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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

SUB-COMMISSION ON LATIN AMERICA

Ouro Preto, Brazil,

6 May 2014

MEETING REPORT

1. Preliminary Point

The President of the Commission, Mr Gianni Buquicchio, welcomed all the participants and congratulated Mr Barbosa on becoming the new President of the Sub-Commission on Latin America, and Mr Luna Ramos on being elected the new Vice-president.

Ms Alanis Figueroa took the floor to present her experience as former President of the Sub-Commission on Latin America. The Sub-Commission was re-established in 2011, and now has as its priority the strengthening of links with other Latin American countries. The first stage consisted of an exchange and sharing of experiences in the fields of constitutional justice, democracy and human rights between Latin America and Europe. However, the remaining challenge is to create stronger tools to enhance the dialogue between those countries which are members of the Venice Commission and those which are not. The Sub-Commission met for the first time outside Venice in Mexico in October 2013, using the opportunity to increase the visibility of the Venice Commission's work on the American continent.

Mr Barbosa Gomes thanked Ms Alanis for her work during her term as Chair of the Sub-Commission and confirmed his commitment to continue working together with all the members of the Venice Commission in creating a work plan for strengthening the role of the Sub-Commission as a platform for interested countries in the region (see item 4 of the agenda).

2. Adoption of the agenda

The agenda was adopted as it appears in document CDL-LA-OJ(2014)001rev.

3. Follow-up to earlier Venice Commission opinions concerning Latin American countries

- Opinion on the Electoral legislation of Mexico (CDL-AD(2013)021)

The opinion on the Electoral legislation of Mexico was adopted in June 2013. Ms Alanis informed the Sub-Commission on the conclusion of the recent electoral reform in Mexico following the 2012 Presidential elections. The text of the opinion had also been debated in the Mexican Congress and several recommendations had been followed, mainly concerning the importance of gender issues and the transversal respect for the principle of equality, including applying this principle when registering candidates, as well as the change in the definition of the rules against calumny and denigration.

4. Communication by the Chair of the Sub-commission

Mr Barbosa submitted several possible topics to the Sub-Commission: a. The constitutionality control by omission, an issue in which Brazil has developed considerable experience; b. The independence of the prosecutor's office; c. The autonomy of the judiciary, including the financial dependence on the government; d. The electronic voting system; e. Judging and deciding using gender perspective.

Mr Buquicchio stressed the importance of prioritising the topics and proposed to include another topic, in the framework of the co-operation with the Bingham Centre (UK): the experience of Latin American countries in the reform of the judiciary subsequent to democratic transitions.

Ms Alanis raised the fact that the Venice Commission had launched a study on the internal democracy of political parties and that she had asked and compiled for the Commission the legislation and applicable rules of many countries of Latin America to be included as reference documents (including Argentina, Bolivia, Costa Rica, Paraguay, Uruguay and Venezuela among others).

Mr Gonzalez Oropeza added the topic of indigenous justice and identified three main axes of activity: justice, which includes the control of constitutionality by omission and the autonomy of the judiciary and prosecutors; electoral issues (electronic voting and internal democracy issues); and the protection of minorities and vulnerable groups, which could include indigenous population issues and the gender perspective.

Ms Bilkova stressed that from the topics raised, two were transversal: the independence of the judiciary and the transitional justice issue.

Mr Romero stressed the importance of the topics and proposed to elaborate a concept paper with key questions in order of priority.

Ms Rocha Antunes proposed to create a permanent secretariat of the Sub-Commission on Latin America in order to create a direct link with all States present, members and non members, and co-ordinate the next steps. Mr Barbosa supported this proposal and announced that Mr Silvio Jose Albuquerque da Silva, Head of his Cabinet, would be the person to develop this initiative. Mr Gonzalez Oropeza and Ms Alanis said that Mexico is willing to support this new structure.

