, a debate under the urgent procedure would be held in the Assembly during the June part-session. He also informed the Commission that the Assembly was monitoring the situation in Moldova, following the failure to elect a President by Parliament. The Assembly insisted that the Moldovan authorities follow the legal expertise of the Venice Commission in seeking a solution to the current crisis. The Assembly also stressed the importance of the co-operation of Azerbaijan with the Venice Commission and it was going to present a draft report on the functioning of democratic institutions in that country to the Assembly in June.

Mr Holovaty also said that the co-operation between the Venice Commission and the Assembly's Legal Affairs Committee was very good. The latter had adopted several reports, notably one on minority protection in Europe, one on the greater commitment of member states concerning the efficiency and implementation of the Council of Europe Treaty Law and one on the situation of Roma in Europe. It had also worked on the Interlaken process relating to the future of the European Court of Human Rights and the enforcement of European Convention on Human Rights standards.

Mr Buquicchio fully supported Mr de Puig's and Mr Holovaty's comments on the good co-operation between the Venice Commission and the Assembly and reiterated that the Assembly was the Commission's best customer. He said that as the Venice Commission was not a political body, it was important for it to receive the support of a political body such as the Assembly.

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

Mr Delcamp, Secretary General of the French Senate, encouraged the continuity and praised the creativity of the Venice Commission. He explained that the Congress resorted to the Venice Commission for questions regarding reforms that have an impact on local independence. He informed the Venice Commission that the Congress had sent an international delegation composed of eleven Congress members representing eight different

countries to Azerbaijan in order to observe the municipal elections on 23 December 2009. He also explained that the Congress often based itself on the Venice Commission's Code of Good Practice in electoral matters.

Mr Delcamp informed the Commission that monitoring missions by the Congress were carried out in different countries, after which reports were prepared and that fifteen countries were going to be visited during the course of this year. At the Congress' 18th plenary session on 17-19 March, it will hold a debate on the role of local and regional authorities in implementing human rights.

Mr Buquicchio informed the participants that Morocco was currently undergoing an important reform on its regions and that the Venice Commission was at the disposal of the Congress, should it need its assistance in this matter.

8. Follow-up to earlier Venice Commission opinions

The Commission was informed on the follow-up to:

Albania

Amicus curiae brief on the Law on "the cleanliness of the figure of high functionaries of the Public Administration and Elected Persons of Albania" ([CDL-AD\(2009\)044](#))

The Secretariat recalled that in December 2008, Parliament adopted a Law "on the cleanliness of the figure of high functionaries of the Public Administration and Elected Persons of Albania". The main opposition party, the socialists, challenged it before the Constitutional Court, which had suspended the Law and sought an *Amicus curiae* brief of the Venice Commission. In October 2009, the Commission adopted the brief. The Commission did not oppose lustration measures as such, but underlined that these needed to respect the Constitution, notably the procedural protection of holders of important state offices (judges of the Constitutional Court and State Court, President etc.). The Lustration Law was an ordinary and not an organic law, and established the same procedure for all categories of subjects; it did not provide for an individualised analysis of actual co-operation with the communist regime. In relation to the alleged conflict of interest of the judges of the Constitutional Court in deciding the constitutionality of this Law, the Commission found that the Lustration Law ought to have provided for a mechanism of replacement of the judges, failing which, it was more important for the court to function.

In January 2010, the Constitutional Court of Albania rendered its judgment on this matter and quashed the Lustration Law. The text of the judgment was not yet available, but the Secretariat would try to obtain it and report back to the Commission at a later stage.

Bosnia and Herzegovina

Amicus curiae brief in the cases of Sejdić and Finci v. Bosnia and Herzegovina (Applications no. 27996/06 and 34836/06) pending before the European Court of Human Rights ([CDL-AD\(2008\)027](#)).

Mr Scholsem informed the Commission that on 22 December 2009 the ECtHR had taken a decision which was fully in line with the *Amicus curiae* brief and contained extensive quotations from several Venice Commission opinions. Both the Constitution and the electoral legislation of this country therefore had to be amended to remove the discriminatory provisions. He had participated together with Messrs Markert and Kouznetsov in a conference on "The Impact of the European Convention of Human Rights on the Constitution and Electoral Code of Bosnia and Herzegovina" in Sarajevo on 28 January 2010. The discussions there showed that, while

there was general agreement that the judgment had to be implemented, it would be very difficult to reach agreement on how to implement it.

Georgia

Opinion on the draft amendments to the Law on Occupied Territories of Georgia (CDL-AD(2009)051)

The Secretariat recalled that the Commission initially assessed the Law on occupied territories and subsequently two sets of draft amendments to it, which had been prepared in consultation with the Commission. In December 2009, the Commission found that the last version of the amendments represented a significant step forward and addressed the main concerns previously raised by the Commission. It encouraged the Georgian authorities to adopt these amendments.

On 26 February 2010 the Georgian Parliament adopted the amendments, which were to be welcomed.

The Secretariat recalled that in its final opinion of December 2009, the Commission had underlined the importance of international monitoring of the situation concerning the population of the “occupied territories” and the interpretation of the formula “necessary humanitarian aid” used in the Law. It was to be noted in this respect that the Strategy on Occupied territories, adopted by the Government on 27 January 2010 invited “international organisations to ...special monitoring missions within the framework of broader international mechanisms tasked with promoting stability on the ground.”

Kyrgyzstan

Joint Opinion by the Venice Commission et OSCE/ODIHR on the draft law on Assemblies of the Kyrgyz Republic (CDL-AD(2009)034)

Ms Sydykova recalled that in October 2008, the Commission adopted, jointly with OSCE/ODIHR, an opinion on the amendments to the Law on the right of citizens to assemble peacefully, without weapons, to freely hold rallies and demonstrations”. The Commission and OSCE/ODIHR found, in particular, that the possibility for the authorities to designate assembly locations was incompatible with the freedom of assembly, and suggested its removal from the Law.

On 2 March 2010, the Constitutional Court found that that provision of the Law, as well as the relevant decree of the Mayor of Bishkek providing the list of special places for public meetings, were in breach of Articles 18 and 22 of the Constitution of Kyrgyzstan.

Italy

Opinion on the compatibility of the laws “Gasparri” and “Frattini” of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media (CDL-AD(2005)017)

The Secretariat informed the Commission that in Recommendation 1897(2010) on “Respect for media freedom”, the Parliamentary Assembly of the Council of Europe had asked the Venice Commission to “prepare an opinion on whether, and to what extent, legislation in Italy had been adapted to take into account their opinion on the compatibility of the laws “Gasparri” and “Frattini” of Italy with Council of Europe standards in the field of freedom of expression and pluralism of the media, adopted by the Venice Commission in June 2005.

It was not the practice of the Commission to prepare follow-up opinions; in addition, the Opinion of 2005 had been requested by PACE and not by the Italian authorities. This request was discussed within the Enlarged Bureau, and the latter's proposal was to write to the Italian authorities seeking information on possible legislative developments since 2005. The reply of the Italian authorities would then be sent to the Parliamentary Assembly.

The Commission agreed with this proposal and instructed the Secretariat to contact the Italian authorities.

