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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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

94th PLENARY SESSION
Venice, Scuola Grande di San Giovanni Evangelista,
Friday, 8 March 2013 (9.00 a.m.) -
Saturday, 9 March 2013 (1.00 p.m.)

94^e SESSION PLÉNIÈRE
Venise, Scuola Grande di San Giovanni Evangelista
vendredi 8 mars 2013 (9h00) -
samedi 9 mars 2013 (13h00)

SESSION REPORT
RAPPORT DE SESSION

* This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.

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1. Adoption of the Agenda

The agenda was adopted as it appears in document CDL-OJ(2013)001ann.

2. Communication by the President

Mr Buquicchio briefly informed the Commission about his recent activities, which are listed in document [CDL\(2013\)011](#).

1. Communication by the Secretariat

Mr. Markert provided clarification on some recent problems of access to documents due to the process of migration of the Commission's website. These problems should soon be resolved.

3. Coopération avec le Comité des Ministres

L'Ambassadeur Alain Cools, Représentant Permanent de la Belgique au Conseil de l'Europe, souligne la place préminente que la Commission de Venise occupe parmi les instances de l'Organisation et l'excellente réputation dont elle bénéficie grâce à la qualité de son travail. Il exprime par ailleurs sa gratitude pour l'assistance constitutionnelle fournie par la Commission à la Belgique dans le cadre de l'Avis relatif à la révision de la Constitution de la Belgique qu'elle a rendu en juin 2012 ([CDL-AD\(2012\)010](#)). [[Link to English version](#)]

L'Ambassadeur Charles-Edouard Held, Représentant Permanent de la Suisse auprès du Conseil de l'Europe, souligne également la haute estime de ses autorités pour les activités de la Commission de Venise et sa contribution à la promotion et la défense des valeurs fondamentales du Conseil de l'Europe - démocratie, droits de l'homme, état de droit - et rappelle que l'impact de son expertise constitutionnelle est étroitement lié à la qualité, l'indépendance et l'impartialité de son action.

M. Buquicchio, en remerciant pour ces appréciations, informe les membres de la Commission que, suite à l'intérêt exprimé par les Etats-Unis, le Comité des Ministres a décidé de les inviter à devenir membre de plein droit de la Commission de Venise et qu'une lettre officielle d'adhésion devrait être reçue bientôt.

Dans ce contexte, M. Buquicchio informe également la Commission que, suite aux informations préoccupantes concernant l'intention des autorités hongroises de procéder à nouvel amendement de la Constitution, le Secrétaire Général du Conseil de l'Europe a pris position en demandant aux autorités hongroises de reporter l'adoption de cet amendement pour permettre à la Commission de Venise de l'évaluer au préalable.

4. Co-operation with the Parliamentary Assembly

Mr Christopher Chope, Member of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe informed the members of the most recent activities of the Parliamentary Assembly of relevance for the Commission, including a report of the Monitoring Committee on Azerbaijan. He also expressed the Assembly's concern over amendments to certain laws of the Russian Federation which it had asked the Venice Commission to assess.

In relation to the upcoming accession of the United States to the Venice Commission, Mr Chope underlined the Assembly's constant concern that the death penalty was still applicable in the US and expressed the hope that its abolishment remain a (shorter or longer term) objective for this country.

Mr Buquicchio stressed that the Venice Commission was firmly committed to the abolition of the death penalty.

5. 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 of Local and Regional Authorities, informed the members in particular that the Committee intended to develop its post-monitoring and post-elections political dialogue with the national authorities, as a way to establish concrete modalities for implementing the Congress' recommendations. Mr Molin reiterated that the Congress' co-operation with the Venice Commission was crucial in this context and that the Congress systematically takes into account Venice Commission opinions and recommendations and refers to them.

6. Follow-up to earlier Venice Commission opinions

Joint opinion on the law amending certain legislative acts of Ukraine in relation to the prevention of abuse of the right to appeal by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe ([CDL-AD\(2010\)029](#))

Mr Markert informed the Commission that the European Court of Human Rights, in its judgment of 9 January 2013 in the case of Olexander Volkov v. Ukraine, referred extensively to this opinion of the Venice Commission and based its reasoning partly on the opinion. The judgment, quite unusually, explicitly asked Ukraine to urgently reform the judicial system. As a consequence, it was necessary to amend the relevant Chapter of the Constitution of Ukraine as soon as possible. The Joint Statement, adopted at the EU-Ukraine Summit of 25 February 2013, also mentioned the need for constitutional reform and asked for the involvement of the Venice Commission in judicial and electoral reform.

Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary ([CDL-AD\(2012\)001](#)) and the Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary ([CDL-AD\(2012\)004](#))

Mr Markert informed the Commission that a new Amendment to the Fundamental Law of Hungary had been introduced in the Hungarian parliament. The Amendment constitutionalised both the central position of the President of the National Judicial Office and the transfer of cases to a court other than the court normally competent. These were precisely the points which were strongly criticised in the Commission's opinion on the judiciary laws. Moreover, the Amendment also introduced into the Constitution the competence of parliament to decide on the recognition of individual religious communities, a competence criticised in the Commission's opinion on the respective law. Other provisions overturned previous decisions by the Constitutional Court or directly addressed the functioning of the Constitutional Court. Decisions by the Constitutional Court taken before the entry into force of the Fundamental Law on 1 January 2012 could no longer be taken into consideration.

The vote on the text was foreseen for next Monday. On Wednesday the Secretary General of the Council of Europe had called on the Hungarian authorities not to adopt the text prior to its examination by the Venice Commission. It was not at all sure that his appeal would be heeded.

Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, ([CDL-AD\(2012\)022](#))

On 22 February 2013, the Parliament of Azerbaijan had adopted amendments to the Law on freedom of Religious Belief according to which all religious materials, such as books, video and audio tapes, and discs can be sold only if they are specifically marked to show they are allowed for sale in the country. The new regulation also states that all religious materials should be sold only in specially designated stores.

These amendments are clearly at odds with the text and the spirit of the recommendations of the Joint opinion of the Venice Commission and the OSCE/ODIHR, which invited the authorities to “remove undue restrictions on the rights of individuals and religious groups to produce, import, export, and freely disseminate, and sell religious literature, items and other informative materials” in order to comply with International standards.

7. Moldova

- *Joint Opinion by the Venice Commission and the OSCE/ODIHR on Draft legislation of the Republic of Moldova pertaining to Financing Political Parties and Electoral Campaigns*

Mr Hamilton introduced the opinion, which concerned two draft laws: one proposed by the Central Election Commission and supported by the government; the other proposed by one party of the coalition. Some elements of both drafts are common. The follow-up would depend on the political situation, given that the government had just fallen. Both drafts concern financing of political parties as well as of electoral campaigns; both are tightening and improving the legal framework.

The draft Opinion underlined that both the draft Amendments and the draft Law met many international standards and good practices relevant to the funding of political parties and election campaigns. At the same time, in order to ensure the legislation’s full compliance with such standards, the draft opinion recommended nine changes in the draft texts *inter alia*: to reconsider the imposition of an annual ceiling for all permissible donations and member fees; to reduce annual ceilings for private donations to political parties; to remove the blanket ban on third-party donations; to consider establishing an independent Directorate of Financial Control in the Central Election Commission; to enhance the system of sanctions.

The Commission adopted the Joint Opinion by the Venice Commission and the OSCE/ODIHR on Draft legislation of the Republic of Moldova pertaining to Financing Political Parties and Electoral Campaigns ([CDL-AD\(2013\)002](#)), as amended by the Council for Democratic Elections.

- *Joint amicus curiae brief by the Venice Commission and the OSCE/ODIHR for the Constitutional Court of Moldova on Law 192 of 12 July 2012 of Moldova on the prohibition of the Use of Communist Symbols*

Mr Bartole explained that the Constitutional Court of Moldova had requested this joint *amicus curiae* brief after 29 MPs had challenged the 2012 law banning the use of the symbol of the hammer and sickle in Moldova. As this was an *amicus curiae* brief, the opinion used international standards as a yardstick: it would be up to the Constitutional Court to assess the constitutionality of the law.

Bans on the use of communist symbols were not impermissible as such, but given that they amount to interference with freedom of expression and association protected by articles 10 and 11 ECHR they have to comply with the criteria of legality (including accessibility and

foreseeability), pursuance of a legitimate aim and proportionality (necessity in a democratic society). Against this background, the opinion identified several shortcomings in Law 192 of 12 July 2012: “totalitarian ideologies” were banned but this term was not sufficiently defined; it was unclear whether the prohibition responded to a “pressing social need”, almost twenty-five years after the fall of the Communist regime and given that the symbol of the hammer and sickle had been legally and officially used since 1994 by the Moldovan Communist Party, which had participated with this symbol in six parliamentary, one presidential and five local elections; fines for the use of the hammer and sickle should only be imposed when the display represented dangerous propaganda. The opinion stressed in particular that the impact of the ban on the legally existing and registered Moldovan Communist Party was disproportionate: the risk for the party of having to cease its activities and the impossibility for its candidates to run with the legally registered party symbol were clearly excessive.

The Commission adopted the *amicus curiae* brief for the Constitutional Court of Moldova on Law 192 of 12 July 2012 of Moldova on the prohibition of the Use of Communist Symbols ([CDL-AD\(2013\)004](#)).

