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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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

102nd PLENARY SESSION

Venice, Scuola Grande di San Giovanni Evangelista
Friday, 20 March 2015 (9.00 a.m. - 6.00 p.m.) -
Saturday, 21 March 2015 (10.45 a.m. - 1.00 p.m.)

102^e SESSION PLÉNIÈRE

Venise, Scuola Grande di San Giovanni Evangelista
Vendredi 20 mars 2015 (9h00 - 18h00) -
Samedi 21 mars 2015 (10h45 - 13h00)

REVISED SESSION REPORT
RAPPORT DE SESSION REVISE

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1. Adoption of the Agenda

The agenda was adopted as it appears in document CDL-PL-OJ(2015)001ann.

2. Communication by the President

The Commission observed a minute of silence in memory of the victims of the deadly attack committed in Tunis on 18 March 2015 and expressed the firmest condemnation of all acts of violence and extremism as well as its sympathy for the families of the victims and for the Tunisian people.

Mr Buquicchio welcomed a new substitute member of the Venice Commission in respect of Austria as well as special guests and delegations attending the Plenary Session. He also informed the Commission about his recent activities, which are listed in document [CDL\(2015\)005](#).

In addition the Commission was informed that the President now has a Facebook page and a Twitter account.

3. Communication from the Enlarged Bureau

The Commission was informed of the discussions which took place at the meeting of the Enlarged Bureau on 19 March 2015, and took note that Mr Clayton had become President of the Sub-Committee for Working Methods following the resignation of Mr Sorensen.

4. Communication by the Secretariat

Mr Markert informed the participants about organisational arrangements for the upcoming Plenary Session and in particular about the change in the timing of the Session on Saturday 20 March 2015 due to the joint meeting with the Presidential Committee of the Parliamentary Assembly of the Council of Europe.

5. Co-operation with the Committee of Ministers

Ambassador Konstantin Korkelia, Permanent Representative of Georgia to the Council of Europe and formerly a substitute member of the Venice Commission in respect of Georgia, praised the Venice Commission for the role it plays in advising governments on complex issues of constitutional law, and stressed the importance of multilateral exchanges between the Commission and member States. He said that his country's co-operation with the Venice Commission was fruitful and time-tested. He emphasised that the Venice Commission had always responded quickly in crisis situations, as is currently the case in Ukraine. He expressed his confidence that the Venice Commission's expertise and experience would be useful for the Ukrainian commission on constitutional reforms.

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

The Commission held an exchange of views with Mr Philippe Receveur, Chair of the Monitoring Committee of the Congress and Mr Alain Delcamp, former Chair of the Group of Independent Experts, the Congress' adviser on constitutional matters. Mr Receveur informed the Commission about the Congress' recent activities. He observed that there is growing support for the inclusion of the principle of subsidiarity, as enshrined in the European Charter for Local Self-Government, into constitutions. He mentioned complaints which the Congress has received concerning territorial re-organisation in France and Albania, which mainly concerned the lack of transparency and inadequate consultations with the territorial entities concerned. He

also described the results of post-monitoring missions in Georgia, Ukraine and Portugal. He presented a brief report on nationals living abroad and voters' lists. He finally informed about the upcoming forum in Graz (Austria) on human rights at the local level. He also informed the Commission that the Congress would send observers to the elections of Bashkan (the Governor) of the autonomous territorial unit (ATU) of Gagauzia in the Republic of Moldova.

Mr Delcamp informed the Commission in more detail about the Congress' recent activities in Ukraine, in particular within the framework of the follow-up to the Congress' 2013 recommendations. The Congress welcomed the determination of the Ukrainian authorities to pursue the process of decentralisation. However, certain important issues were still to be addressed, namely the degree of financial autonomy of local communities and the question of the voluntary merger of the currently too numerous local communities. Mr Delcamp regretted that due to the lack of consensus within the ruling coalition, the decentralisation reform at the constitutional level had been put on hold.

7. Follow-up to earlier Venice Commission opinions

Opinion on the seven amendments to the Constitution of "the former Yugoslav Republic of Macedonia" concerning, in particular, the Judicial Council, the competence of the Constitutional Court and special financial zones ([CDL-AD\(2014\)026](#))

Mr Markert informed the Commission that, in January 2015, the Government of the Republic had introduced a new bill before Parliament, containing revised draft amendments to the Constitution. This bill, which reflected some but not all of the criticism expressed by the Commission in its opinion, was supported by the Parliament; however, another vote in Parliament was necessary to pass these revised amendments. On the substance, the draft amendments had undergone some changes. Thus, the revised draft amendment on the definition of marriage no longer prohibited same-sex partnerships as was previously the case; however, under the revised text, to introduce such partnerships (which are not, so far, recognised in law), any such legislation would need the support of a two-thirds majority in the Parliament. The amendment on the establishment of international financial zones in the country had been re-drafted to provide that the functioning of such zones will be regulated by law. Much will thus depend on the implementing legislation. Two other important amendments - one introducing the constitutional complaint and another changing the composition of the Judicial Council - remained essentially unchanged. In particular, the judicial component within the Judicial Council (10 out of 15) remained too strong. Mr Markert observed that the adoption of the revised constitutional amendments would require a qualified majority (and, for the amendments concerning the judicial council – a "double qualified majority" which includes the majority of the candidates representing ethnic minorities).