Serbia

Mr Hamilton informed the Commission about the follow-up on the Opinion on the draft laws on judges and on the organisation of Courts of Serbia ([CDL-AD\(2008\)007](#)) and on the Opinion on the draft Criteria and Standards for the election of judges and Court Presidents of Serbia ([CDL-AD\(2009\)023](#)). Mr Hamilton explained that these opinions had been drafted as a result of, on the one hand, the decision in Serbia to rid its judicial system of corruption and to do so by removing all judges and appoint new ones and, on the other hand, the Venice Commission's concern for an acceptable manner to do so. He explained that difficulties arose when the existing judges were merely provided with a list of those who were not re-appointed, without individual reasons for the termination of office for those who had not been reappointed.

Mr Hamilton further informed the Commission that discussions between the Venice Commission and the Consultative Council of European Judges (CCJE) had led to the proposal that a joint declaration between the presidents of both bodies be made, declaring that any judicial reform should be carried out in compliance with European standards, that both bodies were concerned that judges who were not reappointed did not receive individual decisions providing reasons for their not being reappointed and the need for an effective remedy for those judges that were not reappointed.

Mr Markert added that, following the discussions in the Enlarged Bureau, the draft declaration should focus on the need for the judges to obtain reasoned individual decisions and to have a remedy. The CCJE's proposal at the moment was more far reaching, putting into question the whole process of reform in Serbia. He said that it may be that the CCJE adopts its own separate declaration.

Mr Dimitrijevic drew the attention of the Venice Commission to the fact that there was a misunderstanding by the Serbian population and the Serbian judiciary on the role of the Venice Commission. He said that the latter was quoted as saying many things, depending on the need of those who quoted it. He also said that the election process and the conduct of the High Judicial Council (body competent to elect judges) were severely criticised in Serbia for allegedly having re-elected "bad" judges and having let go of "good" ones. He suggested that the Venice Commission not take hasty action with respect to this situation.

The Venice Commission took note of the possibility of a joint declaration by the President of the Venice Commission and the President of the Consultative Council of European Judges on the reform of the judiciary of Serbia.

Ukraine

The Commission was informed about the follow-up to the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Law amending some legislative Acts on the election of the President of Ukraine, adopted by the *Verkhovna Rada* of Ukraine on 24 July 2009 ([CDL-](#)

[AD\(2009\)040](#)). Mr Darmanovic, who represented the Venice Commission as a legal advisor during the Parliamentary Assembly's election observation mission, drew attention to the fact that the joint opinion dealt with amendments that were made in July 2009, which were considered to be a step backwards. The Constitutional Court had declared a number of these amendments unconstitutional. Some important issues remained unaddressed, such as the deadlines for appeals or the prohibition of domestic non-partisan observers. In addition, the election legislation had been changed between the two rounds, which was against international standards. This, fortunately, did not influence the electoral process too much, but Ukraine should adopt a unified electoral Code at any rate. The *Verkhovna Rada* had put together a group to work on this issue, but it had not yet begun its work. The Venice Commission should continue to work with the Ukrainian authorities on this matter during the course of 2010.

9. Azerbaïdjan

M. Bartole présente ses observations ([CDL\(2010\)009](#) sur le projet de loi sur les actes juridiques normatifs de l'Azerbaïdjan ([CDL\(2010\)007](#)) ; un projet d'avis n'ayant pu être rédigé faute de réception à temps des observations de M. Mader (CDL(2010)010).

Le projet de loi est un long texte, très complet qui traite en 17 chapitres les principaux aspects et étapes de l'élaboration législative, à savoir la rédaction, la forme, l'adoption, la publication, l'entrée en vigueur d'un acte normatif.

C'est une initiative qu'il faut saluer car elle répond à une tradition juridique et aura certainement pour objectif d'améliorer la qualité et cohérence normative en Azerbaïdjan.

M. Bartole évoque brièvement quelques points qui à l'analyse soulèvent des interrogations. Sur le champ d'application de la loi, le projet de loi énumère très précisément les actes relevant de son domaine d'application, mais ce faisant il semble aller au-delà des dispositions constitutionnelles pertinentes. La place des actes présidentiels n'apparaît pas clairement dans le projet de loi, le règlement de conflits entre actes normatifs et notamment la question de l'abrogation tacite ne sont en l'état pas satisfaisants. Les règles sur la distribution de tâches au sein des différents intervenants dans le processus législatif ne sont pas assez claires. Si le projet pouvait rendre cette distribution des tâches et responsabilités plus claires, le processus normatif gagnerait en transparence. M. Bartole insiste que le projet de loi devrait prévoir plus expressément que ses dispositions s'appliqueront également aux propositions de lois issues du Parlement. Enfin, le projet de loi contient un chapitre relatif à la corruption. Si la lutte contre la corruption constitue indéniablement une priorité, il faut garder à l'esprit que celle-ci trouve souvent son origine dans les lacunes ou non-dits juridiques. Enfin le projet semble faire référence à un processus complexe et multiple de publication des textes officiels.

M. Kamran Bayramov, Conseiller principal, administration du Président, informe la Commission que le projet est actuellement en première lecture au Parlement. L'avis de la Commission sur ce projet de loi sera très important. Il informe la Commission que ce projet de loi aura le statut d'une loi constitutionnelle. Certaines des observations de M. Bartole, et notamment sur les décrets présidentiels sont majoritairement dues à une mauvaise traduction du projet de loi qui ne contrevient pas aux dispositions constitutionnelles. Par ailleurs, M. Bayramov présente les articles de la constitution qui répondraient aux interrogations que le projet suscite notamment quant à la nature des différents actes normatifs, les décrets présidentiels, aux pouvoirs et statuts des différentes institutions, les règles relatives à la publication. M. Bayramov remercie la Commission pour les observations qu'elle a pu d'ores et déjà présenter et rappelle l'importance que ses autorités attachent aux avis de la Commission. L'avis sur ce projet de loi est attendu pour être dûment considéré.

La Commission de Venise charge le Secrétariat de rédiger un projet d'avis sur la base des commentaires de MM. Bartole et Mader en vue de la prochaine session plénière de la Commission.

La Commission de Venise charge le Secrétariat de rédiger un projet d'avis sur la base des commentaires de MM. Bartole et Mader en vue de son adoption lors de la prochaine session plénière de la Commission.

10. Bulgaria

Mr Neppi Modona explained that the draft Act on forfeiture in favour of the State of illegally acquired assets introduced a non-conviction based civil forfeiture and would therefore enable the State to recover not only assets derived from criminal activity, but also all assets "illegally acquired" by a person, without requiring a criminal conviction. It would replace the existing Law on the Forfeiture to the State of Proceeds of Crime. The new Law would introduce a new body, the Illegally Acquired Assets Commission (IAA Commission), with far-reaching powers to investigate whether declared income and actual assets correspond. The IAA Commission would not itself proceed with the confiscation of assets, but would submit a reasoned request to the competent courts or try to reach a settlement.

There was a general trend in Europe towards civil forfeiture in order to fight the tendency of organised criminal groups to use their resources to distance themselves from criminal activities and hide the illicit origin of their assets. This was a key issue in Bulgaria.

Despite its justified purpose, it was important that the Law under consideration should not result in infringements of fundamental rights guaranteed by the Bulgarian Constitution and the ECHR (notably Article 6 ECHR and Article 1 Protocol 1 to the ECHR). This was particularly relevant with reference to the questioning and proceedings before the IAA Commission.

The rapporteurs had co-operated fruitfully with the Bulgarian authorities, and had thus obtained additional information and necessary explanations as to the purpose of this Law. Some amendments proposed by the Bulgarian authorities after consultation with the rapporteurs had indeed gone in the right direction.