- *Amicus curiae* brief for the Constitutional Court of Moldova on the Immunity of Judges

Mr Hamilton presented the draft *amicus curiae* brief, which had been amended at the meeting of the Sub-Commission on the Judiciary on 7 March 2013. The opinion presented the applicable international standards for judicial immunity and noted that judicial immunity, as procedural immunity preventing an investigation against a judge unless immunity was lifted, was known mostly in Eastern European countries only. The purpose of judicial immunity was to protect the judge not from criminal prosecution, but solely from false accusations levelled against the judge in order to exert pressure on him or her. The failure to lift immunity in cases when there was no indication of pressure on the judge would be detrimental to the reputation of the judiciary as a whole. In some Eastern European countries the position of the judges was weak especially in relation to the prosecution authorities and some judges did not dare question criminal indictments brought by the prosecution leading to an extremely high percentage of convictions (called ‘prosecutorial bias’).

The Moldovan amendment provided that in general for the lifting of immunity the consent of the President of the Republic and Parliament was no longer necessary and the Superior Council of Magistracy remained the only body in charge of lifting the immunity. For the crimes of passive corruption and the traffic of influence procedural immunity had been removed completely. The question before the Constitutional Court of Moldova was whether this would contradict the independence of the judiciary.

The draft opinion recognised the need to fight corruption and welcomed that the consent of the President of the Republic and Parliament was no longer necessary. The fact that only the Prosecutor General could bring charges against judges did not result in discrimination between judges and ordinary citizens because of the special status of judges but was rather a reasonable safeguard, even if it could not be excluded that the Prosecutor General could bring false charges him or herself. The special regulation for passive corruption and traffic of influence immunity was not seen as arbitrary because of the specific nature of these crimes. Mr Papuashvili pointed out that the Moldovan legislation did not seem to contradict international standards but it was for the Constitutional Court of Moldova to assess its constitutionality.

The Commission adopted the *amicus curiae* brief for the Constitutional Court of Moldova on the Immunity of Judges ([CDL-AD\(2013\)008](#)).

8. Report on “the relationship between political and criminal ministerial responsibility”

Mr Sejersted introduced the report, which had been drafted following a request by the Committee of Legal Affairs and Human Rights of the Parliamentary Assembly, on the basis of a comparative approach. The report addressed the relationship between law and politics, more precisely between political and criminal responsibility of ministers. There was no single European model and there were very few common European standards, mainly Articles 6 and 7 ECHR. For example, some countries had specific impeachment procedures and others not. The report was of a general character but two concrete pending cases, concerning Iceland and Ukraine, and pending before the European Court of Human Rights, were in its background.

The core issue was the line between legitimate and illegitimate political elements. The main message of the report was that criminal proceedings should not be used to penalise political mistakes and disagreements; political actions by ministers should be subject to procedures for political responsibility. For the rest, the Venice Commission did not make a choice between a specific procedure introducing some political elements and the use of ordinary criminal justice, but the political model was particularly vulnerable concerning the rule of law. Concerning the substance, offences such as abuse of office, misuse of powers or excess of authority had to be interpreted in a very restrictive way, with supplementary elements like intent of personal gain.

The Commission adopted the report on “the relationship between political and criminal ministerial responsibility” ([CDL-AD\(2013\)001](#)).

9. Address by the President of the Federal Constitutional Court of Germany

Mr Andreas Vosskuhle, President of the Federal Constitutional Court of Germany, spoke to the Venice Commission about the “Co-operation of national and international courts in Europe”. He praised the Venice Commission’s contribution to the “European multilevel system” and explained that it did so by supporting its member states in the drafting of their constitutions, by assisting them in developing human rights protection, by providing them with a platform to discuss this issue and by creating a *Verbund* or network of constitutional courts with the aim of exchanging information and experiences with one another. He referred to “*Verbund* techniques” - which are based mainly on the interaction of judges and the exchange of case-law and information between them, which furthers mutual respect and understanding - that guarantee the protection of fundamental rights in a consistent manner and explained that human rights protection in Europe was no longer the sole task of national constitutional courts, but also that of the European Court of Human Rights and the Court of Justice of the European Union.

Link to the intervention CDL-JU(2013)001

Discussions revolved around the importance of creating a dialogue between constitutional courts and how such a dialogue could be improved; the hierarchy of norms between national laws and European law raising the delicate issue of the place of constitutional law in this context; and the impact that draft Protocol no.16 to the European Convention on Human Rights will have once in force, which will introduce the possibility for the European Court of Human Rights to give preliminary rulings similar to those of the Court of Justice of the European Union.

10. Iceland

Mr Scholsem informed the Commission that, in accordance with the decision taken at the Commission's 93rd Plenary Session, the draft opinion had already been sent to the Icelandic authorities.

He informed the Commission about the specific constitutional process which had been marked by the prominent role given, by various ways of consultation and expression, to the will of the people as leading actor and ultimate beneficiary of the process. Ms Thorgeirsdottir provided an up-date on the most recent steps in the examination of the Bill by the Parliament of Iceland and related developments in the country.

The Opinion welcomed the authorities' firm willingness to provide, following the recent economic and financial crisis, modern and democratic legal and institutional foundations for a more just and transparent society, and underlined the active involvement of citizens in the constitutional process.

