



Strasbourg, 30 November 2012

**CDL-PV(2012)003**  
**Or. Engl./Fr.**

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

**92<sup>nd</sup> PLENARY SESSION**  
**Venice, Friday 12 - Saturday 13 October 2012**

**92e SESSION PLENIERE**  
**Venise, vendredi 12- samedi 13 octobre 2012**

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

## TABLE OF CONTENTS

1. Adoption of the Agenda.....	3
2. Communication by the President .....	3
3. Communication by the Secretariat .....	3
4. Co-operation with the Committee of Ministers.....	3
5. Co-operation with the Parliamentary Assembly.....	4
6. Co-operation with the Congress of Local and Regional Authorities of the Council of Europe .....	4
7. Exchange of views with Ambassador Schulerud, Norway.....	5
8. Follow-up to earlier Venice Commission opinions .....	5
9. Romania .....	7
10. Exchange of views with the OSCE High Commissioner for National Minorities .....	8
11. Ukraine .....	8
12. Azerbaijan.....	9
13. Limitation of mandates and incompatibility of political functions.....	10
14. Bosnia and Herzegovina .....	10
15. Montenegro.....	11
16. Fédération de Russie.....	11
17. Tunisia .....	12
18. Mexique .....	13
19. Hungary .....	13
20. Other constitutional developments .....	15
- Jordanie.....	15
- Maroc.....	15
- Kyrgyzstan.....	15
21. Report of the meeting of the Council for Democratic Elections (11 October 2012).....	16
22. Report of the meeting of the Scientific Council (11 October 2012).....	16
23. Report of the meeting of the Sub-Commission on Fundamental Rights (11 October 2012).....	17
24. Other business .....	17
25. Dates of the next session and dates of sessions 2013 .....	17

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

The agenda was adopted as it appears in document [CDL-OJ\(2012\)003ann.](#)

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

Mr Buquicchio briefly informed the Commission about his recent activities, which are listed in document [CDL\(2012\)069.](#)

He welcomed the distinguished guests that were attending this session, including a delegation from Tunisia consisting of members of the National Constituent Assembly.

Mr Buquicchio informed the Commission about the death of its member for Serbia, Mr Dimitrijevic. A minute of silence was observed in his honour.

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

Mr Markert informed the Commission that the Secretariat had received two new requests: one request from the National Congress of Libya to assist them on procedural aspects for the establishment of a constitutional commission and one request for an opinion from the Monitoring Committee of the Parliamentary Assembly of the Council of Europe for an opinion “on the Constitution of Monaco, notably on the compatibility with democratic standards of the provisions on the National Council, taking into account Monaco’s particularities”. With respect to the first request, Libya intended to adopt a new constitution and, towards that end, was working together with the EU through a project implemented by the International Management Group (IMG). They were seeking the expertise of European countries in general and would like to turn to the Venice Commission for its assistance in this respect.

Mr Markert also informed the Venice Commission that a meeting with the delegation from Tunisia consisting of members of the National Constituent Assembly to discuss the draft text of their national constitution would take place in parallel to this Plenary Session.

Mr Markert read out a message by the Secretary General of the Council of Europe addressed to the Tunisian delegation, in which the Secretary General underlined the importance of the co-operation of the Council of Europe with the Tunisian authorities at this important time of reform and change in their country. Mr Buquicchio thanked the Tunisian delegation for coming to Venice to attend this Plenary Session.

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

Ambassador Petter Wille, Permanent Representative of Norway to the Council of Europe, referred to the Venice Commission’s annual report, which he found combined quality with quantity. He noted that more than 50 opinions had been adopted by the Venice Commission in 2011 and informed the Commission that Bosnia and Herzegovina was a country of interest to Norway. He observed and welcomed that the Venice Commission’s primary focus was on Europe, but that it considered it had a role to play in assisting neighbouring countries by using its expertise.

Mr Buquicchio stressed that the Venice Commission welcomed Norway’s financial contribution which had enabled it to carry out its recent work with Northern Africa.

Ambassador Urszula Gacek, Permanent Representative of Poland to the Council of Europe and Chair of the Committee of Ministers’ Group of Rapporteurs on Democracy (GR-DEM), said that the Venice Commission’s impartiality and expertise was very much appreciated by this

Group. She underlined that she attached great importance to the Commission's needs in relation to its increasing workload.

Ambassador Pekka Hyvönen, Permanent Representative of Finland to the Council of Europe, said that the work the Venice Commission carried out with Russia on its path towards the rule of law and the opinions that have been adopted lately for this country show the important role the Commission plays in this area. He underlined the importance of the three-year Rule of Law Project for an amount of five million Euros for activities in Central Asia and explained the organisational work this entailed.

Mr Buquicchio explained that organising activities in Central Asia had been difficult at first due to a lack of contacts in the region. This situation however had changed relatively rapidly and interest in co-operating with Europe seemed to be high on Central Asia's agenda, which was encouraging. The problem now was the increasing demand for training. In this respect the Venice Commission was looking for the support of the EU for its UniDem Arab Campus seminars for civil servants on government transparency.

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

Mr Holovaty, member of the Committee on Legal Affairs and Human Rights, informed the Commission that it would receive a request in connection with the preparation of the Report on "Keeping political and criminal responsibility separate"; the Committee was currently dealing, *inter alia*, with the issue of national security and access to information, in which it referred to the work done by the Venice Commission on democratic control of security services.

Mr Holovaty also informed the Commission about the adoption of the Report on "The definition of political prisoners" and the Report on the Russian Federation, which referred to the Commission's recently adopted opinions. He finally mentioned the Parliamentary Assembly's request for an opinion by the Venice Commission on the Constitution of Monaco.