The rapporteurs therefore proposed to the Commission that this opinion be adopted as an interim one. The final one would be prepared in relation to a further revision of the draft amendments.

Ms Margarita Popova, Minister of Justice of Bulgaria, stated that the fight against corruption and organised crime was a major challenge and a key priority for Bulgaria, which, as a member of the European Union, had a great responsibility in this respect. The authorities were determined to get hold of the proceeds of illegal activities, but were also aware of the need to respect fundamental rights. They were thankful to the Venice Commission for its assistance, and invited the rapporteurs to travel to Bulgaria in order to meet with the authorities and discuss the final version of the draft amendments, which would be prepared taking into account this Interim Opinion.

The Commission adopted the Interim Opinion on the draft Act on forfeiture in favour of the state of illegally acquired assets of Bulgaria (CDL-AD(2010)010).

11. Georgia

Opinion on the draft amendments to the law on assembly and manifestations of Georgia

Ms Flanagan recalled that this Opinion had been requested by the Georgian Parliament, initially (Summer 2009) on a set of amendments adopted in July 2009, and subsequently (1 March) on a set of draft amendments, which the authorities prepared on the basis of the comments of the Venice Commission rapporteurs (October 2009). Since then, the authorities worked on draft amendments; as the work was still in progress, it was now proposed to adopt an interim opinion.

The Law in force contained blanket restrictions and no indication of the principle of proportionality. In fact, it did not provide an adequate system of permissible restrictions based on the Law, in pursuit of a legitimate aim and in a manner proportionate to that aim and necessary in a democratic society. It was necessary that the Law express the general presumption in favour of the right of assembly.

Many of the proposed amendments were welcomed, as they largely addressed the rapporteurs' concerns: blanket restrictions were mostly replaced by administrative discretion on a case-by-case basis, under a general rule that restrictions must respect the principle of proportionality. The designation of specific locations for assemblies would be deleted, which was positive. A certain lack of clarity will be addressed by the authorities.

Certain issues remained, in particular simultaneous and counter demonstrations should be allowed, and the termination of events should be made explicitly more flexible.

Mr Akaki Minashvili welcomed the good co-operation between the Georgian Parliament and the Venice Commission. Parliament would continue to work on these amendments. Efforts were made to meet the rapporteurs' concerns: blanket restrictions related to politically relevant sites would be lifted and the principle of proportionality would be applied. He expressed his confidence that this process of co-operation with the Venice Commission would result in a significant improvement in Georgia.

Several members suggested underlining, in respect of the right of assembly of members of the armed forces, the police and the members of the state administration, that the ECHR allowed for restrictions, although on a proportional basis.

The Commission adopted the Interim Opinion on the draft amendments to the Law on assembly and manifestations of Georgia (CDL-AD(2010)009).

Opinion on the draft constitutional chapter on local self-government

Mr Sorensen recalled that in June 2009 the authorities of Georgia had decided to prepare a new Constitution. A State Constitutional Commission was set up, which sought the assistance of the Venice Commission in this process. An expert appointed by the DG-DAP of the Council of Europe joined the working group.

Draft Chapter VII would replace (and expand) the very few provisions on local self-government, which existed under the current Constitution, thus providing a sounder constitutional entrenchment and implementing the European Charter on Local Self-government (ratified by Georgia and in force there since 2005).

Constitutional entrenchment would mean better protection, insofar as a qualified majority would be needed to amend the principles of functioning of the LSG. This was to be welcomed. However, it was the rapporteurs' opinion that the constitutional amendments ought to have set out more general principles and contain more detailed provisions on local self-government, and not simply delegate, as they did now, these details to the Law. The aim of the reform would be frustrated if at least the basic principles were not included in the Constitution, also because the Constitutional Court would be empowered to decide conflicts and questions relating to the LSG, and would therefore need a clear yardstick (notably concerning the allocation of "appropriate" resources).

Mr Delcamp, representative of the Congress, underlined the importance of leaving to the legislator the possibility of modifying some rules on the LSG without having to modify the Constitution.

Mr Akaki Minashvili thanked the Commission for this valuable opinion, which would be certainly taken into consideration by the State Constitutional Commission and by Parliament at a later stage.

The Commission adopted the opinion on the draft constitutional Law on changes and amendments to the constitution of Georgia (Chapter VII, local self-government) (CDL-AD(2010)008).

12. Moldova

Mr Buquicchio informed the Venice Commission about the constitutional situation in Moldova, explaining that it was undergoing a serious crisis (without either qualifying it as a constitutional or a political crisis) over the past year. He said that Moldova was in a situation of instability, because it could not elect a President of the Republic and had dissolved Parliament twice already. He explained that he had visited Moldova twice this year and met with political parties and leaders. On his second visit he was accompanied by Mr Scholsem and Ms Nussberger. Mr Buquicchio said that after the first visit, the great majority of political party leaders accepted the Venice Commission's suggestion for a solution to the crisis, which was to amend Article 78 of the Constitution on the election of a President of the Republic and Article 85.3 of the Constitution on the dissolution of Parliament and then hold elections for a new President of the Republic.

Mr Buquicchio further informed the Commission that an answer from the authorities in Moldova had been received on 11 March 2010, stating that the Alliance (four parties of the current majority) had decided not to follow the Venice Commission's recommendations, but to draft a new Constitution and adopt it by referendum. Mr Buquicchio explained that the Venice Commission had always found this to be contrary to the current Constitution, but that in order to keep the current Parliament in place; Moldova seemed to have decided to take this path. The Enlarged Bureau therefore decided that the Press Release to be issued on the *Amicus curiae* brief (see below) should also explain the Commission's position on constitutional reform.

Ms Nussberger invited the Commission to examine, with a view to its adoption, the draft *Amicus curiae* brief for the Constitutional Court of Moldova ([CDL\(2010\)001](#)) on the interpretation of Articles 78.5 and 85.3 of the Constitution of Moldova drawn up on the basis of comments by herself and Messrs Scholsem and Tuori ([CDL\(2010\)003](#), [004](#) and [005](#)).

She informed the Commission that the request concerned a procedure in front of the Constitutional Court to provide an abstract interpretation of two articles of the Constitution. The Court was asked three questions, the first was whether the Article on the dissolution of

Parliament applied to the situation with respect to the election of the president; the second concerned the interpretation of the words “in the course of a year” – whether this meant a calendar year or a year counting from the dissolution of Parliament; the third was in respect of the situation in which a president was not elected after repeated elections – within what timeframe the president in office had to dissolve parliament and set a date for the election of a new Parliament. She explained that, with respect to the first question, one provision ensured that the state had functioning constitutional bodies and the other guaranteed political stability – and that in order to achieve a certain degree of political stability, the provision on allowing the dissolution of Parliament only once a year must be applied to cases covered by the provision on the election of the president. As regards the second question, the Venice Commission recommended that the words “in the course of a year” be interpreted as meaning one year, counting from the last dissolution of Parliament, and with respect to the third question, the President of the Republic should dissolve parliament not earlier than a year, counting from the last dissolution of Parliament.

Ms Nussberger drew attention to the fact that the Constitution only provided for a minimum rule with respect to the dissolution of Parliament i.e. once a year, however it did not provide for a maximum rule i.e. no precise period of time for the dissolution of Parliament after the one-year period expired. It was therefore important to state that the date for dissolution should be fixed in a non-arbitrary manner, within a reasonable period of time.