Joint Opinion on Draft Amendments to Legislation on the Election of People's Deputies of Ukraine ([CDL-AD\(2013\)026](#))

Following the Venice Commission's opinion of 2013 the legislation on the election of People's Deputies had been amended in 2013 and in April 2014. These amendments introduced some improvements following previous PACE recommendations, OSCE/ODIHR parliamentary reports and former Venice Commission opinions; however, they did not address the main shortcomings, notably, the choice of the mixed system, a lack of comprehensive electoral reform, certain limitations on candidacy rights and the lack of meaningful campaign finance regulations.

In order to pursue its dialogue with the authorities on the basis of the 2013 and earlier opinions, the Venice Commission had organised a meeting with MPs, the civil society and electoral experts in January 2015 in Strasbourg. In February 2015, the Civil Network

OPORA organised a round table in Kyiv, during which the local electoral reform was also discussed.

The Verkhovna Rada was to establish a specific group on the electoral reform focusing on both the law on parliamentary and local elections. This would enable, among other things, one of the Commission's important recommendations - harmonisation of the legislation in the electoral field – to be met. Unfortunately, no important developments had taken place between January and March 2015.

Instead, the Ukrainian authorities had established a working group on the electoral reform under the Sub-Committee on Territorial reform of the Verkhovna Rada, which would discuss local elections legislation. The local elections are scheduled for October 2015. The Venice Commission was invited to participate and follow the work of the working group on electoral reform. The working group met for the first time on 12 March. The recommendations of this meeting were not conclusive and the Rada and the national expert community expressed their wish to co-operate with different international institutions on this subject.

The Venice Commission remains at the disposal of the Ukrainian authorities for further assistance in this important reform.

Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on making changes to the Law on Disciplinary Liability and Disciplinary Proceedings of Judges of General Courts of Georgia ([CDL-AD\(2014\)032](#))

The Commission was informed that, following the opinions adopted at its 100th plenary session on three draft laws introducing important legislative amendments in the judicial field (the draft law on disciplinary liability of judges, as well as those on general courts and on cassation appeals), the Ministry of Justice, which had positively welcomed most of the Commission's recommendations, was expected to submit the revised drafts to parliament. The review process seemed nevertheless to require more time since none of the drafts had yet been submitted to parliament.

Opinion on the Draft Constitutional Law on the Constitutional Court of Tajikistan ([CDL-AD\(2014\)017](#))

The Secretariat informed the Commission that, shortly after the adoption of the opinion, the Tajik Parliament had adopted the law, which was enacted on 26 July 2014. Recently, the Constitutional Court of Tajikistan had transmitted a Russian translation of the law ([CDL-REF\(2015\)007](#)). Some recommendations made in the opinion had been followed in a somewhat paradox way. The Commission had recommended removing, from the general prohibition for Constitutional Court judges to represent others in legal proceedings, the exception to represent family members. However, not only the exception had been removed but the whole prohibition to represent others. Similarly, the Commission had recommended leaving the choice to the Court rather than providing for an automatic continuation of proceedings in all human rights related cases when the act under review was no longer in force. The adopted Law removed this rule altogether. As a result of the recommendation to remove the power of Parliament to award judges' certificates, this power had been attributed to the Head of State. Following one of the main recommendations, individual complaints could be made by all individuals, not only by citizens.

Rapport sur le rôle des acteurs extra-institutionnels dans un régime démocratique (Lobbying) ([CDL-AD\(2013\)011](#)).

La Commission est informée que, suite au rapport sur le rôle des acteurs extra-institutionnels dans un régime démocratique adopté par la Commission lors de sa 94^e session plénière en mars 2013, le Comité des Ministres a pris connaissance des conclusions et a mandaté, le 11 février 2015, le Comité européen de coopération juridique a rédigé un texte qui aura pour objectif d'encadrer la régulation des activités de lobbying. Le Bureau du Comité européen de coopération juridique a décidé, le 26 février, d'inviter la Commission de Venise à participer au groupe de travail afin de s'assurer de prendre en compte d'éventuelles questions de droit constitutionnel.

Par ailleurs, M. Maiani a été invité, le 4 février 2015, par la Commission constitutionnelle du Sénat italien à une audition afin de présenter ce rapport.

8. Republic of Moldova

Mr Varga, on behalf of the rapporteurs, introduced the draft opinion on the Draft Law on the Prosecution Service of the Republic of Moldova, jointly prepared with the Directorate of Human Rights and the OSCE/ODIHR, previously examined by the Sub-Commission on the Judiciary on 19 March 2015. Minor amendments proposed by the rapporteurs had already been approved by the Sub-Commission.

Mr Varga pointed out that the pending reform was of particular importance for the Republic of Moldova, where corruption, a widespread phenomenon within various sectors of the society, was also affecting the judiciary, at its different levels, thus leading to distrust with regard to its independence and its efficiency. The assessment of the Draft Law was part of a longer process of co-operation with the Moldovan authorities on the legal framework pertaining to the Prosecution Service. In 2008, the Commission had already adopted an opinion on a previous draft law, subsequently amended by the Moldovan parliament.

Overall, the Draft Law represented a substantial improvement of the current Law. Many of the proposed amendments entailed the implementation of the Commission's 2008 recommendations. It was in particular positive that the Draft Law provided for a significant reduction of the tasks of prosecutors - most of which should expire within three years from the entry into force of the Draft Law - which are outside the scope of their main task of criminal prosecution. Additional steps were proposed to secure the autonomy of individual prosecutors and the service's own independence from external influence, its demilitarisation; further improvements concerned the appointment and tenure of the Prosecutor General, the appointment and promotion of other prosecutors, as well as performance evaluation and disciplinary procedures. The proposed procedure for the appointment of the Prosecutor General, likely to help enhance his/her independence from political influence, was clearly preferable to the current procedure but would involve a constitutional amendment.