Mr Buquicchio reminded the participants that the Parliamentary Assembly of the Council of Europe was the Venice Commission's best client. He congratulated the Parliamentary Assembly for adopting Resolution 1900 (2012) on "The definition of political prisoners", which was a milestone and would be a very useful text. He also said, with respect to the activities with Russia, that the Venice Commission co-operated very well with this country and hoped to be able to continue the frank and open discussions.

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

Mr Lars O. Molin, Chair of the Monitoring Committee of the Congress, informed the Venice Commission that the Committee had approved a draft recommendation and a draft resolution on the situation of local and regional democracy in Azerbaijan and had taken the Venice Commission's opinion into account. He pointed out, however, that earlier recommendations by the Venice Commission and by the Congress had not been taken into account in that country. The Government was now invited to take the necessary measures to adopt an action plan to implement these recommendations.

Mr Molin had participated in a high-level meeting with the national authorities in Sarajevo in September 2012, to discuss the follow-up to the Congress' recommendations on local and regional democracy in Bosnia and Herzegovina. The Bureau of the Congress decided to pursue a post-monitoring process to provide proper follow-up to its recommendations and underlined the need to involve the Venice Commission, where possible, in this process.

The Group of Independent Experts (GIE) on the European Charter on Local Self Government had met and discussed a questionnaire on the criteria for standing for local and regional elections in Council of Europe member States. At a meeting between the respective secretariats of the Congress and the Venice Commission (in mid-September 2012), co-operation between the GIE and the Venice Commission had been agreed. The Congress Governance Committee intended to prepare a draft recommendation on this subject for the attention of the Committee of Ministers.

### **7. Exchange of views with Ambassador Schulerud, Norway**

Ms Ingrid Schulerud, Ambassador, Section for Central Europe and the EEA Financial Mechanisms, Ministry of Foreign Affairs of Norway, explained to the Venice Commission the functioning of the European Economic Area (EEA) and Norway Grants. She also informed the Commission that the EEA had entered into a partnership with the Council of Europe to promote democratic principles and international standards. The EEA and Norway Grants were committed to becoming an effective tool to deliver competence and effectiveness and that she believed closer co-operation with the Venice Commission would help to achieve this goal.

Mr Buquicchio expressed the Venice Commission's gratitude to the Norwegian Government for its moral and financial support. Indeed, it was thanks to Norway and Italy that the Venice Commission had started to co-operate with Arab countries, which had proved to be fruitful, as could be witnessed by the presence of a Tunisian delegation at this Plenary Session.

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

- Opinion on the draft law on principles of the state language policy of Ukraine ([CDL-AD\(2011\)047](#));

(Opinion on the Draft Law on Languages in Ukraine, March 2011; Opinion on the draft law on the principles of the state language policy of Ukraine, December 2011).

The Secretariat informed the Commission that the Ukrainian parliament had adopted, in July 2012, a law on Ukraine's policy in the field of languages. In 2011, the Commission had assessed two draft laws dealing with the use and protection of languages in Ukraine and had stressed that the balance between regional and/or minority language protection and the protection of Ukrainian as the state language, including the specific situation of the Russian language, continues to be a difficult challenge for the authorities of Ukraine. Although the second draft was an improved and more balanced text, the question remained whether, having regard to the specific situation in Ukraine, sufficient legal guarantees were provided for the consolidation of the Ukrainian language as the sole State language, and of the integrative role it had to play in the Ukrainian multi-linguistic society.

The adopted law was, reportedly, almost identical to the second draft assessed by the Venice Commission, and this in spite of the fact that substantial improvements had been recommended. As a result, the position of the Russian language had been strengthened, as part of the protection of regional and minority languages, and Russian will operate as a quasi-official language in many of Ukraine's administrative regions. This had engendered heated debate and tension - including street protests - in Ukraine.

Ms Stavniychuk informed the Commission of the efforts made to provide the necessary guarantees for the consolidation and development of the state language. In particular, she informed the members that a special working group had been set to prepare proposals in this respect.

- *Amicus Curiae* Brief for the Constitutional Court of Bosnia and Herzegovina on the law of the Republika Srpska on the status of state property located on the territory of the Republika Srpska and under the disposal ban ([CDL-AD\(2011\)030](#));

In this *Amicus Curiae* Brief, the Commission had found that the law of the Republika Srpska in question violated the fundamental principle that issues of the distribution of powers between the central state and the federated entities must be settled at the federal level as well as the functional principle of the distribution of property (property must be distributed to each level so as to enable every component of the state to carry out its constitutional functions).

The Secretariat informed the Commission that the Constitutional Court of BiH had issued its judgment on 13 July 2012 (U-1/11). The Court found that Bosnia and Herzegovina, by virtue of its succession clause, was the holder of state property. As such, it belonged to the State to decide on state property. In distributing it, the State must take into account the distribution of responsibilities between the State and the entities. The Constitutional Court therefore found the law of the Republika Srpska in question to be unconstitutional.

- Opinions on judicial reform in Serbia;

Mr Markert reminded the participants about the judicial reform process that had taken place in Serbia, the aim of which was to tackle the two major issues of the excessive number of judges and prosecutors and corruption. When the reform had been introduced, the Venice Commission had stressed that it should be implemented in conformity with the rule of law, but that this had unfortunately not been done.