Mr Scholsem added that the appeal to the Constitutional Court of Moldova, which led to this *Amicus curiae* brief, was made by the Communist party, which wanted elections to be held as soon as possible. He explained that all that was needed to end the crisis was an amendment to Article 78 of the Constitution and expressed his concern about the new position of the Alliance.

Mr Esanu explained that the change of Constitution should not be linked with the rule regarding the dissolution of Parliament – whether Parliament was dissolved before or after the new Constitution should be irrelevant. He further explained that it was important for the Venice Commission to repeat that the interpretation of the Constitution should be made in a constitutional manner.

Mr Aurescu underlined that it was important for the Venice Commission to keep its neutrality in this matter and focus on the legal opinion.

The Venice Commission adopted the *Amicus curiae* brief for the Constitutional Court of Moldova on the interpretation of Articles 78.5 and 85.3 of the Constitution of Moldova (CDL-AD(2010)002.

13. Monténégro

M. Huseynov présente le projet d’avis ([CDL\(2010\)023](#)) sur le projet de loi sur l’interdiction de la discrimination dans la République de Monténégro ([CDL\(2010\)024](#)), établi sur la base des ses observations.

Ce projet de loi fait suite à un projet de loi précédent pour lequel la Commission de Venise avait donné un avis (CDL-AD (2009)045).

Le présent projet a repris plusieurs des recommandations faites par la Commission précédemment. En général le texte a été largement amélioré, il est devenu plus clair et plus précis. Une autre amélioration d’importance porte sur les définitions clés utilisées dans le projet, notamment relatives à la discrimination directe et indirecte ; elles sont dorénavant

conformes aux standards internationaux. L'extension de la protection contre la discrimination aux personnes morales est une amélioration notable.

Cependant, un certain nombre de recommandations de la Commission n'ont toujours pas été prises en compte ; le présent projet contient en outre toujours deux grandes carences. Premièrement, le mécanisme de mise en œuvre de la loi reste insuffisant et ne répond pas aux Recommandations de l'ECRI notamment. Le médiateur désigné comme mécanisme de protection ne dispose toujours pas des pouvoirs nécessaires pour mener cette fonction à bien. Un nouveau projet de loi sur le médiateur devrait voir le jour bientôt et serait soumis à la Commission pour évaluation.

Deuxièmement, le système de sanctions et remèdes prévu par loi est inadapté et ne répond pas aux Recommandation de l'ECRI ou de l'UE, ces sanctions devraient être « effective, proportionnées et dissuasives ».

En outre, le projet révèle d'autres faiblesses : la définition d'action positive devrait être améliorée à la lumière des Recommandations de l'ECRI et de l'UE, le droit des tiers d'agir ou de soutenir les victimes devrait être réintroduit (notamment s'agissant d'organisation de défense des droits de l'homme ; des références à d'autres textes de lois pertinents devraient être introduits dans le texte).

La Commission adopte le projet d'avis et charge le Secrétariat de transmettre l'avis CDL-AD (2010)11 aux autorités monténégrines.

14. Serbie

M. Bartole présente le projet d'avis ([CDL-EL\(2010\)007](#)) sur le projet de loi sur le référendum de la Serbie ([CDL-EL\(2010\)004](#)), préparé par M. Sanchez Navarro et lui-même, qui fait suite à la demande du ministre serbe de l'Administration publique et de l'Autonomie locale.

Une réunion sur ce thème s'est tenue à Belgrade le 8 mars 2010 et a permis de clarifier un certain nombre de points. Etaient notamment représentées la commission en charge de la révision de la loi, le ministère de l'Administration publique et de l'Autonomie locale et les organisations internationales intéressées. Les autorités serbes ont fait preuve d'ouverture et de leur disponibilité à revoir le projet dans le sens des recommandations de la Commission de Venise.

Le texte est complexe et parfois confus : on ne sait pas bien ce qui s'applique à tout et ce qui concerne un aspect particulier (notamment l'initiative civile). Il faut dès lors clarifier ce qui relève du référendum – y compris à l'initiative du corps électoral, qui implique un vote populaire – et ce qui relève de l'initiative civile, qui conduit uniquement à un vote du Parlement. Les droits des citoyens devraient être étendus : en particulier, ceux qui proposent un référendum devraient pouvoir être partie à l'audience devant la Cour constitutionnelle concernant les domaines dans lesquels le référendum est permis et un recours devrait être possible contre la décision du Parlement de ne pas soumettre une demande de référendum à la requête d'une partie du corps électoral au vote du peuple.

La Commission adopte l'avis sur le projet de loi sur le référendum et l'initiative populaire de la Serbie (CDL-AD(2010)006), avec quelques amendements.

15. Slovak Republic

Mr Bartole recalled that on 25 September 2009, the Slovak authorities had requested the Commission's assessment of the Act on the State Language, as amended. A working group was set up, composed of Mr Velaers, Mr Vermeulen and himself. On 18-19 January 2010, the rapporteurs travelled to the Slovak Republic on a fact-finding mission, and met with the Slovak authorities and with representatives of several minority groups. The rapporteurs' attention was devoted primarily to the piece of legislation in question, but was necessarily also turned to other pieces of legislation in areas such as health care and education. After the visit, the rapporteurs transmitted a list of questions and requests for additional information to the Ministry of Culture; the replies were not yet received. The rapporteurs wished to thank the Slovak authorities for welcoming and assisting them so effectively.

16. Turquie

M. Sejersted présente le projet d'avis ([CDL\(2010\)011](#)) sur le statut des communautés religieuses en Turquie, établi suite à une demande de l'Assemblée parlementaire du Conseil de l'Europe sur la base des observations de MM. van Dijk, Grabenwarter et Sejersted.

Ce projet d'avis est le fruit d'un long processus de réflexion et de recherches, les rapporteurs ont également entrepris une mission d'investigation à Ankara et Istanbul en novembre 2009 et depuis les rapporteurs ont fait un effort collectif pour aboutir à ce projet.

La demande de l'Assemblée parlementaire comportait une double question, chacune étant différente dans sa nature et sa portée mais liée entre elle. La première question consistait à évaluer la compatibilité avec les standards internationaux du défaut de personnalité juridique des communautés religieuses en Turquie. La deuxième question consistait à examiner le droit du Patriarche orthodoxe grec d'Istanbul d'utiliser l'adjectif « œcuménique » dans sa dénomination.

Le projet d'avis expose dans un premier chapitre les standards européens dans l'attribution de la personnalité juridique aux organisations religieuses. Ce chapitre montre un véritable consensus des instances européennes ; le présent avis s'est attaché à être en entière conformité avec ces institutions.

Le deuxième chapitre, expose le système juridique et pratique qui prévaut en Turquie relativement à la reconnaissance des organisations religieuses musulmane ou non. Le troisième chapitre analyse la situation juridique en Turquie à la lumière des standards européens précités et le quatrième chapitre traite spécifiquement de la question de l'usage du terme « œcuménique » par le Patriarche orthodoxe grec d'Istanbul.

La Commission souligne qu'il n'y pas de modèle européen unique pour le statut juridique des communautés religieuses. Il s'agit d'une question sensible dans de nombreux pays et la situation en Turquie apparaît comme particulièrement complexe. La Commission se félicite du fait que ces dernières années il y a eu beaucoup de réformes importantes de la législation turque, qui ont amélioré la situation des communautés religieuses non musulmanes.