To further improve the Draft Law, the Moldovan authorities were invited inter alia: to provide a narrower delineation of the prosecutors' powers outside criminal law and for judicial supervision of their actions in this area; to provide clear and specific regulations for the dismissal of the Prosecutor General and more precise safeguards for the internal independence of prosecutors; and to duly harmonise provisions of the Draft Law with corresponding provisions of the Moldovan legislation, notably the Code of Criminal Procedure. The draft opinion also recommended reconsidering the proposals which are not consistent with the organic law on the Autonomous Territorial Unit of Gagauzia and stressed that any interference with the status of Gagauzia would be a particularly sensitive step which would require, if done at all, appropriate consultation with the competent bodies of Gagauzia.

The Commission subsequently held an exchange of views with Ms Liliana Palihovici, Deputy Speaker of Parliament, Mr Vladimir Grosu, Minister of Justice and Mr Corneliu Gurin, Prosecutor General of the Republic of Moldova. The representatives of the Moldovan authorities thanked the Venice Commission for its assistance which was important for the domestic reform of the prosecution service, part of a wider process aimed at modernising the overall judicial system, in line with the European standards of independence, efficiency and accountability. They informed the Commission of the forthcoming steps in the reform process, including the intention to establish a specific working group to draft the constitutional amendments required by certain proposals contained in the Draft Law.

The Commission adopted the Joint Opinion on the Draft Law on the Prosecution Service of the Republic of Moldova ([CDL-AD\(2015\)005](#)).

9. Ukraine

a) *Law on the Judiciary*

Mr Hamilton introduced the draft joint opinion by the Venice Commission and the Directorate of Human Rights (DGI) on the Law on the Judiciary and the Status of Judges and amendments to the Law on the High Council of Justice of Ukraine. He pointed out that the law took up many recommendations from earlier opinions of the Venice Commission but it also included problematic areas, which would require further amendments. Following discussions in the Sub-Commission on the Judiciary and with the Ukrainian authorities, he made proposals for amending the conclusion of the draft opinion, notably by removing a reference to judges' certificates, which were not a major issue. He also mentioned that more generous provisions on the use of languages other than Ukrainian in courts could be envisaged as part of a more comprehensive policy.

Mr Oleksiy Filatov, Deputy Head of the Presidential Administration of Ukraine, welcomed the draft opinion and pointed out that the main problems stemmed from the Constitution rather than the law. He insisted that in Ukraine there was no real language problem. Russian speakers were able to understand Ukrainian and *vice-versa*. Both judges and jurors should be able to speak the State language but the wording of the draft could be improved in this respect. It was also explained that, in the past, a large number of judges had been appointed - due to corruption - without the necessary qualifications and were corrupt themselves. In order to overcome this serious problem, one possibility considered was to dismiss all judges but the drafters had deemed this to be unconstitutional. Instead, the judges should pass a test and be checked against certain anti-corruption criteria. This procedure should enable all good judges to re-qualify. Similar procedures had been used in other post-communist countries, notably in East Germany, where former GDR judges had to pass a qualification test.

Ms Oksana Syroyid, Deputy Speaker of the *Verkhovna Rada* of Ukraine agreed that there was no real language problem in Ukraine and promised to send evidence to prove this. She expressed her agreement with the draft opinion's recommendation to exclude Parliament from making decisions on the career of judges.

In the discussion it was underlined that the President should not be able to establish courts. This was clearly a legislative matter.

The Commission adopted the joint opinion of the Venice Commission and the Directorate of Human Rights (DGI) on the Law on the Judiciary and the Status of Judges and amendments to the Law on the High Council of Justice of Ukraine ([CDL-AD\(2015\)007](#)).

The Commission also took note of the preliminary opinion on the draft Law on the Judiciary and the Status of Judges ([CDL\(2015\)004](#)), previously sent to the Ukrainian authorities.

b) Lustration Law

Ms Peters reminded the Commission that in its interim opinion on the Lustration Law of Ukraine in December 2014, the Commission had reached the following conclusions: lustration should concern only positions which may genuinely pose a significant danger to human rights or democracy; guilt must be proven in each individual case, and cannot be presumed on the basis of the mere belonging to a category of public officials; responsibility for carrying out the lustration process should be removed from the Ministry of Justice and should be entrusted to a specifically created independent commission, with the active involvement of the civil society; the Lustration law should specifically provide for the guarantees of a fair trial; the lustration of judges should be regulated in one piece of legislation; information on the persons subject to lustration measures should only be made public after a final judgment by a court.

In February 2015, a delegation of the rapporteurs had travelled to Kyiv and had met with the Ukrainian authorities in order to discuss how to amend the Lustration Law. It had become clear that the lustration process aimed to a large extent at fighting corruption rather than at preventing threats to the democratic development of the country due to anti-democratic ideological positions. There had been further informal exchanges, in particular as concerns the Central Executive Body overseeing the lustration process.

On the eve of the Plenary Session, in Venice, the discussion had been pursued at a further meeting between the rapporteurs and the Ukrainian Minister of Justice and his delegation.

Progress had been made in respect of some recommendations: the judges would be partly excluded from the scope of application of the Lustration Law and the register of the lustration measures would be amended. Further work was however necessary to meet the Commission's concerns. While the Minister of Justice intended to provide some clarifications potentially capable of clearing up some doubts, some problematic points remained and had to be addressed in the form of amendments, concerning, in particular, the positions to be lustrated, the principle of individual guilt and the fair trial guarantees.