Mr Milisav Coguric, Assistant Minister, Ministry of Justice and Public Administration, Sector for Normative Affairs and International Co-operation of Serbia, informed the Venice Commission that the new Government intended to continue with the reform of the judiciary and wanted to create an independent justice system. He said that within the context of the reappointment of judges and prosecutors, the Constitutional Court had rendered two decisions which had overturned the decisions made by the High Judicial Council and ordered the reappointment of a total of 533 judges (for the moment). These decisions stated that all the judges should be reappointed by the High Judicial Council within 30 days so that justice can be rendered. Some 300 judges had been reappointed so far, which had very serious economic repercussions in the country.

Mr Coguric also explained that the network of courts in Serbia also needed to be reformed. Access to justice was not in a satisfactory state in Serbia and needed to be addressed urgently. The criminal and civil procedure codes also needed to be reviewed and there were areas in the procedure where there was a serious lack of legal protection. He ended by expressing the willingness of the Serbian authorities to address these complex issues.

- Interim Opinion on the Draft Constitutional Amendments of Luxembourg ([CDL-AD\(2009\)057](#)).

Le parlement du Luxembourg a demandé en 2009 un avis de la Commission de Venise sur la proposition de révision portant modification et nouvel ordonnancement de la Constitution. L'avis a été adopté par la Commission en décembre 2009.

La proposition de révision a fait l'objet d'une prise de position du gouvernement du 22 juin 2011.

Le 6 juin 2012, le Conseil d'Etat luxembourgeois a rendu son avis. Celui-ci fait régulièrement référence à l'avis de la Commission de Venise. Il est suivi d'une proposition de texte constitutionnel révisée.

Par exemple, le Conseil d'Etat relève « Dans l'esprit de la Commission de Venise, qui a noté que la Constitution fait parfois état d'une grande confiance à l'égard du législateur (par. 40), le Conseil d'Etat estime que la Constitution en projet pourrait faire droit à cette remarque critique en requérant, notamment pour les lois qui touchent à des matières relevant de la substance constitutionnelle de notre ordre juridique et institutionnel, qu'elles soient votées à la majorité qualifiée ». Parmi les points fondamentaux retenus, on peut citer la nécessité d'une clause transversale en matière de limitation des droits fondamentaux. On peut aussi noter que le Conseil d'Etat fait référence à la Commission de Venise en dehors de l'avis intérimaire sur la Constitution luxembourgeoise.

Mme Err précise que le texte de la révision a été élaboré par le Parlement, d'où la confiance dans le pouvoir législatif. Le Parlement se donne encore trois mois pour examiner l'avis du Conseil d'Etat, puis il y aura probablement une navette avec le Conseil d'Etat. Le Président de la Commission des institutions et de la révision constitutionnelle a l'intention de saisir ensuite la Commission de Venise pour un nouvel avis.

Douze points sont en discussion, concernant :

- Le drapeau, l'hymne national et la langue
- Les cultes
- La clause transversale sur les restrictions aux droits fondamentaux, pratiquement adoptée
- Les règlements d'exécution
- L'introduction de la majorité qualifiée dans un certain nombre de domaines, notamment dans la loi électorale
- La vérification des pouvoirs du Parlement après les élections (le contrôle est exercé uniquement par le Parlement)
- Le droit de dissolution du Parlement
- Les pouvoirs du Grand-Duc : c'est une question d'importance majeure
- Le droit de vote pour les référendums : faut-il l'étendre aux non-Luxembourgeois ?
- Les pouvoirs de nomination des fonctionnaires par le Grand-Duc
- L'introduction d'une Cour suprême et d'un Conseil national de la justice.

## 9. Romania

Ms Suchocka informed the Commission that in early July, the dismissal of the Speakers of the Chambers of Parliament and the Ombudsman had been followed a few days later by Government emergency ordinances reducing the competences of the Constitutional Court and changing the legislation on referenda. While the Constitutional Court rejected the complaints against the dismissals, it invalidated part of the emergency ordinances. The Court provided a consultative opinion on the suspension of the President of the Republic within 24 hours, which was immediately followed by the actual suspension. A referendum on the suspension took place on 29 July. On 21 August, the referendum was invalidated by the Court because of lack of participation and the President took up office again. Complaints by the Constitutional Court about outside pressure had triggered statements of support by the President of the Venice Commission.

The Commission had been requested to give an opinion on such constitutional and legal situation by the Secretary General of the Council of Europe and by the Prime Minister of Romania. Ms Suchocka stated that on 10-11 September, a delegation of the Commission composed of Mr Bartole, Mr Tuori and herself, accompanied by Mr Markert and Mr Dürr had travelled to Bucharest to have meetings *inter alia* with the President of Romania, the Prime Minister, the Constitutional Court, the Superior Council of Magistracy, the former and acting Ombudsman and leaders of political parties. It seemed that the use of government emergency ordinances - instead of ordinary legislation - had also been constant practice

during the previous government. The visit showed that in Romania there was a serious lack of loyal co-operation between state bodies; state institutions attacked each other in order to damage the post-holders.

In line with the Venice Commission's practice, the opinion would be adopted at the December session, after the parliamentary elections due to take place on 9 December 2012.

Mr Mihai informed the Commission that the Romanian Senate had established a committee of enquiry tasked with examining whether the prosecutors who were investigating fraud (including by politicians) during the referendum were carrying out their tasks correctly.

Mr Paasivirta informed the Commission that the President of the EU Commission had made a statement expressing concern about dangers for the rule of law and checks and balances because of intimidation and pressure against judges and prosecutors in Romania. A report under the Co-operation and Verification Mechanism would soon assess the events in the light of the rule of law and judicial independence.

### **10. Exchange of views with the OSCE High Commissioner for National Minorities**

The Commission held an exchange of views with Mr Knut Vollebæk, OSCE High Commissioner for National Minorities, on past and future co-operation.