La Commission souligne néanmoins que le droit fondamental de la liberté de religion garanti par l'article 9, lu en combinaison avec l'article 11 de la Convention européenne de droits de l'homme (CEDH) prévoit, entre autres, la possibilité pour les communautés religieuses en tant que telles d'obtenir la personnalité juridique, tandis qu'en Turquie, elles peuvent seulement créer des fondations ou associations à l'appui de la communauté religieuse. La possibilité d'obtenir la personnalité juridique est importante, notamment pour assurer l'accès à la justice et la protection des droits de propriété.

La Commission de Venise encourage donc les autorités turques à poursuivre le processus de réforme et d'introduire une législation permettant à toutes les communautés religieuses non-musulmanes en tant que telles d'acquérir la personnalité juridique. Il existe de nombreux modèles en Europe sur la façon de procéder et les autorités turques sont libres de choisir le modèle qu'elles jugent le plus adapté à la situation dans leur pays tant qu'il est en conformité avec les exigences de la Convention européenne des droits de l'homme. Dans l'attente de cette législation, les règles existantes, y compris les lois sur les fondations et associations, doivent être interprétées de telle manière à minimiser les restrictions à la liberté de religion qui découlent du fait que les communautés religieuses n'ont pas elles-mêmes la personnalité juridique.

En ce qui concerne le droit du Patriarcat orthodoxe d'utiliser le titre, 'œcuménique', la Commission considère que toute atteinte à ce droit constituerait une violation de l'autonomie de l'Eglise orthodoxe en vertu de l'article 9 de la CEDH. La Commission constate que rien n'indique que les autorités turques empêchent le Patriarcat d'utiliser ce titre et que les autorités turques n'ont pas l'obligation positive d'utiliser elles-mêmes ce titre. La Commission ne parvient pas néanmoins à voir de raisons, factuelles ou juridiques, qui empêcheraient les autorités d'adresser le Patriarcat œcuménique par son titre historique et généralement reconnu.

M. Kaan Esener, Ministre plénipotentiaire, Vice Directeur pour le Conseil de l'Europe et les droits de l'homme, Ministère des affaires étrangères de la Turquie remercie la Commission pour l'occasion qui lui est donnée d'avoir un échange de vues avec elle.

Concernant la solution juridique choisie en Turquie pour l'acquisition de la personnalité juridique des organisations religieuses, M. Esener rappelle à la Commission que les organisations religieuses peuvent acquérir la personnalité juridique par le biais d'associations et de fondations. C'est une solution qui diffère de celle généralement appliquée en Europe mais répond à la spécificité du pays. Les groupes religieux non musulmans peuvent acquérir la personnalité juridique par le biais d'association ou de fondations, si certains problèmes ont effectivement été rencontrés la nouvelle loi sur les fondations a pour objectif de les résoudre. Les problèmes rencontrés étaient davantage issus de la loi sur les fondations que du défaut de personnalité juridique des groupes religieux non musulmans. M. Esener relève en outre que l'avis de la Commission est particulièrement long et que certains paragraphes ou références de la jurisprudence de la Cour européenne des droits de l'homme vont au-delà de l'objet de la saisine. Il invite en outre la Commission à revoir les conclusions du projet d'avis afin de ne pas promouvoir un seul moyen d'acquérir la personnalité juridique et ainsi laisser aux autorités turques une marge d'appréciation sur la manière juridique de conférer aux communautés et groupes religieux les droits et moyens pour acquérir la personnalité juridique et exercer librement leur religion ou convictions. Il rappelle enfin qu'en vertu de la Constitution, la Turquie est un Etat séculier. S'agissant de l'usage du terme « œcuménique » par le Patriarcat orthodoxe grec d'Istanbul, M. Esener note avec satisfaction que le rapport relève à juste titre que les autorités turques n'ont jamais interféré dans un tel usage.

M. Özbudun soutient le projet d'avis en entier. Il félicite les rapporteurs pour avoir rédigé un avis bien équilibré, objectif et avec des propositions intelligentes. Le contexte juridique actuel en Turquie implique qu'il ne serait pas possible d'accorder une personnalité juridique de droit publique aux communautés religieuses car ceci impliquerait une supervision de l'Etat ce qui serait contraire aux conclusions du rapport. Selon lui, le système de l'association culturelle, comme pratiqué en France pourrait constituer une solution satisfaisante.

Sur la seconde question du projet d'avis, M. Ozbudun est en parfait accord avec le rapport et note avec satisfaction que ce dernier ne relève aucune obstruction du gouvernement à l'usage du terme « œcuménique ».

M. Holovaty, joint par M. van der Brande, remercie les rapporteurs pour cet excellent rapport.

MM. Bradley, Bonnici, Cameron, Colliard, Maus, Vermeulen et Mmes Koufa et Palma prennent la parole et proposent des amendements qui seront étudiés plus avant par le rapporteur en comité restreint. Des amendements sont proposés à la Commission.

Le projet d'avis est adopté par la Commission avec certains amendements. L'avis CDL-AD (2010) 005 sera transmis à l'Assemblée parlementaire.

17. Ukraine

Mr Hamilton presented the draft Joint Opinion on the draft Law on the Judicial System and the Status of Judge of Ukraine. He pointed out that the draft was an improvement in comparison to the earlier text, but that a number of issues resulted directly from problems in the Constitution, which would need a profound revision. The main problems included the involvement of Parliament in judicial appointments and the removal of judges as well as the complicated system of judicial self-government. Further problems concerned the powers of the Head of State to establish courts, the complicated court structure, the too wide immunity for judges, the five-year probationary period for judges, the possible consideration of unspecified "other documents" by the High Qualification Commission and judicial training. He made a proposal for an amendment in respect of the latter issue.

Mr Gass drew attention to the fact that this Opinion was the follow-up to an earlier Venice Commission Opinion in 2007 on two separate laws, which had been merged into a single text. The present draft was an improvement in a number of respects, but other concerns had not been addressed. Judicial reform should not be confined to the legislative level and Mr Gass made a proposal for an amendment to strengthen the language of the Opinion on this point.

Ms Stavniychuk thanked the rapporteurs for the work done and their patience. She agreed that a constitutional reform was necessary and pointed out that the 2009 Opinion of the Commission on draft constitutional amendments already provided indications in which direction reforms should go. She expressed the hope that the new political constellation would allow for constitutional reforms to be implemented.

Ms Palma insisted that the opinion should make it clear that judges should not be exempted from general reductions of salaries in the public sector. Messrs. Hoffmann-Riem and Esanu suggested that the wording in the Opinion on the composition of the judicial council be aligned with that adopted in the general report on judicial independence the day before.

The Venice Commission adopted the Joint Opinion on the draft Law on the Judicial System and the Status of Judge of Ukraine with amendments (CDL-AD(2010)003).

18. Autres développements constitutionnels

- Suède

MM. Johan Hirschfeldt et Thomas Bull, Professeur de droit constitutionnel à l'Université d'Uppsala informent la Commission sur la réforme en cours de la Constitution de la Suède.