The constitutional order established by the Bill reflected an option for a strong parliamentary regime associated with a complex set of mechanisms aimed at enabling increased direct participation of citizens in decision-making. However, while in itself such a model might be deemed suitable to the specific context in Iceland, its translation in legal and constitutional terms raised certain concerns. Numerous provisions were too vague and broad, which, despite some clarifications in the Explanatory Notes, may lead to serious difficulties of interpretation and application.

Furthermore, the complex institutional system proposed by the Bill appeared too complicated and marked by lack of consistency, both as regards the powers, the interrelations and the balance between the main institutions - parliament, government and President - and the mechanisms of direct participation that it introduced. To avoid the risk of political blockage and instability, a careful review of the relevant constitutional provisions, both from legal and political perspective, was recommended. Similar recommendations had been formulated in relation to the proposed electoral system, excessively complicated.

The human rights chapter of the Bill, introducing guarantees for a wide range of fundamental rights and freedoms, including socio-economic rights and "third generation" rights, would also require increased precision and substantiation as to the scope and nature of the protected rights and related obligations. Similarly, clarifications should be provided as to the immovability of judges and the independence of prosecutors, the transfer of state powers and the place of international norms in the domestic legal system.

The Commission adopted the Opinion on the Constitutional Bill for a new Constitution for the Republic of Iceland, with a number of amendments ([CDL-AD\(2013\)010](#)).

11. Georgia

- *Opinion on the draft Amendments to the Organic Law of Georgia on Courts of General Jurisdiction*

Mr Hamilton presented the opinion on the draft Amendments to the Organic Law of Georgia on Courts of General Jurisdiction, as amended following discussion by the Sub-Commission on the Judiciary at its meeting of 7 March 2013.

The draft amendments cover three different points: media coverage of courts' proceedings, composition of the High Judicial Council and transitional provisions on the termination of functions of the current High Judicial Council of Georgia (HCJ).

As concerns media coverage of courts proceedings, while recognising that there are advantages to having audio or video recordings of court hearings, in particular in the Georgian context, the opinion stressed that the draft amendments relating to media coverage should be more precise as it was doubtful that they meet, as they stand, the criteria of the “quality of the law” required by the case-law of the European Court of Human Rights.

Regarding the composition of the High Judicial Council, it was underlined that in important respects the amendments represent progress for the independence of the Council (in particular through the introduction of a secret ballot in the election procedure and through the election of 8 judges by the Judicial Conference on a proposal from the judges themselves). The main point of contention was the ban of chairmen of courts and chambers from election in the High Council of Justice. The logic behind the establishment of judicial councils suggests that as few limitations as possible be laid on the right of the judges to elect who, among their colleagues, they might wish to represent them in the Council. However in order to take into account the concerns expressed by many Georgian interlocutors the following suggestions were made: the Law could limit the maximum number of chairmen who could sit on the Council; alternatively, the amendments could provide that should a chairman of a court be elected in the Council, he or she would have to resign from his or her position as chairman while of course retaining his or her position as an ordinary judge.

Finally, on the very controversial issue of termination of functions of the current High Judicial Council, the opinion stated that an important function of judicial councils is to shield judges from political influence. For this reason, allowing the complete renewal of the composition of a judicial council following parliamentary elections would be inconsistent. However, it would seem possible to apply transitory measures which would bring the current Council closer to the future method of composition, for example by providing that incumbent chairmen of courts should resign as chair in order to remain on the Judicial Council. A procedure for remedying appointments by the Administrative Committee instead of election by the Judicial Conference could also be envisaged.

Mr Alexandre Baramidze, Deputy Minister of Justice, thanked the Venice Commission for its work. He drew the attention of the participants to a letter sent by the Minister of Justice to M. Buquicchio on 7 March 2013, informing the Venice Commission of changes envisaged in the draft amendments following discussions in the Ministry of Justice, with other executive authorities and the leadership of Parliament.

Mr Konstantin Kublashvili, Chairman, Supreme Court of Georgia stated that the Reform of the Judiciary was a continuous process in Georgia. The High Council of Justice welcomed parts of the amendments, in particular the introduction of a secret ballot but some of the amendments were cause for great concern, in particular the ban of chairmen of courts and chambers on election to the HCJ and the automatic dismissal of the current HCJ. He further stated that he could not agree with the dismissal of the members of the Council who had been elected by the Administrative Committee, as this election had been done in conformity with the Law and had not been challenged in court.

Ms Tinatin Khidashveli, Member of Parliament, explained that the amendments had been introduced in order to depoliticise the HCJ as well as to strengthen the independence of the Judiciary; she consequently questioned that the reform should be delayed by four years. She underlined in addition that the Minister of Justice had made a new proposal and suggested replacing only those members who had been appointed by the Administrative Committee. Finally, Ms Tinatin Khidashveli, expressed the wish that, in the near future, the Venice Commission be more involved in the Constitutional and Electoral Reform in Georgia.

Mr Tuori, Chair of the session, assured her of the Venice Commission’s readiness to co-operate with the Georgian authorities when they so wish.