Mr Vollebæk gave an overview of the countries and the issues he had recently been engaging with and underlined the excellent long-standing co-operation between the Venice Commission and his Office. He stressed that, despite their different mandates, methods and scope of action, the two bodies shared the common goals of protecting minority rights and assisting in the prevention and reduction of interethnic tensions. Examples of fruitful co-operation, in recent years, be it on country-specific activities or in relation to thematic reports (national minorities in inter-state relations, minorities' participation in public life) had shown that the constant dialogue between the Venice Commission and the High Commissioner's Office is a key way to complement and mutually reinforce each-other.

Mr Vollebæk also referred to new phenomena, concerns and approaches noted in the field of minority protection, as well as evolutions in the interpretation of the relevant standards – as shown by the monitoring of the Framework Convention and of the Language Charter, the ECtHR case law or ECRI's work. He emphasised the need for a consistent approach of all stakeholders involved in dealing with the new challenges. In particular, a common platform was needed, in his view, to address the decreasing interest shown by States in implementing minority-related standards as well as the new ways chosen by States to handle highly sensitive issues, such as providing citizenship to members of their kin-minorities. Mr Vollebæk also informed the Commission of the forthcoming launch of a new set of (HCNM) Guidelines on Integration within Society.

On behalf of the Commission, Mr Jan Helgesen stressed that minority issues had always had a prominent place on the Commission's agenda and that co-operation with the Office of the High Commissioner had always been highly valued by its members. He mentioned, in terms of future co-operation, the seminar on minority rights planned for the first part of 2013 in Oslo, at which the High Commission would be a key guest.

### **11. Ukraine**

The Venice Commission had been invited, at the request of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, to prepare a draft Opinion on the draft Law on the Public Prosecutor's Office of Ukraine (prepared by the National Commission for Strengthening Democracy and the Rule of Law).



Mr Sørensen stated that the Opinion recommended that the scope of functions of the Public Prosecutor's Office be reduced, as they exceeded the scope of functions that a prosecution service should have in a democratic society. The Opinion welcomed the draft Law's stance on abandoning the supervisory role prosecutors currently hold over the administration and the fact that it took into consideration much of the criticism made by the Venice Commission in previous opinions.

The Secretariat had received a letter on 3 October 2012 from Mr Lavrynovych, Minister for Justice of Ukraine, informing it that a Law "On the amendments to some legal acts regarding the improvement of the Office of the Public Prosecutor functioning" had been adopted on 18 September 2012. The letter also stated that these amendments were part of a larger reform and that the draft Law "On the Office of the Public Prosecutor of Ukraine" currently being prepared by the Working Group on Reform of the Office of the Public Prosecutor and the Bar of Ukraine would be submitted to the Venice Commission for an opinion in due course.

The rapporteurs said that the draft Law would represent an important step if it were to be adopted. However, while the Venice Commission was looking at this draft Law, the Ukrainian authorities appeared to have gone into the opposite direction, adopting a Law on amendments which seemed to have made the supervisory role of the administration permanent. An additional concern was that currently prosecutors were being put under pressure to leave the Association of Prosecutors.

Ms Marina Stavniychuk said that since the draft Law had been sent to the Venice Commission, a few meaningful events had influenced the situation in Ukraine. She explained that a new criminal procedural code had been introduced and that on 18 September 2012 a number of laws on public prosecutors had been amended. She also told the Venice Commission that the Constitutional Assembly in Ukraine intended to improve the prosecution service and was currently preparing amendments to the Constitution of Ukraine. She asked that a paragraph be added to that effect in the opinion, which had been partly done following the suggestions made by Mr Sørensen and Mr Helgesen (see paragraph 119 of the Opinion, CDL-AD(2012)019).

Mr Tapiola explained that the role of the Prosecutor's Office was a long-standing issue in Ukraine and that there was now urgency to move forward. He said that the EU regretted the fact that the Law on amendments had been adopted without first consulting the Venice Commission and hoped that today's discussions would feed into the process.

**The Commission adopted the Opinion on the draft Law on the Public Prosecutor's Office of Ukraine (prepared by the Ukrainian Commission on Strengthening Democracy and the Rule of Law), with a number of amendments ([CDL-AD\(2012\)019](#)).**

## 12. Azerbaijan

Mr Djeric presented the draft joint opinion by the Venice Commission and the OSCE/ODIHR, on the Law on freedom of religious belief of Azerbaijan (as amended) drawn up on the basis of comments by Ms Thorgeirsdottir and himself. The draft opinion had been examined by the Sub-Commission on Fundamental Rights, at its meeting on 11 October 2012.

The Law on Freedom of religious belief as amended in 2011 set a legal framework which was in several aspects contrary to international standards and would benefit from additional revision in order to meet these standards.

While it was recognised that a State benefits from a large margin of appreciation, this should not be interpreted with a degree of latitude that would permit the undermining of the substance of human rights values. The European Court of Human Rights holds that freedom of thought, conscience and religion and of beliefs is one of the foundations of a “democratic society”.

The Law appeared to contain several quite restrictive provisions which were against international standards. In addition provisions regulating central issues such as the scope of the law and of the beneficiaries of the right to freedom of religion and conscience, the registration, the autonomy and liquidation of religious communities; conscientious objection, the issue of proselytism, the publication and circulation of religious materials should be reformulated in order to meet international standards. The Law was moreover characterised by a vague terminology which may lead to arbitrary interpretation and implementation.