M. Hirschfeldt présente le cadre constitutionnel de la Suède qui remonte à 1809 et a depuis été réformé plusieurs fois. Les dernières réformes constitutionnelles datent des années 90 en vue d'une harmonisation au regard de l'adhésion à l'Union européenne et des exigences découlant de la Convention européenne des droits de l'Homme. La présente réforme a commencé en

2004 par la création d'un Comité de travail au sein du parlement ; les propositions ont été présentées en 2009 et entreront en vigueur début 2012.

M. Bull présente les aspects principaux de la réforme qui ne touchera pas à la continuité et aux traditions suédoises, comme la monarchie par exemple. Le premier point de la réforme porte sur le contrôle juridictionnel de constitutionnalité. Le critère « de conflit manifeste » de normes est désormais aboli ; il suffira désormais d'arguer d'un conflit de normes pour engager un contrôle juridictionnel de constitutionnalité. Par ailleurs, le Conseil législatif pour la constitutionnalité des lois se verra renforcé et plus indépendant du gouvernement. Ce Conseil effectue un contrôle préalable et jouera un rôle prépondérant dans le processus législatif. L'autonomie locale sera renforcée, un chapitre spécial y sera consacré. Afin de renforcer la position des tribunaux, la désignation des juges sera modifiée afin d'impliquer systématiquement la commission judiciaire dans le processus de désignation. Enfin, la réforme constitutionnelle introduira la notion du droit à un procès équitable dans un délai raisonnable, ce qui illustre l'impact du droit international en droit constitutionnel suédois.

M. Buquicchio indique que la Commission de Venise serait disposée à partager ses vues avec les autorités suédoises sur leur réforme constitutionnelle.

M. Tuori informe la Commission que la Finlande, lors de sa dernière réforme, avait repris le concept de conflit manifeste pour l'introduire dans sa constitution. Par ailleurs le Conseil législatif a pour sa part été éliminé car jugé peu efficace.

M. Bull relève, en effet, que la réforme suédoise s'est inspirée du modèle norvégien.

- *Kirghizistan*

Mme Sydykova, Présidente de la Cour constitutionnelle du Kirghizstan, informe la Commission des développements constitutionnels au Kirghizistan.

Le Président de la République a adressé au parlement un projet d'amendements constitutionnels. Ces amendements visent à renforcer les pouvoirs du parlement et à réorganiser le gouvernement. Les pouvoirs du Président se voient également réduits de part notamment la création du Conseil présidentiel et d'autres organes de coordination. Parmi les amendements on peut citer la révision des articles touchant à la sécurité de l'Etat, la modification des règles régissant les cas d'incapacité du Président, une révision des pouvoirs du gouvernement. Le projet de réforme constitutionnelle a été transmis à la Cour constitutionnelle pour une évaluation qui a fait quelques propositions de modifications. Le projet a été adopté en première lecture au Parlement. La deuxième lecture est prévue dans quelques mois, si une majorité qualifiée est atteinte, le projet sera adopté.

M. Buquicchio rappelle que la Commission de Venise a travaillé depuis 1993 avec le Kirghizstan pour réviser cette constitution et qu'elle se tient à la disposition des autorités kirghizes.

- *Nepal*

Mr Helgesen informed the Commission that, upon the invitation of the Embassy of Norway in Kathmandu, which had borne the expenses, he and Ms Granata-Menghini had travelled to Nepal in order to meet with members of the Constitutional Commission in order to explore the possibilities of assisting it in the process of adopting a constitution for Nepal. The interim Constitution of 2006 fixed 28 May 2010 as a deadline for adopting the new Constitution. Eleven working groups had prepared, separately from each other, all the relevant parts of the Constitution, but a considerable number of issues remained outstanding, including important ones such as the form of government and the federal structure. While it seemed

unlikely that the process could be completed before the deadline, Mr Helgesen considered that the Venice Commission could be helpful in ensuring the viability and workability of the Constitution, no matter what choices the Nepalese people would make.

The process was a very interesting, bottom-up one, with a constitutional commission (provisionally functioning as parliament as well) composed of some 600 people from the whole society (including one third of women and several *dhalits*, the untouchables). The challenges faced by the Nepalese people were undoubtedly great, but what was at stake was not only a new constitutional order, but also peace. The Constitutional Commission had expressed interest in the possible assistance of the Venice Commission, including the implementation of the new Constitution. The timing and form of the Commission's involvement would depend on whether the deadline would be extended. Mr Helgesen was in contact with the Norwegian Embassy, and would report back to the Commission soon.

- *Portugal*

En l'absence de M. Moura Ramos, empêché de venir, M. Dürr informe la Commission qu'en novembre 2008, une Conférence des juridictions constitutionnelles des pays de langue portugaise a été créée par les organes de contrôle constitutionnel de l'Angola, du Brésil, du Cap-Vert, de la Guinée-Bissau, du Mozambique, du Portugal, de S. Tomé et Príncipe et de Timor-Leste, qui sont liées par la langue portugaise et l'histoire commune de leurs pays. Le but de cette Conférence est de promouvoir l'échange d'expériences entre les cours membres et de renforcer la représentation conjointe de ces pays dans des fora internationaux. La Cour Constitutionnelle Portugaise, qui exerce la présidence de la Conférence à titre provisoire, a convoqué une première assemblée générale à Lisbonne les 20 à 22 mai 2010, pour l'approbation des statuts de la Conférence, qui souhaite établir des rapports de coopération avec la Commission de Venise et invite la Commission à se faire représenter à ses travaux.

M. Buquicchio se félicite de ces informations et propose une coopération similaire à celle établie avec d'autres groupes régionales ou linguistiques réunissant des cours constitutionnelles, tel que l'ACCPUF.

- *Ouzbékistan*

M. Jakhongir Khaydarov, représentant du Centre de recherches sur la démocratisation et la libéralisation de la Cour suprême de la République d'Ouzbékistan informe la Commission sur la coopération en cours entre l'Ouzbékistan et la Commission de Venise. Cette coopération a débuté en mars 2009 avec une visite de M. Buquicchio. En juin 2009 une conférence a été organisée pour évaluer les perspectives de réforme, notamment concernant l'indépendance du pouvoir judiciaire. En mai 2010, une conférence sera organisée sur l'introduction de la médiation et sur l'habeas corpus. L'habeas corpus a en effet été adopté et introduit en Ouzbékistan qui a également aboli la peine de mort. Dans le cadre du projet de la Commission européenne mis en œuvre par la Commission de Venise, la réforme du système pénal, le principe de la séparation des pouvoirs, la séparation des magistrats et procureurs et un code de déontologie seront les principaux thèmes de travail.

M. Buquicchio souligne l'importance de la coopération de l'Ouzbékistan et de la Commission de Venise en vue de mener à bien ce vaste projet de réformes soutenu financièrement par l'Union européenne.

19. Report of the meeting of the Sub-Commission on the Judiciary

Ms Suchocka presented the results of the discussions in the meeting of the Sub-Commission on the Judiciary, which took place on 11 March 2010, including further proposals made by

members after the meeting (CDL(2006)006rev). She insisted that the text was the result of long discussions and of many compromises made between the members. She highlighted, in particular, recent additions by Mr Torfason on financial resources of the courts and by Mr Meridor on guarantees against media pressure on courts. She pointed out that this report was only the first part of the work of the Sub-Commission, the second part on prosecution will follow.

While Mr Mifsud-Bonnici doubted whether exceptions to case-allocation rules could be motivated in all cases, Mr Bradley expressed doubt as to the practicability of providing for the review of decisions on case-allocation. Ms Suchocka insisted that the text was the result of a difficult compromise on that point.