It had been agreed that the Minister of Justice would provide the rapporteurs with a revised set of draft amendments, with additional explanations and material and with official translations before the end of April 2015. A final opinion would be subsequently prepared, if possible before the Plenary Session of June 2015. Indeed, the lustration process had not been suspended following the adoption of the interim opinion of the Venice Commission and continued to be carried out despite the shortcomings in the law: this matter was therefore to be regarded as an urgent one. The Ukrainian parliament was then expected to adopt amendments to the Lustration Law without delay.

Mr Pavlo Petrenko, Minister of Justice of Ukraine, expressed his appreciation for the Commission's assistance. The December 2014 Interim Opinion had been carefully examined by the Working Group established within the Ministry of Justice and composed of members of parliament, representatives of the executive authorities and professional experts. The working

group agreed that the Lustration law should not be applicable to judges and that the lustration process should be overseen by a special body instead of by the Ministry of Justice.

The Ministry would provide the rapporteurs with the requested information and material. The working group would complete its work by May 2015. Revised amendments to the Lustration Law would be sent to the Verkhovna Rada within two months.

Mr Buquicchio stressed that the revision of the Lustration Law was an urgent matter. The Ukrainian authorities were invited to provide the rapporteurs with the additional material as soon as practicable, so that it could be possible to send out the final opinion on the Lustration Law even before the June Plenary Session.

The Commission authorised the rapporteurs to send the draft final opinion on the Lustration Law of Ukraine to the Ukrainian authorities prior to the Plenary Session of June 2015, if possible.

c) Constitutional amendments on the immunity of members of Parliament and judges

The Commission was informed that the Head of the Presidential Administration of Ukraine had requested an opinion - scheduled for adoption at the June session - on constitutional amendments with respect to the immunity of members of Parliament and judges. The draft provided for the removal of inviolability for members of Parliament and a shift of the competence to lift judges' immunity from Parliament to the judicial council.

The rapporteurs asked the Ukrainian delegation whether it was wise to remove parliamentary inviolability at a moment when all stakeholders agreed that there was a widespread problem of corruption in the judiciary. Shifting the power to lift judges' immunity to the judicial council was less controversial.

Ms Syroid replied that judges' immunities should indeed be dealt with in the framework of wider constitutional reforms on the Judiciary. Parliament was trapped with a populist request. Since independence the Prosecutor General had requested lifting judges' immunity only in six cases and Parliament had refused this only once. However, the power to lift immunity should indeed be removed from Parliament.

Mr Filatov pointed out that the proposal had been the result of a promise by all but one of the political parties to remove parliamentary immunity. The draft amendments would now be considered in the framework of the constitutional commission established by the President and would become part of the wider constitutional reform.

d) Constitutional Reform

Mr Filatov informed the Commission that some 200 applications for membership in the constitutional commission had been presented by more than 50 organisations including the civil society. Among them, the President would soon select the Commission's members, taking into account a fair representation of professional and political groups. International observers would also participate in the Commission. The Venice Commission had appointed Ms Suchocka as its representative.

10. Draft Report on proportional electoral systems: the allocation of seats inside the lists (Open/Closed Lists)

Mr Kask introduced the draft report on proportional electoral systems: the allocation of seats inside the lists (open/closed lists), already adopted by the Council for Democratic Elections at its meeting on 19 March 2015. This report aims at detailing the various systems of allocation of seats inside the lists, but not at providing guidelines. He reminded the Commission that the Code of Good Practice in Electoral Matters did not provide for recommendations for or against an electoral system as long as the standards of the European electoral heritage are respected.

There was a great variety in the 61 observed countries, which can be divided into two categories: (1) those with closed lists systems: the voter voted only for a party, which had decided the allocation of seats beforehand; (2) those with open lists systems, which could in turn be divided into a variety of categories; in particular, the number of preferences could be fixed or variable. There were also types of mixed systems, where closed lists were used in some cases and open lists in others. The various modalities of open lists were discussed in the report (cumulative vote, strikethrough, crossing-out, single transferable vote). In some countries, there was the possibility to vote for a candidates' list or one or several candidates, in others only for one or several candidates. In the last part of the report, the issue of the effects of the thresholds and quotas for gender balance were discussed. A reference to quotas in closed lists systems - which are easier to apply - would be added in the final version.

The issue of the allocation of seats inside the lists was closely linked to that of the internal democracy of political parties. This theme was addressed in the report on the method of nomination of candidates within political parties. A first version of this report had also been discussed in the Council for Democratic Elections, with a view to the adoption of a report at the June 2015 Plenary Session. If lists were closed, democracy within the party was of special importance.

Following discussion, it was decided not to amend the report by introducing recommendations. The report was meant to be descriptive.

The Commission adopted the Report on Proportional Electoral Systems: The Allocation of Seats inside the Lists (Open/Closed Lists) ([CDL-AD\(2015\)001](#)).

11. Montenegro

Mr Neppi Modona and Mr Hamilton briefly introduced the draft opinion on the revised draft Law on the Public Prosecutor's Office and the draft opinion on the revised draft Law on the Special Public Prosecutor's Office. At its 101st Plenary Session the Commission had been informed that the Montenegrin authorities had in the meantime amended the earlier Draft Laws taking into account the Commission's assessment and that they intended to seek the Commission's opinion on the revised Draft Laws. With this in mind, the Commission had authorised the rapporteurs, in the light of the urgency of the domestic proceedings, to send the forthcoming draft opinions to the Parliament of Montenegro prior to its 102nd Plenary Session.

The draft opinion on the revised draft Law on the Public Prosecutor's Office welcomed the fact that many of the recommendations contained in the Interim Opinion had been taken into account. As a result, the revised Draft Law contained a considerable number of improvements.