Mr Huseynov offered his assistance to the rapporteurs in order to improve the text of the opinion in the light of alleged misunderstandings due to the translation of the text of the law.

However, as Mr Helgesen, Chair of the session underlined, the rapporteurs had analysed a translation of the Law officially provided by the Azerbaijani authorities

Mr Aliyev stressed the neutral attitude of Azerbaijan towards religious denominations and its deep cultural and historical roots. He underlined that the relevant cultural and historical heritage, which was duly taken into account when the Law was prepared, was of key importance for the adequate understanding of the country’s legal framework governing the relationship between the State and Religion. In particular, Mr Aliyev pointed out that, in the process of amending the law, the authorities had paid due attention to the 2004 OSCE/ODIHR – Venice Commission Guidelines for Review of Legislation Pertaining to Religion or Belief. In the authorities’ view, this legal framework, which includes, in addition to the Law under examination, further statutory and constitutional provisions, contains guarantees for the right to freedom of religion or belief that are fully in line with the ECHR requirements. Mr Aliyev concluded that the criticism contained in the opinion was mostly due to misunderstandings and translation errors.

There ensued a discussion amongst members, and certain amendments were agreed.

**The Commission adopted, with a few amendments, the opinion on the Law on Freedom of religious belief, as amended in 2011 ([CDL-AD\(2012\)022](#)).**

### **13. Limitation of mandates and incompatibility of political functions**

M. Gross, Président du Conseil des élections démocratiques, informe la Commission que le Conseil a tenu une longue discussion sur le rapport préparé par Mme Siljanovska-Davkova et Mme Karakamisheva-Jovanovska spécialement sur le chapitre introductif relatif aux aspects théoriques. Il a été dès lors décidé de reprendre la question à la prochaine session.

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

The Commission examined the draft opinion prepared at the request of the Minister of Justice of the Federation of Bosnia and Herzegovina (hereafter referred to as “FBiH”).

Ms Bilkova informed the Commission that the Minister had invited the Commission to provide a position of principle on whether the practice of so-called pre-signed/blanket resignations was in line with “the general principles of the rule of law, particularly the principles of legal security, respecting of human rights and prohibition of discrimination”. Under this practice, candidates for high political positions in the executive sign blanket (or enveloped) resignations, which are

subsequently used by their political party, in case the persons concerned betray their loyalty to the party. The Commission was informed that the request was made in relation to a specific case, which was, at the time of the preparation of the draft opinion, pending before the FBiH Constitutional Court. The Court had in the meantime adopted a decision on this case, decision which the Rapporteurs had not had the possibility to consult. The Opinion did not address the concrete case at hand.

The Opinion stressed that the practice of blanket resignations was an extension of the theory of the imperative mandate, according to which holders of a political position must follow their party directives in implementing their mandate. If they fail to do so, they may be, as a last resort, recalled from their position. The Commission stated that, while there are no European binding, legal norms nor soft law guidelines or recommendations which prohibit such a practice, blanket resignations of elected representatives are a well-known phenomenon. They have drawn extensive criticism, including by the Venice Commission, based on the principle of the free and independent political mandate under the liberal democratic tradition.

In the Commission's view, although pre-signed-resignations of ministers constituted a form of imperative mandate *largo sensu*, the specificities of the executive power may imply that criticism of blanket resignations of parliamentary deputies does not necessarily apply, or not in the same way, in the case of government members. This practice may even be acceptable in the context of the executive power if certain key requirements, such as lawfulness, openness and transparency were met. The Commission therefore examined the practice of Ministers' resignation from this perspective. It found that, in most cases, pre-signed resignations circumvented existing legislative and/or even constitutional provisions providing specific dismissal/resignation procedures and that, by giving parties a continuous control on the ministers, may be harmful to the well-functioning and effectiveness of a government as autonomous political institution in a democratic system. The Opinion concluded that such fictional, dishonest and non-transparent arrangements were not consistent with the European principles and best practices of democracy and the rule of law.

**The Commission adopted the Opinion on the practice of blanket resignation of ministers in the Federation of Bosnia Herzegovina ([CDL-AD\(2012\)021](#)).**

## **15. Montenegro**

The Secretariat informed the Commission that, because of the parliamentary elections of October 2012, there had been delays in the work on the constitutional provisions dealing with the judiciary, and that exchanges with the Venice Commission on the planned amendments were envisaged for the period following the elections. This also applied to the work on the two religion-related laws that were under preparation. A visit to the country would be organised in December 2012 or January 2013.

## **16. Fédération de Russie**

La conférence sur "Les partis politiques dans une société démocratique : base juridique de leur organisation et de leurs activités", co-organisée par la Commission de Venise et la Cour constitutionnelle de Russie, s'est tenue à Saint-Pétersbourg les 27-28 septembre 2012 au siège de la Cour constitutionnelle. M. Colliard indique que la Commission a été représentée, outre par lui-même, par Mme Err, MM. Paczolay et Scholsem. Le point a été fait sur les normes européennes en la matière, y compris dans le domaine de la démocratie interne des partis. Le souci du Président Zorkin était de sensibiliser les cadres juridiques russes à la construction d'un système de partis pluraliste. Les difficultés principales sont l'imprécision de la notion de parti politique et le risque d'une multiplication des partis, qui pose la question

des droits à reconnaître aux différents partis. M. Colliard souligne l'effort d'organisation de la Cour constitutionnelle russe.

## 17. Tunisia

M. Buquicchio exprime tout d'abord la gratitude de la Commission envers les gouvernements de la Norvège, de l'Italie et de la France pour leur soutien financier aux activités de la Commission en Tunisie et dans les autres pays de la rive sud de la Méditerranée.

