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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

3rd MEETING OF
THE SUB-COMMISSION ON THE JUDICIARY
(Venice, 12 March 2009)

REPORT

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1. Adoption of the agenda

The agenda was adopted without changes.

2. Study on the Independence of the Judicial System

Under the chair of Mr Tuori and later Ms Flanagan, the Sub-Commission examined the comments on the two aspects of the study, judges and prosecutors.

- Judges

The participants discussed Part I on Judges of the Draft Report on the Independence of the Judicial System (CDL-JD(2009)001) prepared on the basis of comments by Mr Neppi Modona, Ms Nussberger and Mr Zorkin. Mr Torfason's recently received comments (CDL-JD(2009)003) were included during the meeting of the Sub-Commission.

The Sub-Commission made the following changes to the draft report:

1. Paragraph 16 was moved to the chapter on general remarks in order to make it clear that this report referred to the ordinary judiciary and did not relate to constitutional courts, international courts or any other special courts.
2. The chapter on the remuneration and the budget was split into two parts.
3. Paragraph 22 was amended in order to make it clear that in addition to the merits of a judge there could be objective reasons for judicial appointments.
4. Paragraph 41 was amended to reflect that remuneration should be based on a general standard and not on an assessment of the individual performance of a judge. Bonuses should be excluded.
5. It was underlined that even in times of crisis, the proper functioning and the independence of the Judiciary must not be endangered by budgetary reductions.
6. The wording on the inadmissibility of guidelines by higher courts for lower courts was amended to reflect that this should not exclude information on existing case-law, including that of the European Court of Human Rights, or recommendations on the level of sentencing.
7. The recommendation on the establishment of a judicial council both for old and new democracies was completed by a reference to the value of the diversity of legal systems.

The Sub-Commission adopted the draft report with amendments and decided to propose it to the Plenary for adoption.

- Prosecutors

The Secretariat recalled main issues which the report should deal with in respect of prosecutors:

1. The two main models for the prosecution service (independence vs. being part of the executive) and guarantees against undue interference in the latter case.
2. Instructions of senior prosecutors to junior prosecutors in individual cases
3. The permanent tenure of prosecutors

The members of the Sub-Commission decided that they should continue to discuss the part on prosecutors in the light of a draft report to be prepared on the basis of comments by the rapporteurs Mr Hamilton, Mr Sorensen and Ms Suchocka.

3. Other business

None

LIST OF PARTICIPANTS

CYPRUS:	Mr Frixos NICOLAIDES
DENMARK:	Mr Jorgen Steen SORENSEN
FINLAND:	Mr Kaarlo TUORI
GEORGIA:	Mr George PAPUASHVILI
GERMANY:	Ms Angelika NUSSBERGER
ICELAND:	Mr Hjörtur TORFASON
ITALY:	Mr Guido NEPPI MODONA
LATVIA:	Mr Aivars ENDZINS
LIECHTENSTEIN:	Mr Harry GSTÖHL
MALTA:	Mr Ugo MIFSUD BONNICI
MOLDOVA:	Mr Nicolae ESANU
ROMANIA:	Mr Lucien MIHAI
SWITZERLAND:	Mrs Gret HALLER
"The Former Yugoslav Republic of Macedonia":	Ms Gordana SILJANOVSKA-DAVKOVA

SECRETARIAT (Venice Commission)

Mr Gianni Buquicchio
Mr Thomas Markert
Ms Simona Granata-Menghini
Mr Schnutz Dürr