It was, however, regrettable that a number of matters raised by the Commission had still not been addressed or that the solutions proposed were still to be improved. These included: the

multiplicity of prosecutorial structures entailing sometimes overlapping functions; the need for simplified procedures for election to the Prosecutorial Council and fair and proportional representation of all levels of the Prosecution Service; the need for the qualified majority for the election of the Council's lay members; the need to eliminate the involvement of external bodies in the dismissal of Prosecutorial Council members; the need for clearer criteria for the appointment and the secondment/transfer of prosecutors, and for appeal possibilities against compulsory transfers; the need for improved evaluation criteria and a more independent evaluation commission for prosecutors.

The draft opinion on the revised draft Law on the Special Public Prosecutor's Office also welcomed the fact that the Montenegrin Government had taken into account some significant criticisms contained in the Interim Opinion on the earlier version of the Draft Law.

However, the revised Draft Law did not address or only partly addressed important concerns raised by the Commission, including: the need for increased accountability guarantees, including judicial review of prosecutorial measures and reporting to Parliament, as a way to minimise the risks of abuse and/or political pressure; concerns relating to the power of the special prosecutors to issue certain instructions and take certain steps in relation to other institutions without judicial approval or control; the need to clarify the relationship between the special prosecutors and the police, the need for efficient data protection guarantees; the situation of pending cases regarding offences that fall under the jurisdiction of the Office which are not concluded by other prosecution offices at the date of the entry into force of the future Law.

Finally, the rapporteurs found regrettable that, although transmitted to the Montenegrin authorities prior to the plenary meeting, the recommendations made by them following the assessment of two revised draft laws appeared to be reflected only to a limited extent in the final texts of the two laws as adopted by the Montenegrin Parliament. Nevertheless, the two adopted laws constitute a clear improvement compared to the draft laws initially submitted to the Venice Commission for assessment.

The Commission endorsed the Final opinion on the revised draft Law on the Public Prosecutor's Office (CDL-AD(2015)003) and the Final opinion on the revised draft Law on the Special Public Prosecutor's Office ([CDL-AD\(2015\)002](#)).

Ms Kjerulf Thorgeirsdottir introduced the draft opinion on draft Amendments to the Law on media of Montenegro, previously examined and approved, with minor amendments, at the joint meeting of the Sub-Commissions on Democratic Institutions and Fundamental Rights.

The main purpose of the draft law was to enable a temporary shutdown, by a court order, of a media outlet having published illegal media content repeatedly and in disregard of previous court judgments. Ms Kjerulf Thorgeirsdottir explained that, although prior restraints on future publications are not ruled out by the European Convention on Human Rights, the European Court has always considered such measures as a great danger for the freedom of press. The measure proposed by the draft law was *a fortiori* problematic as the restraint did not concern some particular information or a publication on a specific topic but the overall functioning of the media outlet concerned. As explained in the draft opinion, even a short-term interruption of all publications or broadcasting may "kill" a media outlet as a whole, especially where it is dependent on advertising revenue; although it is permissible to limit freedom of expression for the sake of the protection of public morals or the rights of others, these aims cannot justify a temporary closure of a media outlet as a whole. This should therefore be used as a measure of last resort and "public morals" and "rights of others" - terms which are very vague and subject to extensive interpretation - should be defended by other, less drastic means. Non-compliance

with court judgments is a serious problem but it may be combatted by other means, not specific to the media sphere. In addition, the Constitution of Montenegro does not allow censorship for the sake of the protection of public morals or the reputation of others.

The law introduced this measure (ex-ante banning of future publications) in two forms: as a sanction and as an interim measure applied in pending proceedings. However, the effect of the interim measure is the same as that of the sanction. It was thus recommended not to use ex-ante banning as an interim measure. The draft opinion conceded that it was possible to ban temporarily all publications but only in extreme cases, namely where the media outlet repeatedly published materials calling for unlawful violence against individuals or groups, the violent overthrow of the constitutional order. Yet, the concept of "repeated" offence needed clarification in the law. It was also recommended not to put a lower limit on the fines which may be imposed on the journalist for publications of illegal media content: the judge should be free to reduce the level of fines below the lower limit, where the circumstances so require.

The Commission adopted the opinion on draft Amendments to the Law on media of Montenegro ([CDL-AD\(2015\)004](#)).

12. Georgia

The Commission was informed that the mandate of the commission set up to prepare amendments to the Constitution of Georgia had been extended until 15 September 2015. The reform process will take more time than expected. In addition, due to internal disputes within the ruling coalition, it had become more difficult to obtain the necessary three-fourths parliamentary majority to adopt the constitutional amendments.

13. Update of the report on the Democratic Oversight of the Security Services

Mr Cameron reminded the Commission that in November 2012 the PACE had asked the Commission to update its 2007 report on the Democratic Oversight of the Security Services (CDL-AD(2007)016). The present report, however, was only in part an update of the previous study in the light of general developments since 2007: it also contained a detailed analysis of Signals Intelligence (SIGINT), of what it is, on how it may impact on human rights, of how it could and should be regulated, of best practices in this field and of why these could be regarded as best practices.

The report pointed out that, if insufficiently regulated and controlled, signals intelligence has a very large potential for infringing privacy and certain other human rights. Signals intelligence can be regulated in a lax fashion, meaning that a large number of people are caught up in a net of surveillance, or relatively tightly, meaning that the actual infringement of individuals' privacy and other human rights is more limited.