The Sub-Commission therefore agreed to:

- **Establish a permanent Secretariat of the Sub-Commission on Latin America. The coordinator will be Mr Silvio Jose Albuquerque da Silva. The Secretariat will help in proposing and organising the work of the Sub-Commission.**
- **Instruct the permanent Secretariat to elaborate concept papers for the different topics proposed, in view of a meeting of the members from Latin America which will take place during the Plenary session in June 2014.**

5. Communication by the President of the Venice Commission

In 2013, several activities were organised by the Venice Commission in Latin America:

- The VOTA agreement between the Venice Commission and the Federal Electoral Tribunal of Mexico, which was concluded with the official signature of the text on 23 October 2013 and the enlargement of the database to all Latin American countries, has continued developing. Since September 2013, over 30 legal texts have been indexed and added to the database.

All concerned Latin American countries are invited to verify the information submitted and to add further elements, if necessary.

- The Sub-Commission was also informed on the progress made on the Study on the implementation of international Human Rights treaties, with a special focus on Latin America and within a comparative basis. The organisation of the *International Congress on the implementation of international human rights treaties in national legislation*, held in Mexico City (23-25 October 2013), was part of the exchanges that

were necessary to strengthen the comparative discussion and exchange of views on the topic of the Study. The rapporteurs (Mr Pieter Van Dijk – former member of the Venice Commission), Ms Bilkova (member, Czech Republic) and Ms Anne Peters (substitute member, Germany), created a database of over 500 constitutional decisions relating to the implementation of human rights treaties as such, as well as to the implementation of the International Courts of Human Rights' judgments. This is a very timely Study, as recent reactions in Europe to certain European Court of Human Rights' judgments, such as the discussion on prisoners' rights in the United Kingdom, or the complexities of compliance with international judgments at the domestic level, for example, in the re-opening of proceedings in criminal matters, are an issue of concern. It will be the first time that a Study will compare the experiences of the European and Inter-American systems. The Study will be submitted for discussion and possible adoption before the end of 2014.

Mr Buquicchio underlined the importance of Latin America for Europe and recalled that strong co-operation with the region was the initial idea of the Venice Commission's founder, Mr La Pergola, who had proposed the creation of the COVENAL (Venice Commission for Latin America). Until 2002, countries from Latin America were only observer States, but with the change to the Commission's Statute making it into an enlarged agreement, the Venice Commission opened its doors to non-European States. In Latin America, the first state to join was Chile, followed by Peru, Mexico and Brazil.

The re-establishment of the Sub-Commission on Latin America was the first step towards the future creation of a Sister-Commission for Latin America.

In order to increase and further improve co-operation between the Venice Commission and Latin American countries that are not members of the Venice Commission, several steps were proposed:

- a. Firstly, the need to establish permanent and institutional contacts, in order to avoid having different participants who are not familiar with the Venice Commission. For this reason, each Latin American country that is interested should appoint a representative for the Sub-Commission on Latin America and co-operate closely with the co-ordinator of the permanent Secretariat.
- b. Secondly, the creation of a forum/network of experts, which could intervene when a country requests a study or an exchange of views on a specific topic.

The President underlined the importance of the links with the judiciary and the fact that all representatives present in the meeting were members of Courts. However, he stressed that courts have a special co-operation channel: accession of the WCCJ, with the incentive of participating in the VOTA and CODICES databases. **The President of the VC formally invited all Courts from Latin America to accede to the WCCJ and recalled that the 3rd Congress will take place on 28 September to 1st October 2014 in Seoul.**

The possibility of becoming a member of the VC was debated, even though any new request for accession has to be submitted to the Committee of Ministers of the Council of Europe for approval, which is a complex procedure. However, for a non-member country to become a permanent participant in the Sub-Commission on Latin America represents an alternative and a more flexible way of co-operating with the Venice Commission, without the budgetary constraints but with the possibility of participating in its activities and in the exchange of experiences.

The President formally invited all interested non-members from Latin America to nominate a representative to the Sub-Commission and to get in touch with the Permanent Secretariat of the Sub-Commission.

The Memorandum of Understanding signed with the OAS could be an element to channel cooperation with Latin America within the framework of the Sub-Commission.

Mr Ernesto Vargas Silva, from Colombia, Ms Nancy Hernández, from Costa Rica and Mr Juan José Núñez, from Venezuela, supported the participation of their countries with a representative in the Sub-Commission.