Mr Akaki Minashvili, Member of Parliament stated that the fact that the judiciary expressed its disagreement with the reform showed that they were independent. He also warned that for the Venice Commission to accept some transitory measures could be badly perceived and may look like an infringement to the principle of legality.

The discussions focused on the possibility of introducing - and to what extent – exceptions to the principle according to which an incoming government or any new Parliament should not adopt measures which would jeopardise the continuity of membership of the High Judicial Council.

Mr Gonzalez Oropeza in particular mentioned that in 1995 the High Council of Justice of Mexico had been entirely changed by the incoming President and that, after this experience, it had been decided to introduce an Article concerning the High Judicial Council in the Constitution.

The rapporteurs clarified that the transitory measures envisaged in the opinion concerned exclusively the judges members of the High Judicial Council who had been elected by the Administrative Committee instead of, as foreseen by the Constitution, by the Conference of Judges. It was accepted that ratification of the “election” by the Conference of Judges could be sought at this stage (as should have been sought at the time of the election).

The Commission adopted the Opinion on the draft Amendments to the Organic Law of Georgia on Courts of General Jurisdiction ([CDL-AD \(2013\)007](#)).

- *Opinion on the Provisions relating to Political Prisoners in the Amnesty Law*

Mr Esanu presented the opinion on the Provisions relating to Political Prisoners in the Amnesty Law of Georgia. The amnesty Law has been analysed against the rule of law principles of legality (including transparency), prohibition of arbitrariness, non-discrimination and equality before the law and was not found to be in conformity with these principles. However, the Commission acknowledged that it would be contrary to the principles of legal certainty and non-retroactivity of criminal law if the persons who had been released pursuant to this law were to be returned to prison. The Commission stressed that any future amnesty or mechanism to address claims of imprisonment for political reasons should comply with rule of law principles and should involve the courts.

Mr Alexandre Baramidze explained that this Law had not been prepared by the Ministry of Justice and that, as a Representative of the executive, he would make no comments. He informed the Commission that in the (near) future, a temporary commission will review applications of people claiming to be political prisoners and will recommend that their cases be reviewed by the Courts, if it finds any indication of miscarriage of justice.

Mr Akaki Minashvili, Member of Parliament, stated that this opinion made no changes as people had already been released but called on the Vice Minister of Justice to send the future draft to the Venice Commission.

During the discussion, it was underlined that Amnesty and Pardon were very difficult legal issues in general and that they were all the more complicated when it comes to Amnesty for “political prisoners”. The implication of the adoption of measures of Pardon or Amnesty on the principle of separation of powers was discussed. While acknowledging that there is probably no unanimously recognised definition of “political prisoners”, the Commission stressed that the definition of who could be considered as a political prisoner in order to benefit from the law under consideration should have been made public. Finally, it was stressed that the opinion under consideration was limited to the Georgian situation.

The Commission adopted the Opinion on the Provisions relating to Political Prisoners in the Amnesty Law ([CDL-AD \(2013\)009](#)).

12. Russian Federation

Mr Clayton reminded that the Venice Commission had adopted an opinion on the Assembly Act of the Russian Federation in March 2012, in which it had criticised the system of prior notification set out in the law as amounting, in effect, to a system of prior authorisation, for failing to provide the application of proportionality principles, for imposing excessive responsibilities on the organisers and for imposing blanket restrictions.

In June 2012, the Russian parliament had adopted amendments to this law which did not follow the Commission's recommendations. The Parliamentary Assembly had asked for the opinion of the Venice Commission on these amendments. In the meantime, the amendments had been brought before the Constitutional Court of the Russian Federation which had rendered its judgment on 14 February 2013.

The Russian authorities had asked the Venice Commission to postpone the examination of this opinion until the June 2013 session in order to give them sufficient time to prepare their arguments. The Commission's Enlarged Bureau however was of the view that the opinion was ripe for adoption and proposed to proceed with it.

The Opinion welcomed the views expressed in the judgment of the Constitutional Court of the Russian Federation and its analysis of the case-law of the European Court of Human Rights. However, the Constitutional Court had been limited in its analysis to the issues raised by the Duma members in their application. The Venice Commission had examined the whole range of issues raised by the amendments and found that, despite the judgment, several issues remained unresolved. In particular, the Commission found the following provisions to be at odds with international standards: the ban on previously convicted individuals to organise public events; the blanket prohibition on wearing masks during public assemblies; the limitations on picketing; the time prohibition; the limits to campaigning prior to "agreement" with the authorities; the specially designated places for public events; the maximum amount of sanctions. In conclusion, the opinion found that the amendments to the Assembly Act adopted in June 2012, despite the positive impact of the judgment of the Constitutional Court of 14 February 2013, represented a step backwards for the exercise of freedom of assembly in the Russian Federation.

Concerning masks, it was acknowledged during the discussion that other European countries prohibited concealing one's identity during public events. It was nonetheless underlined that the blanket nature of the prohibition in the Russian law raised issues of proportionality.