It emerged from the case-law of the European Court of Human Rights that CoE member states have to regulate the main elements of signals intelligence in statute form. The national legislature must be given a proper opportunity to understand the area and draw the necessary balances. The report contended however that CoE member states should not be content with satisfying the quality of law standards of the ECHR. Only strong independent control and oversight mechanisms can assuage public concern that signals intelligence is being abused. It was possible to regulate signals intelligence in a way to satisfy security needs and human rights concerns.

Mr Diaz Tejera, representative of the PACE Legal Affairs Committee, referred to Dick Marty's report on renditions and also to the upcoming report on mass surveillance, which pointed out

that much work on electronic surveillance is being carried out in Council of Europe member states without any legal control. The question of what form of control was best suited in this area arose. Mr Cameron explained that oversight of SIGINT required a combination of judicial expertise and policy analysis. Germany and Sweden had come up with oversight bodies which combined these two elements. Judicial control alone was insufficient ; once the selectors had been authorised through ex ante judicial procedures, follow-up needs to be monitored by a standing – very dynamic - control body.

Mr Delcamp stressed the necessity that such oversight be carried out continuously.

Mr Frendo expressed the view that the report under consideration tackled in a very clear manner very complex questions which were being discussed at this very moment in several member states. It therefore appeared useful to disseminate it as broadly as possible.

Mr Mario Oetheimer, Head of Sector Information Society, Privacy and Data Protection, Freedoms and Justice Department, EU Fundamental Rights Agency, informed the Commission that the mandate of the Fundamental Rights Agency was to provide data for taking policy decisions and legal advice on draft legislation at the request of the bodies of the European Union. The European Parliament in particular had requested FRA to carry out an in-depth research on fundamental rights protection in respect of surveillance and on remedies open to individuals in this respect. The mapping of the legal framework in the 28 EU member States was being made through a network of 28 field research teams. Mr Cameron had co-operated with this network. FRA and the Venice Commission had thus established an interesting synergy: the Venice Commission's 2007 Report on the Democratic Oversight of the Security Services together with the update and report on the strategic surveillance would represent the analytical framework within which FRA would examine the collected data.

Mr Oetheimer stressed the quality of the Update and report under consideration and the interest in having it published and disseminated.

The Commission adopted the Update of the 2007 Report on the Democratic Oversight of the Security Services and Report on the Democratic Oversight of Signals Intelligence Agencies ([CDL-AD\(2015\)015](#)).

14. Co-operation with other countries

Albania

Mr Buquicchio informed the Commission that in January 2015 he had travelled to Albania together with Ms Granata-Menghini in order to participate in two conferences. The political situation in Albania was complex. The boycott of parliament by the opposition had ended in December 2014 following a political agreement, brokered by the European Parliament, concerning in particular the “decriminalisation of parliament” (i.e. the problem of MPs with previous or pending criminal convictions, including abroad) to be achieved with the assistance of the Venice Commission. The Chair of the parliamentary committee tasked with the decriminalisation had accepted Mr Buquicchio's proposal to hold a conference on this matter with the participation of international experts as well as Albanian politicians. The Council for Democratic Elections had just decided, in preparation of this event, to prepare a report on this topic.

As concerns the reform of the judiciary, the Commission had been invited to appoint an expert to participate in the work of the parliamentary committee responsible for the reform. Mr Hamilton had been appointed, while the former Albanian member, Mr Luan Omari, had been

asked to participate in all the meetings of the parliamentary committee in order to report to the Commission about progress of work and to request the participation of Mr Hamilton whenever necessary.

In the meantime, however, the opposition had resumed the boycott of all parliamentary committees, which made any progress difficult. Mr Buquicchio had conveyed the message to the Albanian opposition that their role needed to be constructive and that in a democratic country the institutions need a high level of political maturity in order to be able to function smoothly.

Tunisia

Mr Buquicchio informed the Commission that at the beginning of March 2015 he had travelled to Tunisia together with Ms Granata-Menghini in order to meet the representatives of the institutions set up under the new constitution following the parliamentary and presidential elections of the fall 2014. They had met with the President of the Republic, the Speaker of parliament, the President of the Supreme Court, the Prosecutor General, the Minister of Justice and other high authorities. The Tunisian authorities had all expressed their interest in co-operating with the Commission, following the very successful experience of the preparation of the new constitution.

The first issue on which the Commission was to work imminently was the preparation of the law on the High Council of Justice. The preparation of the law on the Constitutional Court was also an important and urgent matter.

The Commission expressed its full support for the implementation of the new constitution, and its commitment to assist the Tunisian authorities, even more so after the deadly attack at the Bardo museum on 18 March.

15. Information on constitutional developments in other countries

Kazakhstan

Mr Rogov underlined the importance attached by the authorities of Kazakhstan to co-operation with the Venice Commission. He stressed that, in 2013, the constructive dialogue and participation of the Commission's experts in numerous exchanges of views strongly influenced the work on such important documents as the Code of Criminal Procedure, the Criminal Code and the Administrative Code. He informed the Commission about the launch of an important programme of co-operation between Kazakhstan and the Council of Europe in the field of the judiciary on 19 March 2015.

Mr Rogov made reference to the address made by the President of Kazakhstan during the 16 Nur Otan Congress (the ruling party in Kazakhstan) in March 2015 which established a list of priorities for future reforms in Kazakhstan, notably, a constitutional reform focused on strengthening the parliament, additional measures to reinforce the rule of law and an important revision of anti-corruption legislation. A special commission will be established to prepare corresponding draft legislation. The authorities of Kazakhstan were looking forward to co-operating with the Venice Commission on these important reforms.

In August 2015 the Constitutional Council plans to organise an international conference dedicated to the 20th anniversary of Kazakhstan's constitution. Mr. Rogov invited members of the Commission to attend this important event.