M. Larbi Abid, Deuxième vice-Président de l'Assemblée National Constituante de la Tunisie, informe la Commission sur l'état d'avancement des travaux de l'ANC. Les commissions constitutionnelles ont achevé leur travail, à l'exception de celle sur les pouvoirs exécutif et législatif, car la décision sur le régime politique n'a pas encore été prise. Le comité conjoint de coordination et de rédaction a formulé un certain nombre de propositions de modification des différents chapitres, notamment en matière des droits de la femme. Lorsque ces propositions relèvent de la forme ou de la coordination, elles sont obligatoires.

La date annoncée pour l'adoption de la constitution, le 23 octobre 2012, a une valeur symbolique, et l'ANC y attache une grande importance ; cependant, l'ANC entend donner priorité à la qualité du texte constitutionnel.

M. Buquicchio exprime également sa conviction que la qualité de la nouvelle constitution doit primer sur la célérité de son adoption.

M. Habib Khedher, Rapporteur Général de la Constitution, se félicite de l'échange de vues qui s'est tenu à Tunis le 26 juillet 2012 entre l'ANC et une délégation importante de la Commission de Venise, accompagnée de représentants de l'Assemblée Parlementaire et du Congrès des Pouvoirs Locaux et Régionaux et qui a été d'une grande utilité. Il exprime le grand intérêt que l'ANC a pour la coopération avec la Commission de Venise.

M. Khedher apporte des précisions quant au processus d'adoption de la Constitution. Une fois le projet de constitution finalisé, il sera présenté au public ; des réunions publiques seront tenues dans toutes les régions de la Tunisie afin de recueillir l'avis de la société civile ; le comité conjoint de coordination et de rédaction finalisera ensuite le projet. Quinze jours après le dépôt du texte, l'Assemblée Plénière commencera la discussion en vue de l'adoption (d'abord article par article à la majorité absolue, puis sur la totalité du texte à la majorité de deux tiers).

M. Khedher explique en détail les questions qui restent à trancher (notamment l'étendue des pouvoirs de l'exécutif, les compétences de la cour constitutionnelle, la relation du parquet avec les pouvoirs exécutif et judiciaire).

M. Khedher termine en exprimant la volonté de l'ANC d'atteindre le plus haut niveau de qualité pour la future constitution de la Tunisie.

M. Colliard exprime son appréciation pour le travail de l'ANC, et se félicite particulièrement que l'instance indépendante des élections soit prévue au niveau constitutionnel.

Plusieurs membres de la Commission expriment leur satisfaction pour la qualité des échanges de vues avec l'ANC.

M. Paasivirta exprime le soutien de l'Union Européenne pour la collaboration étroite qui s'est créée entre l'ANC et la Commission de Venise. La Tunisie est une partenaire privilégiée de l'Union Européenne dans la région. L'Union Européenne se félicite notamment de récentes améliorations du texte constitutionnel par rapport à l'égalité des genres.

## **18. Mexique**

Mme Alanis indique que la rédaction de l'avis sur le droit électoral du Mexique a commencé après les élections de juillet 2012. Les rapporteurs sont Mme Biglino, MM. Darmanovic et Tanchev, qui vont se rendre au Mexique les 12-13 novembre 2012, où ils vont rencontrer les autorités en charge des questions électorales, des universitaires et des représentants des principaux partis politiques. Parmi les points à traiter dans l'avis, on peut noter la (pré-) campagne électorale, l'annulation des résultats des élections, la liberté d'expression et ses limites, les sondages d'opinion, la représentation des minorités et des groupes vulnérables au Congrès, les quotas par sexe, les infractions électorales, l'achat de votes et la contrainte en la matière, la participation des fonctionnaires aux campagnes et leur neutralité.

M. Colliard fait part de son expérience : dans les bureaux de vote, tout semble s'être bien passé, si bien que les recours ont été rejetés. En ce qui concerne la campagne et la pré-campagne, des progrès sont encore souhaitables, mais les problèmes du contentieux électoral au Mexique sont ceux d'une démocratie établie.

## **19. Hungary**

Mr Tuori informed the Commission that at the request of the Parliamentary Assembly, the rapporteurs had prepared an opinion on the reforms adopted by the Hungarian authorities following the Opinion on the Judiciary Acts of Hungary, which had been adopted by the Venice Commission in March. Already before the adoption of that opinion, the Hungarian Government had introduced amendments in Parliament as a reaction to the then draft opinion. After the March session, the Secretary General of the Council of Europe held a dialogue with the Hungarian authorities and, as a result, amendments to the cardinal acts were adopted in July 2012.

These amendments took into account part of the Commission's criticism but not all of it. Some of the most problematic powers of the President of the National Judicial Office were moved to the National Judicial Council (NJC) and the President's accountability was enhanced. Remaining problems related to the President's obligation to give reasons for all decisions, appointment procedures, the transfer of judges and the composition of the NJC. However, the main open issues were the transfer of cases, in practice from Budapest to the countryside, and the implementation of the Constitutional Court's judgement annulling the early retirement of judges.

The problem of transfers of cases should be solved structurally, by strengthening the Budapest courts. Any transfer of cases could only be only made on an exceptional basis, for a limited period and under objective criteria for the selection of cases and the selection of the proceeding court. However the Government had informed the Commission that objective criteria for the selection of cases could not be found. Therefore, the system should be completely abolished.

As concerns the retired judges, legal uncertainty prevailed. Following the Constitutional Court's judgement, they had not been automatically reinstated but had to appeal individually against the dismissal and to reapply for a new post. The draft opinion strongly recommended adopting a law to reinstate the judges in office. Legislation currently in Parliament would raise the retirement age to 65 years but would prevent judges older than 62 years from holding leading positions. This restriction should be removed.

