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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**MEETING OF THE SUB-COMMISSION
ON THE JUDICIARY**

(Venice, 16 October 2008)

REPORT

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1. Adoption of the agenda

The agenda was adopted unchanged.

2. Request by the Parliamentary Assembly of the Council of Europe for an opinion on European standards on the independence of the judicial system

The meeting was chaired by Mr Enzins.

Mr Markert explained that the request for an opinion on the independence of the judicial system had come from the Legal Affairs Committee of the Parliamentary Assembly, which was preparing a report on the abuse of the criminal justice system. The introductory report by the Assembly's rapporteur was available as a link in the annotated agenda (CDL-JD(2008)001ann). The Assembly wanted to have a report on existing standards and the identification of areas where new standard should be developed. The Secretariat note CDL-JD(2008)002 followed the structure of Opinion no. 1 of the Consultative Council of European Judges (CCJE) and presented existing standards like the European Charter on the Status of Judges or Recommendation 94(12) of the Committee of Ministers of the Council of Europe. The latter Recommendation was about to be revised and the report by the Venice Commission would therefore be useful not only for the Parliamentary Assembly but also as an input to the revision of this recommendation. Areas where new standards might be necessary could be:

- Internal independence in general and specifically the right to the lawful judge, i.e. a predetermined assignment of cases to individual judges, thus removing from court presidents the assignment of cases, which could be abused. Such a constitutional right already existed in a number of countries.
- Non monetary benefits for judges (e.g. apartments), the attribution of which could be abused as well.
- Given that the report was to cover the judicial system as a whole, the issue of independence or non-interference in the work of prosecutors could be raised.

Mr Markert pointed out that so far Mr Neppi Modona, Ms Suchocka and Mr Zorkin had agreed to act as rapporteurs. Mr Torfason indicated that he would like to act as rapporteur as well.

Mr Papuashvili and Mr Neppi Modona agreed on the importance of internal independence of judges but pointed out that including prosecution in the report might make its scope too wide.

Mr Baranyi was of the opinion that it would be difficult to decide for or against the independence of the prosecution because the models differed in Europe. Mr Menouni insisted that the definition of judicial policy was a task of the Government and instructions to the Prosecutor General were a legitimate means to implement such policy.

Mr Dürr pointed out that in its opinions the Commission already had indicated substantial guarantees in the field of prosecution, e.g. that senior prosecutors should be able to override a decision of a junior prosecutor only if the junior prosecutor had acted outside the scope of his or her authority.¹ Such substantial guarantees of non-interference could be defined without entering the discussion whether prosecution should be independent.

Mr Zorkin suggested to start with a comparative analysis of all Council of Europe member states but this could not be done within the time frame. The report should focus on the relationship judiciary / executive. In practice, the problem often was not one of standards but of their implementation. The Commission should focus on monitoring.

¹ See Opinion on the Draft Law on the Public Prosecutors Service of Moldova, CDL-AD(2008)019.

Mr Neppi Modona insisted that the starting point should be the Venice Commission's recent Report on Judicial Appointments (CDL-AD(2007)028). However, December would be too early for the adoption of a report.

Mr Endzins agreed and pointed out that the *Vademecum* on the Judiciary (CDL-JD(2008)001) provided an overview of past opinions of the Commission on the judiciary and should be the basis of the new report on the independence together with the Report on Judicial Appointments.

The Sub-Commission decided that the issue of timing should be discussed with the representative of the Parliamentary Assembly during the Plenary Session and the Chair, Mr Endzins, should report on this to the Plenary on Saturday.

3. Other business

Mr Papuashvili raised the issue of judicial ethics and whether a judge would be allowed to make statements relating to political events. Messrs Buquicchio, Endzins and van Dijk replied that this topic should not be discussed in relation to a specific person.