The Commission adopted the opinion on Federal Law no. 65-FZ of 8 June 2012 amending Federal law no. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing and the code of administrative offences of the Russian Federation ([CDL-AD\(2013\)003](#)).

13. Serbia

Mr Hirschfeldt presented the draft opinion on the draft amendments to the laws on the judiciary of Serbia, explaining that the amendments were positive, but that a number of provisions should nevertheless be revisited. With respect to the amendments to the Law on judges, this mainly concerned the liability of judges for damages that should be approached with caution; the introduction of the possibility of carrying out a general review of all courts

and positions of judges at very short intervals (every three years) that should be reconsidered; the standards of evaluation and procedures for judges and their dismissal that should be more clearly defined and the National Assembly's role in the election of judges and of court presidents that should be revisited as it politicises the judiciary. With respect to the amendments to the Law on the organisation of courts, the introduction of several provisions dealing with the protection of the right to trial within a reasonable period of time could be considered an effective tool, but at this point in time a more general and systematic approach was needed to introduce an effective and well-balanced mechanism for the judiciary in Serbia.

Mr Esanu presented the draft opinion on the draft amendments to the Law on the public prosecution. He explained that the provision on the mechanism of objecting to oral instructions (notably mandatory instructions of a higher-ranking public prosecutor to a lower-ranking public prosecutor) should cover the situation of a prosecutor dealing with an instruction that is against his/her conscience and that the competence of the Republican Public Prosecutor to submit "other reports" to the National Assembly, other than the regular annual reports, seemed reasonable provided that it refers to the *competence* rather than to the *obligation* of the prosecutor to do so. In addition, the right of a prosecutor who is subject to disciplinary sanction to appeal to the Administrative Court should also be clarified.

Mr Nikola Selaković, Minister for Justice and Public Administration informed the Venice Commission that the recommendations made in these draft opinions were acceptable for both the Government and the Ministry of Justice and Public Administration of Serbia, especially with respect to the criteria and procedures that needed clarification and that should be defined by the laws, notably that of the liability of judges.

The Commission adopted the Opinion on the draft amendments to the laws on the judiciary of Serbia ([CDL-AD\(2013\)005](#)) and the Opinion on the draft amendments to the Law on the public prosecution ([CDL-AD\(2013\)006](#)).

14. Ukraine

Mr Buquicchio informed the Venice Commission that he had paid a short visit to Kyiv in February to meet with the President, the Speaker of Parliament and the Bureau of the Constitutional Assembly. He explained that the Venice Commission's main concerns and priority were the reform of the judicial system, the electoral system, the *Prokuratura* and local self-government. Mr Kravchuk, the President of the Constitutional Assembly, had expressed his intention to send in April the draft amendments to the Chapter of the Constitution on the judiciary to the Venice Commission for an opinion. He had also met with the Speaker of Parliament and discussed the electoral reform; the Ukrainian authorities appeared to intend to co-operate closely with the Venice Commission on this issue.

Mr Kivalov explained that the Ukrainian authorities were following the Venice Commission's recommendations in the drafting of the Constitution and that the work was on-going. He said that the Constitutional Assembly was composed of constitutional law experts, representatives of local self-government, NGOs and was headed by Mr Kravchuk. The Assembly was well respected and its plenary sessions were open to the public, the media and could be followed on the internet.

15. Study on Children's Rights in Constitutions

Mr Helgesen informed the Commission that a study on Children's Rights in Constitutions would be initiated as a contribution to the 2012-2015 Council of Europe Programme "Building a Europe for and with Children"; hopefully it would be presented at the 2014 Ministerial Conference. The Parliamentary Assembly might also request this study from the Venice

Commission, in order to complete a report under preparation within its Committee on Social Affairs, Health and Sustainable Development. For the preparation of the study, the Venice Commission would have recourse to an external expert, Mrs Ursula Kilkelly, who has extensively written on the implementation of Children's Rights: International standards in national legal systems.

Several members welcomed this project as an opportunity to take stock of the current situation and of recent constitutional amendments. Ms Err informed the Commission that she would report this decision to the next meeting of the Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Assembly.

16. Study on “the role of extra-institutional actors in the democratic system”

Mr Maiani presented the draft study on “the role of extra-institutional actors in the democratic system” drawn up on the basis of comments by Mr Haenel, Ms Haller, Mr Maiani, Ms Peters and Mr Raj Chari (expert).

This study was requested by the Parliamentary Assembly, in its Resolution 1744 (2010). The Committee of Ministers had decided to follow-up the Assembly's Recommendation to draw up a European code of conduct on lobbying, in the light of the findings of the Venice Commission's study. The report had taken into consideration this background and related expectations when defining its purpose and scope. After delimitating the notion of lobbying as commonly accepted, its modalities and the scale of involvement of lobbying actors in the political process, the report assessed lobbying activities against democratic standards, such as the democratic principle and pluralism, freedom of association and of expression as guaranteed by the European Convention of Human Rights and the Court's case-law, and other Council of Europe's guidelines deriving from Recommendations of the Committee of Ministers.