Following some discussion, the members decided to delete a distinction made between old and new democracies with respect to the establishment of a judicial council.

The Venice Commission adopted the Report on the Independence of the Judicial System - Part I: the Independence of Judges with amendments (CDL-AD(2010)004).

20. Report of the meeting of the Council for Democratic Elections

Mr Mifsud Bonnici informed the Commission about the results and conclusions of the meeting held on 11 March 2010.

The Council elected Mr Andreas Gross as President and Mr Jean-Claude Colliard as Vice-President.

The Council adopted the draft (second) Report on thresholds and other features of the electoral system, which bar parties from access to Parliament. This report (CDL-EL(2010)001) was the second stage of the research on this issue and followed a report by Mr Jaklic ([CDL-AD\(2008\)037](#)) adopted in 2008. It was prepared by Mr Colliard and transmitted to the Parliamentary Assembly of the Council of Europe, which had to deal with this issue during its January 2010 session. It was adopted by the Council for Democratic Elections and was submitted to the plenary for adoption.

The Venice Commission adopted the Report on thresholds and other features of the electoral system which bar parties from access to Parliament (CDL-AD(2010)007).

At the request of the Committee of Ministers, the Council adopted draft Comments ([CDL-EL\(2010\)005](#)) in view of the reply by the Committee of Ministers to Parliamentary Recommendation 1898(2010) on thresholds and other features of the electoral system which have an impact on representativity of parliaments, adopted in the January session of the Parliamentary Assembly of the Council of Europe. The Comments drew attention to what the Venice Commission had done in this field and also addressed the request of the Parliamentary Assembly for the Council of Europe to define standards in the electoral field by referring to all standards already defined by the Venice Commission. It had been slightly amended by the Council for Democratic Elections.

The Venice Commission adopted the Comments in view of the reply by the Committee of Ministers to Parliamentary Recommendation 1898(2010) on thresholds and other features of the electoral system which have an impact on representativity of parliaments (CDL(2010)030).

At the request of the Committee of Ministers, the Council adopted draft Comments ([CDL-EL\(2010\)006](#)) in view of the reply by the Committee of Ministers to Parliamentary Recommendation 1899(2010) on increasing women's participation in politics through the electoral system ([CDL-EL\(2010\)006](#)), adopted in the January session of the Parliamentary Assembly of the Council of Europe. The Comments drew attention to the main findings of the Venice Commission's study in this field (CDL-AD(2009)029).

The Venice Commission adopted the Comments in view of the reply by the Committee of Ministers to Parliamentary Recommendation 1899(2010) on increasing women's participation in politics through the electoral system (CDL(2010)031), with one amendment.

The Council took note of the joint OSCE/ODIHR-Venice Commission informal Comments (CDL-EL(2010)003) on general recommendations by the working group on electoral reform in Armenia aimed at improving the legal electoral framework (CDL-EL(2010)002), which had already been sent to the Parliamentary Assembly of Armenia.

The Commission took note of the joint OSCE/ODIHR-Venice Commission informal Comments on general recommendations by the working group on electoral reform in Armenia aimed at improving the legal electoral framework (CDL-EL(2010)003).

Mr Mifsud Bonnici informed the Commission on on-going work in the electoral field: an opinion was being prepared on the revised electoral legislation of Georgia; a request was just received on the draft revised electoral code of Moldova; similar requests were expected from Armenia, Bosnia and Herzegovina and possibly Azerbaijan, as well as Belarus through the Parliamentary Assembly. A request by the Electoral Commission of the United Kingdom on the code of practice for observing elections might be made. A study will be prepared on out-of-country voting. Co-operation will take place with Azerbaijan and Bosnia and Herzegovina in view of this year's elections.

21. Adoption of the annual report of activities 2009

The Commission adopted the draft annual report of activities 2009 ([CDL\(2010\)018](#)).

22. Other business

Mr Markert informed the Venice Commission that the Swiss Presidency of the Committee of Ministers will organise a conference with the Venice Commission on democracy and decentralisation. The President of the Venice Commission will be one of the opening speakers and other members of the Venice Commission were cordially invited to take part in this event.

23. Dates of the next sessions

The schedule of sessions for 2010 is confirmed as follows:

83 rd Plenary Session	4-5 June
84 th Plenary Session	15-16 October
85 th Plenary Session	17-18 December

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

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS

ALBANIA/ALBANIE	Mr Viktor GUMI
ALGERIA/ALGERIE	Mr Boualem BESSAÏH Mr Mohamed HABCHI
ANDORRA/ANDORRE	Mr Joan MONEGAL BLASI
ARMENIA/ARMENIE	Mr Gagouk HARUTUNYAN
AUSTRIA/AUTRICHE	M. Christoph GRABENWARTER
AZERBAIJAN/AZERBAIDJAN	Mr Lätif HUSEYNOV
BELGIUM/BELGIQUE	Mr Jan VELAERS M. Jean-Claude SCHOLSEM M. Cazim SADIKOVIC (Apologised/Excusé)
BOSNIA AND HERZEGOVINA/ BOSNIE-HERZEGOVINE	
BRAZIL/BRESIL	Mr Gilmar MENDES (Apologised/Excusé)
BULGARIA/BULGARIE	Mr Eugeni TANCHEV (Apologised/Excusé)
CHILE	Mr Mario FERNANDEZ BAEZA
CROATIA/CROATIE	Mr Ivan SIMONOVIC (Apologised/Excusé) Ms Jasna OMEJEC (Apologised/Excusée)
CYPRUS/CHYPRE	Mr Frixos NICOLAIDES (Apologised/Excusé) Mr Myron NICOLATOS
CZECH REPUBLIC/ REPUBLIQUE TCHEQUE	Mr Cyril SVOBODA (Apologised/Excusé) Ms Eliska WAGNEROVA
DENMARK/DANEMARK	Mr Jorgen Steen SORENSEN
ESTONIA/ESTONIE	Mr Oliver KASK (Apologised/Excusé) Ms Berit AAVIKSOO
FINLAND/FINLANDE	Mr Kaarlo TUORI Mr Matti NIEMIVUO
FRANCE	M. Jean-Claude COLLIARD
GEORGIA/GEORGIE	Mr George PAPUASHVILI (Apologised/Excusé) Mr Konstantine VARDZELASHVILI
GERMANY/ALLEMAGNE	Mr Wolfgang HOFFMANN-RIEM Ms Angelika NUSSBERGER
GREECE/GRECE	Ms Kalliopi KOUFA
HUNGARY/HONGRIE	Mr Peter PACZOLAY Mr Laszlo TROCSANYI
ICELAND/ISLANDE	Mr Hjörtur TORFASON
IRELAND/IRLANDE	Ms Finola FLANAGAN Mr James HAMILTON
ISRAEL/ISRAËL	Mr Dan MERIDOR
ITALY/ITALIE	Mr Gianni BUQUICCHIO (President/Président) Mr Sergio BARTOLE Mr Guido NEPPI MODONA
REPUBLIC OF KOREA/ REPUBLIQUE DE COREE	Mr Kong-hyun LEE (Apologised/Excusé) Mr Boohwan HAN
KYRGYZSTAN/KYRGHYZSTAN	Ms Svetlana SYDYKOVA
LATVIA/LETTONIE	Mr Aivars ENDZINŠ
LIECHTENSTEIN	Mr Harry GSTÖHL
LITHUANIA/LITUANIE	Mr Egidijus JARASIUNAS (Apologised/Excusé)
LUXEMBOURG	Mme Lydie ERR
MALTA/MALTE	Mr Ugo MIFSUD BONNICI
MEXICO/MEXIQUE	
MOLDOVA	Mr Nicolae ESANU
MONACO	M. Dominique CHAGNOLLAUD (Apologised/Excusé) Mr Christophe SOSSO