The Sub-Commission therefore agreed to invite all interested Latin American countries to nominate a representative to the Sub-Commission on Latin America.

6. Road-map for the activities in Latin-America in 2015-2016

The Secretariat of the Venice Commission sent out a questionnaire on possible areas of co-operation between the Venice Commission and Latin American countries participating in the meeting of the Sub-Commission on 6 May 2014. Nine guest participants have replied to the Venice Commission concerning their views on the Sub-Commission on Latin America and the Venice Commission and possible areas of co-operation: the Supreme Courts of Bolivia (Maritza Suntura Juaniquina), Chile (Hugo Dolmestch Urta), Colombia (Maria Cristina Duque Gomez), Costa Rica (Nancy Hernandez), El Salvador (Edward Sidney Blanco Reyes), Nicaragua (Alba Luz Ramos Vanegas), Peru (Jorge Luis Salas Arenas) and Venezuela (Juan José Núñez) and the Constitutional Court of Colombia (Luis Ernesto Vargas Silva). The four members of the Venice Commission (Brazil, Chile, Mexico and Peru) also sent comments and replies. Hardly any of the guests who replied had previously participated in activities organised by the Venice Commission.

There appears to be an interest in developing co-operation in three areas: fundamental rights, justice and electoral matters.

Having studied the replies and in accordance with the discussions held, the following elements appeared relevant for future co-operation:

- a. According to its Statute the Venice Commission can develop co-operation activities, in all areas indicated in the questionnaire, with States. It is expected that the participants of this meeting will inform other institutions of their countries about the different possibilities of exchange of information and co-operation with the Commission.
- b. Any ad-hoc co-operation will be based on concrete requests coming from the authorities.
- c. If certain subjects interest several countries, the Sub-Commission will study the possibility of organising regional activities on an ad-hoc basis.

The Sub-Commission agreed therefore to proceed as follows:

- **Transmission of the topics selected to the Head of the permanent Secretariat of the Sub-Commission on LA, Mr. Albuquerque da Silva.**
- **Meeting of the Head of the permanent Secretariat with the four members of the Venice Commission from Latin America during the Plenary session in Venice (13-14 June 2014) with a view to establishing the priorities amongst the proposed topics.**
- **At the next meeting of the sub-commission (possibly in October in Venice): discussion of future actions in the light of the priorities.**

7. Date and place of the next meeting of the Sub-Commission

The place and date of next meeting will be decided at a later stage.

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS

VENICE COMMISSION MEMBERS

Mr Gianni BUQUICCHIO
President of the Venice Commission

Ms Herdis THORGEIRSDOTTIR
Vice-President of the Venice Commission, Professor, President of the European Women
Lawyer's Association, Iceland

Mr Joaquim Benedito GOMES BARBOSA
President, Federal Supreme Court of Brazil, Member of the Venice Commission, President of
the Sub-Commission on Latin America

Ms Carmen Lucia ROCHA ANTUNES
Judge, Federal Supreme Court of Brazil, Substitute Member of the Venice Commission

Mr Juan José ROMERO GUZMAN
Judge, Constitutional Court of Chile, Member of the Venice Commission

Ms Veronika BILKOVA
Professor, Department of International Law, Faculty of Charles University, Prague, Czech
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Ms Carmen ALANIS
Judge, Federal Electoral Court of Mexico, Substitute Member of the Venice Commission

Mr Manuel GONZALEZ OROPEZA
Judge, Federal Electoral Court of Mexico, Substitute Member of the Venice Commission

GUESTS

BOLIVIA

Ms Maritza SUNTURA JUANIQUINA
Judge, Supreme Court

CHILE

Mr Hugo DOLMETSCH URRA
Judge, Supreme Court

COLOMBIA

Mr Luis Ernesto VARGAS SILVA
President, Constitutional Court

COSTA RICA

Ms Nancy HERNANDEZ LOPEZ
Judge, Constitutional Court

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Mr Antonio GAGLIARDO
Judge, Constitutional Court

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Mr Edward Sidney BLANCO REYES
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Mr Jorge Luis SALAS ARENAS
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Mr Jorge LARRIEUX RODRIGUEZ
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