The report further proposed a reflection on the opportunities and risks of lobbying for the functioning of democratic institutions. As a contribution to pluralism, extra-institutional actors could be regarded as a way for improving the functioning of the democratic system. However, the activities of extra-institutional actors aimed at influencing political decision-making could raise concerns with regard to legitimacy, representativeness, equality, transparency and accountability, which are fundamental principles of democracy.

By examining and evaluating the existing legal system of lobbying regulations, the report finally provided an overview of possible strategies to strengthen the democracy-supportive role of extra-institutional actors in a democratic society. While different types of system regulation had been adopted throughout Europe, this tendency seemed to denote an increasing interest in effective regulation in this field. The two main objectives of that regulation were to ensure transparency of the political system and the accountability of political actors.

The report concluded that against the international standards and principles, taken together with increasing demands by citizens who seek more transparency in politics, the regulation of lobbying activities seemed indeed a suitable response in order both to strengthen the positive aspects in the role of extra-institutional actors and to counter the drawbacks if not threats to the democratic process that lobbying might entail.

Several members underlined the complexity of the subject and of related issues. There was lengthy discussion as to whether the role of extra-institutional actors, such as NGOs defending principles of common interest, should be addressed in the report at the same level as professional lobbyists. It was also proposed to mention the term “lobbying” in the title of the study to make it clear that this report focuses on this type of extra-institutional actors.

The Commission adopted the study “the role of extra-institutional actors in the democratic system (lobbying)” ([CDL-AD\(2013\)011](#)).

17. Joint Guidelines by the Venice Commission and the OSCE/ODIHR on Freedom of Association

Ms Thorgeirsdottir informed the Commission about a first meeting which had taken place in Paris on 8 February 2013, in order to discuss the frame of the new project of Joint Guidelines by the Venice Commission and the OSCE/ODIHR. It was decided that both institutions would seek inclusiveness and would contribute equally to the process. While a long standing expert would be hired by ODIHR, the core Working Group of experts would consist of academics and representatives of selected associations (including the Conference of OING of the Council of Europe), with one gender expert. Introducing the UN Special Rapporteur at some point of the process would be welcome. For the Venice Commission, Ms Peters, Ms Thorgeirsdottir and Mr van Dijk will be part of the core Working Group. It was agreed that the format and scope of the Guidelines would be comprehensive, but short, with a description of best practices, like other joint Guidelines. The Working group had identified certain key issues to be addressed; however the definition of the exact content of the guidelines had been left to the first meeting of the Joint core Working Group.

18. Address by the President of the Constitutional Court of Montenegro

Mr Milan Markovic, President of the Constitutional Court of Montenegro, reminded the Venice Commission that the Constitution of Montenegro had entered into force in October 2007 and that it established a new system for Montenegro. Part 6 of the Constitution regulates the competence of the Constitutional Court on the model of Austria and Germany. The recent introduction of the individual constitutional complaints procedure had seen the caseload of the Court soar, a sign that it was working. However, this would also increase the risk for Montenegro to be in violation of Article 6 ECHR with respect to holding trials within a reasonable period of time.

Questions were raised about the Venice Commission’s recommendations made with respect to the composition of the Constitutional Court and whether the draft constitutional and legislative amendments on this matter were being finalised.

In reply to a question from Mr Neppi Modona concerning the existence of draft laws dealing with the composition of the Constitutional Court following the Venice Commission’s recommendations, Mr Milan Markovic said that due to the caseload, constitutional amendments were currently being prepared to increase the number of judges from 7 to 9. This would enable the Court to establish special panels of judges (composed of 3 judges each) to decide constitutional complaints (if unanimous). If unanimity cannot be reached, the case will then be sent to the plenary.

19. Coopération avec le Maroc

Mme Martin informe la Commission des suites données à la demande d’assistance de Mme Hakkoui, Ministre de la Solidarité, de la Femme, de la Famille et du Développement social, en vue de la mise en place de l’Autorité chargée de la parité et de la lutte contre toutes les discriminations et du Conseil consultatif de la famille et de l’enfance, tels que prévus par la constitution. Une délégation du Ministère marocain s’est rendue à Strasbourg, le 25 janvier 2013, afin d’avoir un échange de vues sur les meilleures pratiques européennes. Il a été convenu qu’une délégation de la Commission de Venise et d’experts du Conseil de l’Europe se rendrait à Rabat en vue d’une audition avec les Commissions scientifiques qui ont été mises en place par le Ministère marocain, ainsi qu’avec d’autres acteurs locaux. Dans une étape

ultérieure le Ministère envisage de soumettre à la Commission de Venise les projets de lois avant soumission au Parlement.