Mr Répássy, Minister of State for Justice, thanked the Venice Commission for the opinion and pointed out that it concluded that a majority of the remarks made in the earlier opinion had been implemented. The Commission's proposals would be considered within the regular review of the legislation on the judiciary. Written comments on the draft opinion had already been sent to the Commission and remained valid. In drafting the amendments, the

Hungarian Government had taken into account the view of the Judiciary and traditions. The Government was committed to judicial independence and would request the Constitutional Court to examine the provisions, which the Commission had criticised. The Court had already decided in the case of judges' retirement and the transfer of cases was pending before the Court. The Constitutional Court could annul these provisions if they were not in conformity with the Fundamental Law, which enshrined internal and external judicial independence.

Mr Paasivirta pointed out that the case of judges' retirement was pending before the European Court of Justice in Luxemburg, where a hearing had taken place on 10 October under an expedited procedure. A judgement was expected before the end of the year. The European Commission welcomed the opinion, including the assessment of the transfer of cases.

**The Commission adopted with amendments the Opinion ([CDL-AD\(2012\)020](#)) on Amendments to the Cardinal Acts on the Judiciary which were adopted by the Hungarian Parliament following the adoption of Opinion [CDL-AD\(2012\)001](#).**

La Commission a examiné le projet d'avis sur la Loi sur l'auto-détermination informationnelle et la liberté d'information de Hongrie préparé à la demande de la Commission de suivi de l'Assemblée parlementaire. Dans ce contexte, elle a eu un échange de vues avec M. Robert Repassy, ministre d'Etat pour la Justice de la Hongrie.

Tel qu'il a été indiqué par Mme Peters, Rapporteur, dans son introduction, le projet d'avis donne une appréciation globalement positive de la loi hongroise, tout en relevant des points exigeant des améliorations ou des clarifications. Un nombre d'amendements ont été proposés par les Rapporteurs, visant à refléter certaines clarifications fournies par les autorités hongroises dans leurs commentaires écrits.

La Commission se félicite que les principes d'équité, de légalité, de finalité, de proportionnalité et de précision, qui sont censés gouverner l'ensemble du traitement des données, aient ont été dûment pris en compte dans l'élaboration de la loi. L'obligation d'assurer, par des mesures de sécurité appropriées, la protection des données à caractère personnel, ainsi que le degré de protection plus élevé garanti par la loi hongroise pour les données à caractère sensible, sont positivement signalées par la Commission, tout comme la mise à disposition de voies de recours contre toute violation des règles et principes gouvernant la protection des données.

Les rapporteurs ont noté avec intérêt l'option du parlement hongrois de légiférer dans le cadre d'une même loi sur deux questions qui, tout en étant complémentaires, sont sous-tendent des objectifs opposés : la protection des données et le droit à l'accès à l'information. Selon eux, ce choix pourrait donner lieu à des difficultés d'application et d'interprétation. D'autres questions, telles que le mode désignation du Président de l'Autorité nationale pour la protection des données, l'exclusion des données à caractère personnel du droit à l'accès à l'information, ou encore l'absence d'une garantie explicite, dans la loi, pour la protection des sources d'information des médias, ont attiré l'attention de la Commission. Selon cette dernières, des améliorations, voire des amendements sont nécessaires pour que les dispositions concernées de la loi soient pleinement conformes aux standards applicables.

Dans son intervention, M. Repassy a réitéré l'engagement de la Hongrie pour le respect des normes et standards relatifs aux droits à la protection des données à caractère personnel et aux droits à l'accès aux informations d'intérêts public. Il a par ailleurs souligné que la Hongrie a pris des engagements vis-à-vis de l'ensemble des instruments internationaux régissant ce domaine, étant parmi les premiers Etats ayant ratifié la Convention du Conseil de l'Europe sur l'accès aux documents contenant des informations à caractère public, convention qui n'est pas

encore entrée en vigueur. Tout en remerciant la Commission pour l'évaluation attentive de la loi et pour les recommandations contenues dans le projet d'avis, M. Repassy a également signalé un nombre de points de divergence entre la position de ses autorités et celle de la Commission sur des questions ayant soulevé des observations critiques de cette dernière. Il a invité la Commission à réexaminer ces points à la lumière des commentaires écrits transmis par le Gouvernement hongrois.

**La Commission adopte l'Avis sur la Loi sur l'auto-détermination informationnelle et la liberté d'information (CDL-AD(2012)023), avec amendements.**

## 20. Other constitutional developments

### - *Jordanie*

Le Médiateur de Jordanie a récemment pris contact avec la Commission en vue dans la perspective d'une coopération future. Une délégation du Conseil de l'Europe, comprenant la Commission de Venise s'est rendue les 17-19 septembre 2012, à Amman, en Jordanie pour rencontrer les autorités jordaniennes en vue de programmes de coopération qui pourront être financés par l'Union européenne. Les programmes initiaux visent le soutien aux réformes du système judiciaire, y compris la cour constitutionnelle ce qui relève prioritairement de la compétence de la Commission.

### - *Maroc*

La coopération de la Commission de Venise avec le Maroc s'intensifie depuis la réforme constitutionnelle de 2011 ; réforme constitutionnelle qui fut présidée par M. Ménouni, membre de la Commission de Venise.