Spain

Mr Castella Andreu provided information on recent Constitutional Court rulings on the popular consultation on the independence of Catalonia. Mr Castella recalled that, in September 2014, the Catalan Assembly passed the Catalan Act for popular consultations other than referendums, regulating a new institution - the “participative process” - similar to a referendum but according to the drafters of the law not subject to the constitutional requirement of authorisation by the central government for each regional referendum. Both the Law, challenged by the central government before the Constitutional Court, and the consultation process organised by the Catalan Government on 9 November 2014, were suspended by the Constitutional Court. Despite the Court decision, the participative process went ahead.

The Law and the Decree for the organisation of the consultation were definitively declared unconstitutional by the Constitutional Court on 25 February 2015. According to the Court, the popular consultation is in substance very similar to a true referendum since it involves a direct call to the citizens to vote; therefore the national legal framework for the referendum should apply. The Court recalled that a referendum or consultation on self-determination cannot be held outside the framework of the Constitution. This would require a constitutional reform, which is particularly difficult to achieve.

The Constitutional Court had already declared as unconstitutional the proclamation of Catalonia as a sovereign State made in the non-legally binding resolution passed by the Catalan parliament in January 2013.

16. Co-operation with the Parliamentary Assembly

The President of the Venice Commission and the President of the Parliamentary Assembly of the Council of Europe informed the Commission on the results and conclusions of the meeting of the Enlarged Bureau with the Presidential Committee of the Parliamentary Assembly held on 21 March 2015.

The Enlarged Bureau and the Presidential Committee exchanged views on the current situation in Ukraine, notably on co-operation on such important issues as the constitutional reform, decentralization and the review by the Venice Commission of the legislation on lustration as well as the reform of the judiciary. The participants at the meeting also discussed the latest developments in the Southern Mediterranean region. In view of the fact that in several countries the opposition not infrequently boycotts the work of parliament, it was suggested to update the Commission’s 2010 report on the role of the opposition in a democratic parliament ([CDL-AD\(2010\)025](#)).

Following the presentation of the results of the meeting of 21 March, the Commission held an exchange of views with Mrs Anne Brasseur, President of the Parliamentary Assembly and with Mr Arcadio Diaz Tejera, Member of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, on co-operation with the Assembly. The Commission members underlined the role played by the Assembly in submitting requests for opinion on constitutional issues in member States and expressed their hope that this co-operation would further develop.

17. Rule of Law Checklist

Mr Tuori recalled that a checklist of five essential elements of the Rule of Law had been appended to the Report on the Rule of Law, and had attracted considerable attention, including from the European Commission. A working group was in the process of developing and updating it; the checklist would comprise an outline of the enabling environment for the rule of

law and benchmarks grouped under five titles. Explanatory notes would be attached to each benchmark.

Mr Tuori explained that the intention was not to launch a tick-box exercise but to provide a tool for an in-depth analysis of the situation with respect to the rule of law in a given country.

It was planned to present the checklist to the Sub-Commission on the Rule of Law in June, aiming at its adoption by the Plenary in October 2015.

18. Programme Campus UniDem

Monsieur Mohamed Moubdi, Ministre chargé de la fonction publique et de la modernisation de l'administration du Maroc rappelle que les relations entre le Conseil de l'Europe et le Royaume sont privilégiées et convergent pleinement avec la politique d'ouverture et de modernisation, de consolidation de l'Etat de droit et de bonne gouvernance engagé par le Maroc. Le Maroc participe, en effet, régulièrement à certains accords élargis du Conseil de l'Europe ; une dynamique d'adhésion aux conventions du Conseil de l'Europe a été engagée ; grâce au « Statut de partenaire de la démocratie » dont il bénéficie depuis juin 2011 auprès de l'Assemblée parlementaire, des parlementaires marocains participent aux débats de l'Assemblée. Enfin, le plan d'action 2015-2017 entre le Conseil de l'Europe et le Maroc permet de poursuivre par l'accompagnement et l'expertise fournis les réformes démocratiques du pays.

M. Moubdi remercie la Commission pour avoir choisi son pays en tant que plateforme pour la mise en œuvre du projet «Campus UniDem » qui vise au renforcement des capacités des hauts cadres de la fonction publique de la région MENA. Ce projet consiste, d'une part, à faire bénéficier de hauts cadres de la fonction publique de sessions de renforcement de capacité en matière de l'Etat de droit, de la bonne gouvernance, de la démocratie et des droits de l'homme. D'autre part, il permettra de réunir des hauts responsables des pays d'une même région géographique, et ce, dans une perspective d'échanges d'expériences et de renforcement des liens entre les administrations des pays de la région. Ces conférences et ces ateliers, auxquels participeront les responsables de la fonction publique de la région MENA (Algérie, Tunisie, Mauritanie, Lybie, Egypte, Jordanie, Liban et Maroc), seront l'occasion pour les participants de présenter des cas concrets permettant d'identifier les valeurs communes et de bonnes pratiques en matière de l'Etat de droit, des droits de l'homme et de la bonne gouvernance qui, partant, pourront être appliqués dans leurs pays respectifs.

Le Président souligne que le projet de Campus UniDem est un programme important, partie intégrante d'un programme plus large de formation sur les droits de l'homme dans le cadre du programme Sud. Il réitère l'engagement de la Commission pour en assurer le plein succès et remercie les autorités marocaines pour leur soutien.

19. Adoption of the annual report of activities 2014

The Commission adopted the annual report of activities for 2014.