M. Markert participera le 14 mars 2013 à un séminaire sur l'Etat d'avancement du partenariat pour la démocratie. Par ailleurs, la Conférence régionale des rédacteurs de constitutions, proposée par M. Menouni se tiendra mi-mai.

Entre temps, la Commission poursuivra son soutien aux activités du Médiateur marocain, en contribuant à un séminaire de formation pour les collaborateurs des Médiateurs membres de l'Association francophone des médiateurs de la Méditerranée, les 9-10 avril 2013.

M. Menouni se félicite de l'investissement et des activités de la Commission de Venise au Maroc.

20. Other constitutional developments

Tunisie

M. Ben Achour informe la Commission des derniers développements politiques en Tunisie, notamment la crise du gouvernement, l'assassinat du leader politique Chokri Belaïd, la démission du premier ministre suite au rejet de sa proposition de former un gouvernement technique et la toute récente formation d'un nouveau gouvernement comprenant des ministres techniques. Concernant la préparation de la constitution par l'Assemblée Nationale Constituante, il précise qu'aucune décision n'a pu être prise par rapport au régime politique et que la composition du futur Conseil Supérieur de la Magistrature reste controversée. Sur la date des élections, il évoque la possibilité que la constitution ne soit pas adoptée par la plénière de l'ANC et qu'un référendum ne soit nécessaire, ce qui repousserait les élections à une date bien ultérieure à celle annoncée. Finalement, M Ben Achour invite la Commission à poursuivre sa collaboration avec la Tunisie, tout en évitant de manipulations.

Turkey

The Commission was informed on the participation of the President in the EU-Turkey Joint Parliamentary Committee meeting in Ankara on 14-15 February 2013. The President stressed that, during his exchanges with the Joint Committee, he had reiterated the Commission's readiness to co-operate with the authorities and provide them all the assistance needed in the constitutional process.

The President took this opportunity to inform the members that, although some commendable progress had been achieved, the work of the Conciliation Committee set up within the Parliament of Turkey in order to find consensus on the most sensitive constitutional issues seemed to be blocked. Under these circumstances, alternative scenarios, some of them outside the procedure foreseen by the Constitution for constitutional revision, were being considered. These included a draft for a new constitution proposed by the Prime Minister and followed by a referendum.

Mr Özbudun confirmed that the situation of constitutional reform was unclear. He stressed as a positive development the agreement found within the parliament for the establishment of the Joint Conciliation Committee as well as the inclusive and open way in which this committee had been operating (with all four main political parties represented therein and numerous open exchanges with other interested actors - trade unions, academics, smaller parties, business associations etc.). He however noted that the unanimity rule adopted by the Conciliation Committee for proposing formal constitutional amendments to the Parliament made it particularly difficult to reach consensus. As a result, different options were possible as a result of on-going political negotiations.

21. Report of the meeting of the Scientific Council (7 March 2013)

Mr Helgesen informed the Commission about the plans of the Scientific Council to work on the checklist on the Rule of Law, on a new compilation on the role of political parties and on the study on the rights of the children.

He also proposed to the Commission, after discussing with the Enlarged Bureau, to appoint three new Chairs of Sub-Commissions as members of the Scientific Council: Mr Kaarlo Tuori, Mrs Herdis Thorgeirsdottir and Mr Jorgen Sorensen. The composition of the Scientific Council would be totally renewed in December 2013.

22. Rapport des réunions du Conseil des élections démocratiques (15 décembre 2012 et 7 mars 2013)

Lors de sa réunion du 15 décembre 2011, le Conseil des élections démocratiques a notamment examiné l'avant-projet de rapport sur l'usage des ressources administratives pendant les campagnes électorales, traité de la préparation de l'avis sur le droit électoral du Mexique et eu un échange de vues avec le représentant du Congrès sur les activités de celui-ci en matière électorale.

M. Jean-Claude Colliard informe la Commission de l'état d'avancement des différentes activités de la Commission, telles que discutées lors de la réunion du 7 mars 2013, et notamment de:

- la réunion sur les systèmes électoraux en Tunisie, qui s'est tenue à Strasbourg le 18 décembre 2012 : elle a permis de discuter des systèmes électoraux, et en particulier de ceux qui pourraient être pris en considération pour les prochaines élections législatives en Tunisie ;
- l'assistance à l'observation des élections présidentielles en Arménie (19 février 2013) au cours de laquelle la Commission a apporté un conseil juridique à la délégation d'observateurs de l'APCE ;
- le transfert en cours de la base VOTA au Tribunal électoral du pouvoir judiciaire de la Fédération du Mexique.

Le projet d'avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur la Moldova est traité sous le point 8.

23. Adoption of the annual report of activities 2012

The Commission adopted the annual report of activities 2012 ([CDL\(2013\)001](#)).

24. Dates of the next sessions

The schedule of sessions for 2013 was confirmed as follows:

95 th Plenary Session	14-15 June 2013
96 th Plenary Session	11-12 October 2013
97 th Plenary Session	6-7 December 2013

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

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

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

[Link to the list of participants](#)