La Commission s'est engagée à apporter son soutien aux réformes en cours concernant notamment les lois organiques à adopter en vertu de la constitution. A cet effet, la Commission a participé, en juillet 2012, à un échange de vues organisé par le Congrès des Pouvoirs Locaux et Régionaux avec les membres du Parlement et de la Chambre des Conseillers du Maroc, concernant le projet de loi organique sur la décentralisation avancée. Fin novembre, un séminaire est organisé avec la Conseil constitutionnel du Maroc pour un échange d'expériences relativement à l'exception de constitutionnalité. La Commission a maintenu une coopération soutenue avec le Médiateur du Maroc. M. Sorensen a participé à la Conférence annuelle de l'Association des Ombudsmen de la Méditerranée, présidée par le Médiateur du Maroc. La Commission contribuera, en outre, aux sessions de formation organisées par cette institution. Une grande Conférence régionale sur le rôle de l'institution du Médiateur dans une démocratie en transition est prévue en 2013 au Maroc.

### - *Kyrgyzstan*

Mr Vardzelashvili informed the Commission on the follow-up to the "Dialogue on Main Directions of the Judicial Reform in the Kyrgyz Republic" (Bishkek 19-20 March 2012) in which he had participated on behalf of the Commission. The support from the Venice Commission had been acknowledged at the Dialogue, which had resulted in the "Concept of Judiciary Reforms in the Kyrgyz Republic".

One of the main issues discussed was the limitation of the powers of the President of the Republic in the appointment of judges. For the judges of the Supreme Court and its Constitutional Chamber, the Concept foresees the right of the President to refuse the appointment of a candidate but the Judicial Council can overturn such an objection with a two-

thirds majority. However, there was no such power to overrule the refusal by the President to appoint lower court judges.

Other serious problems discussed were the non-execution of judgements and a lack of funding of the judiciary. The Concept also envisaged the establishment of a high school for judges and favours a specialisation of both of courts and judges. General 'explanations' by the Supreme Court were referred to as being important and necessary (in its opinion, the Commission had been critical of them).

Even though the Law on the Constitutional Chamber of the Supreme Court had been in force for some time, the Chamber had still not been established. This was problematic on account of the ensuing limitation of the possibilities to protect constitutional rights.

### **21. Report of the meeting of the Council for Democratic Elections (11 October 2012)**

M. Gross, Président du Conseil des élections démocratiques, indique que le Conseil des élections démocratiques a travaillé sur les mesures pour améliorer le caractère démocratique des élections dans les Etats membres du Conseil de l'Europe. Après une analyse de ce qui a été déjà fait, il a décidé de sélectionner deux thèmes : la méthode de désignation des candidats des partis politiques (y compris par des élections primaires) et la question des listes ouvertes.

Concernant la demande de l'Assemblée parlementaire d'examiner le thème de l'image des migrants et des réfugiés pendant les campagnes électorales, le Conseil a considéré qu'il s'agit d'une question politique qui ne relève pas de la Commission de Venise. La Commission se rallie à ce point de vue.

La question de la limitation des mandats dans le temps et du cumul des mandats a été traitée sous le point 13.

### **22. Report of the meeting of the Scientific Council (11 October 2012)**

Mr Helgesen informed the Commission that the Scientific Council had agreed, as a follow-up to the Commission's recent work on the topic of the rule of law, and having regard to the interest raised by the relevant Report adopted by the Commission in March 2011, to pursue its work on this topic. A specific working group would be set up, tasked with expanding and up-dating the checklist annexed to the report, making it more operational and possibly proposing more practical and more comprehensive guidelines to the stakeholders involved. The Commission agreed that such a reflection was of particular importance in the light of recent developments in some of European states having not only confirmed the importance of the rule of law for the countries' democratic stability but also highlighted new challenges and dangers that may threaten and undermine it.

The Commission was informed that the work of the Scientific Council on thematic compilations was continuing. In this framework, one new compilation would be prepared on the topic of freedom of association.

The Commission was also informed that the planned seminar on minority rights will be held in late winter/early spring 2013 in co-operation with the Norwegian authorities.



### **23. Report of the meeting of the Sub-Commission on Fundamental Rights (11 October 2012)**

Ms Thorgeirsdottir informed the Commission that the preliminary draft opinion on the amendments to the Law on assemblies and to the Code of Administrative Offences of the Russian Federation had been discussed at length but the Sub-Commission had decided not to endorse the opinion in light of the fact that these amendments were pending before the Constitutional Court of the Russian Federation. The preliminary draft opinion would be sent for information to Mr Zorkin, President of the Russian Constitutional Court. The Sub-Commission had also discussed at length the need to avoid double standards in addressing laws on freedom of assembly.

As concerns the draft joint opinion on the law on freedom of religious faith of Azerbaijan, Ms Thorgeirsdottir informed the Commission that the issue of the bad quality of translation of the law had been raised by Mr Huseynov. Nevertheless, the Sub-Commission had decided to maintain the current wording of the text, as the translation was an official one which had been provided by the authorities of Azerbaijan. Some amendments to the draft opinion had been proposed (see item 12).

### **24. Other business**

No other business was discussed by the Venice Commission during this Plenary Session.

### **25. Dates of the next session and dates of sessions 2013**

The final session 2012 was confirmed as follows:

93<sup>rd</sup> Plenary Session                      14-15 December 2012

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

The Commission confirmed the schedule of sessions for 2013 as follows:

94 <sup>th</sup> Plenary Session	8-9 March 2013
95 <sup>th</sup> Plenary Session	14-15 June 2013
96 <sup>th</sup> Plenary Session	11-12 October 2013
97 <sup>th</sup> Plenary Session	6-7 December 2013

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

[Link to the list of participants](#)