MONTENEGRO	Mr Srdjan DARMANOVIC
MOROCCO/MAROC	M. Abdellatif MENOUNI
	M. Abdelaziz LAMGHARI
NETHERLANDS/PAYS-BAS	Mr Peter van DIJK (Apologised/Excusé)
	Mr Ben VERMEULEN
NORWAY/NORVEGE	Mr Jan HELGESEN
	Mr Frederik SEJERSTED
PERU/PEROU	Mr Carlos MESIA RAMIREZ (Apologised/Excusé)
POLAND/POLOGNE	Ms Hanna SUCHOCKA
PORTUGAL	Mme Maria Fernanda PALMA
ROMANIA/ROUMANIE	Mr Lucian MIHAI
	Mr Bogdan AURESCU
RUSSIAN FEDERATION/ FEDERATION DE RUSSIE	Mr Valeriy ZORKIN
SAN MARINO/SAINT-MARIN	Mme Barbara REFFI (Apologised/Excusée)
SERBIA / SERBIE	Mr Vojin DIMITRIJEVIC
SLOVAKIA/SLOVAQUIE	Ms Ivetta MACEJKOVA
SLOVENIA/SLOVENIE	Mr Klemen JAKLIC (Apologised/Excusé)
	Mr Peter JAMBREK
SPAIN/ESPAGNE	Ms Maria Angeles AHUMADA RUIZ
SWEDEN/SUEDE	Mr Iain CAMERON
	Mr Johan HIRSCHFELDT
SWITZERLAND/SUISSE	Mme Gret HALLER
"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"/ "L'EX REPUBLIQUE YOUGOSLAVE DE MACEDOINE"	Ms Gordana SILJANOVSKA-DAVKOVA
TUNISIA/TUNISIE	Mr Fathi ABDENNADHER
	Ms Radhia Ben SALAH
TURKEY/TURQUIE	Mr Ergun ÖZBUDUN
UKRAINE	Ms Marina STAVNIYCHUK
UNITED KINGDOM/ ROYAUME-UNI	Mr Jeffrey JOWELL (Apologised/Excusé)
	Mr Anthony BRADLEY

COMMITTEE OF MINISTERS/COMITE DES MINISTRES

Ambassador Andrey TEHOV, Permanent Representative of Bulgaria to the Council of Europe
Ambassador Dragana FILIPOVIĆ, Permanent Representative of Serbia to the Council of Europe

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE/ASSEMBLEE PARLEMENTAIRE DU CONSEIL DE L'EUROPE

Mr Lluís Maria de PUIG, Former President of the Parliamentary Assembly
Mr Serhiy HOLOVATY, Member of the Committee on Legal Affairs & Human Rights

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF THE COUNCIL OF EUROPE/CONGRES DES POUVOIRS LOCAUX ET REGIONAUX DU CONSEIL DE L'EUROPE

Mr Alain DELCAMP, Sénat, France

EUROPEAN UNION/UNION EUROPEENNE

European Commission/Commission européenne

M. Patrick HETSCH, Conseiller juridique principal (Apologised/Excusé)

M. Esa PAASIVIRTA, Conseiller juridique

Committee of the Regions (CIVEX)/Comité des régions (CIVEX)

Mr Luc Van den BRANDE, Président

INVITED GUESTS/INVITES D'HONNEUR

ARMENIA/ARMENIE

Mr. Karen KARAPETYAN, Chief of the Staff to the President of the Republic of Armenia

AZERBAIJAN/AZERBAÏDJAN

Mr. Kamran BAYRAMOV, Senior Adviser, Department of Legislation and Legal Assessment, Administration of President

BULGARIA/BULGARIE

Ms. Margarita POPOVA, Minister of Justice

Ms Janeta PETROVA-BOSSEVA, Deputy Minister of Justice

Ms Gergana ALIAKOVA, Interpreter

GEORGIA/GEORGIE

Mr. Akaki MINASHVILI, Chairman of Foreign Relations Committee of the Parliament of Georgia

INTERNATIONAL ASSOCIATION OF CONSTITUTIONAL LAW/ASSOCIATION INTERNATIONALE DE DROIT CONSTITUTIONNEL

M. Didier MAUS, Président, Association internationale de droit international

OSCE

Office for Democratic Institutions and Human Rights/Bureau des Institutions Démocratiques et des Droits de l'Homme

Ms Marta ACHLER, Head of the Legislative Support Unit

PALESTINIAN NATIONAL AUTHORITY/AUTORITE NATIONALE PALESTINIENNE

Mr Ali KHASHAN, Minister of Justice

Mr Farid AL-JALAD, Chief Justice (Apologised/Excusé)

PORTUGAL

Mr Rui MOURA RAMOS, President, Constitutional Tribunal (Apologised/Excusé)

SWEDEN/SUEDE

Mr Thomas BULL, Professor of Constitutional Law, University of Uppsala, Judge, Court of Appeal

TURKEY/TURQUIE

Mr Kaan ESENER, Minister Plenipotentiary, Deputy Director General for the Council of Europe and Human Rights, Ministry of Foreign Affairs

UKRAINE

Mr Serhii KIVALOV, Chairman, Committee on Justice, Verkhovna Rada of Ukraine (Apologised/Excusé)

UZBEKISTAN/OUZBEKISTAN

Mr Jakhongir KHAYDAROV, Director, Research Centre on Democratisation and Liberalisation of the Supreme court of the Republic of Uzbekistan

DG-HL EXPERTS/EXPERTS DE LA DG-HL

Mr Stephan GASS, Professor, University of Applied Sciences Northwestern Switzerland, Vice-President Court of Appeal, Basel

Mr Matti PELLONPÄÄ, Justice of the Supreme Administrative Court of Finland, Former Judge of the European Court of Human Rights (Apologised/Excusé)

ITALY/ITALIE

Mr Renato CIANFARANI, Ministry of Foreign Affairs

REGIONE VENETO

Mr Diego VECCHIATO, Département des affaires internationales

Ms Alessandra VALERIO, Bureau de la coopération transfrontalière

Ms Donatella CAMPANELLA

SECRETARIAT

Mr Thomas MARKERT

Ms Simona GRANATA-MENGHINI

M. Pierre GARRONE

Mr Schnutz DURR

Ms Caroline MARTIN

Ms Tanja GERWIEN

Ms Helen MONKS

Ms Brigitte AUBRY

**PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE/ASSEMBLEE
PARLEMENTAIRE DU CONSEIL DE L'EUROPE**

Ms Agnieszka NACHILO

**CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF THE COUNCIL OF
EUROPE/CONGRES DES POUVOIRS LOCAUX ET REGIONAUX DU CONSEIL DE
L'EUROPE**

(Apologised/Excusé)

INTERPRETERS/INTERPRETES

Mr Derrick WORSDALE

Ms Maria FITZGIBBON

Mr Artem AVDEEV

Mr Vladislav GLASUNOV