20. World Conference on Constitutional Justice

The chair of the Bureau of the World Conference on Constitutional Justice, Mr Harutyunyan, informed the Commission that, after the plenary session, the World Conference would hold the 9th meeting of its Bureau in Venice. The World Conference now had 95 member Courts. Following the 3rd Congress in Seoul in September/October 2014, the Bureau was called upon to decide on the venue of the 4th Congress to take place in 2017. The candidacy of the Constitutional Court of Lithuania to host the congress was likely to be accepted. The Bureau

would also examine the financial report and proposals for activities between the congresses. Possible changes to the Statute concerning the composition of the Bureau would be discussed but the decision would be left to the General Assembly. Finally, the regional and linguistic groups of Courts represented in the Bureau would inform the participants at the meeting about the programme of activities of their respective groups.

21. Report of the meetings of the Council for Democratic Elections (13 December 2014 and 19 March 2015)

Mr Vermeulen informed the Commission on the results and conclusions of the meeting of the Council held on 13 December 2014. The Council had held an exchange of views on the report on open and closed lists and on the preliminary draft report on electoral lists and voters residing abroad. It also held a discussion on a proposal concerning the use of the ISO standards in the electoral field. The Council came to a conclusion that these standards were not accepted by most countries in Europe and could not be considered as compulsory for Electoral management bodies.

Mr Kask presented the conclusions of the meeting of the Council for Democratic Elections of 19 March 2015. The Council had elected its new President, Mr. Jos Wiene, Member of the Congress of Local and Regional Authorities. The Council also adopted the Report on Proportional Electoral Systems: the Allocation of Seats inside the Lists (Open/Closed lists), subsequently adopted by the Commission on 20 March.

The Council also took note of the information report on electoral lists and voters abroad in Bulgaria, Moldova and Tunisia ([CDL-PI\(2015\)003](#)) and of the progress work on the Report on the method of nomination of candidates within political parties.

The plenary was informed that, following the adoption of the report on the misuse of administrative resources during the electoral process ([CDL-AD\(2013\)033](#)) and the discussion which had taken place in the framework of the 11th European Conference of Electoral Management Bodies on this subject, the Venice Commission would prepare guidelines in this field. It was planned to prepare and adopt these guidelines by the end of 2015.

The Secretariat informed on progress in the preparation of the 12th European Conference of Electoral Management Bodies which would take place in Brussels on 30-31 March 2015 on "Ensuring neutrality, impartiality and transparency in elections: the role of Electoral Management Bodies". The 13th edition of the Conference would take place in Bucharest on 14-15 April 2016 and would be organised in co-operation with the Permanent Electoral Authority of Romania.

The Council will hold its next meeting on Thursday 18 June 2015 at 10 a.m.

22. Report of the meeting of the Scientific Council (19 March 2015)

Mr Helgesen presented the compilation on Courts and judges which the Scientific Council proposed for endorsement by the Plenary.

<p>The Commission endorsed the compilation of Venice Commission opinions and reports concerning courts and judges (CDL-PI(2015)001).</p>

The Representative of the European Commission stressed the importance of these compilations of Venice Commission's opinions and reports, which provided an extremely useful set of quotations and references to the essential parts of the Commission's work.

Mr Helgesen informed the Commission that the Scientific Council had decided to launch the update of two studies: on the composition of constitutional courts ([CDL-STD\(1997\)020](#)) and on individual access to constitutional justice ([CDL-AD\(2010\)039rev](#)).

Mr Helgesen finally informed the Plenary that, as concerned the seminar on External Constitutional Advice which had initially been scheduled for October 2015, following discussion the members of the Scientific Council considered that more reflection was required on the programme and postponement was necessary. The Venice Commission would pursue its consultations with the two co-organisers, IACL and International IDEA.

The Scientific Council had decided that the Seminar on the Relationship between the ECtHR and domestic authorities and courts would take place in November 2015 in Oslo.

23. Rapport de la réunion de la Sous-commission sur le bassin méditerranéen (19 mars 2015)

M. Menouni, Président de la Sous-commission informe la Commission des résultats et des conclusions de la première réunion de la Sous-commission sur le bassin méditerranéen. Cette réunion avait pour double objectif de présenter les grandes lignes de la politique du Conseil de l'Europe et de l'Union européenne dans la région, par le biais du programme « Vers une gouvernance démocratique renforcée dans le sud de la Méditerranée » ainsi que d'apporter une réflexion sur la contribution de la Sous-commission aux travaux de la Commission.

Le but principal des programmes de coopération du Conseil de l'Europe est l'accompagnement et la mise en œuvre des réformes constitutionnelles. Le deuxième axe est de créer et de promouvoir un espace juridique commun. La Sous-commission tiendra les membres de la Commission régulièrement informé des avancées dans la mise en œuvre de ces programmes.

La Sous-commission s'est félicitée du lancement du Programme régional UniDem visant à renforcer les capacités des hauts cadres de l'administration publique. La Sous-commission a discuté des thèmes des prochains ateliers interculturels de la démocratie. Le prochain atelier, qui pourrait avoir lieu vers la fin de l'année, pourrait porter sur les autorités indépendantes et les instances de régulation. S'agissant d'un sujet d'importance et de grande actualité pour les pays de la Méditerranée, l'échange d'expérience pourrait être particulièrement intéressant. Les relations entre le pouvoir exécutif et le pouvoir législatif pourraient également faire l'objet d'un atelier culturel.

24. Other business

No other business was raised.

25. Dates of the next sessions

The Commission confirmed the dates of the next Plenary Sessions as follows: 19-20 June 2015; 23-24 October 2015; 18-19 December 2015.

[Link to the list of participants](#)