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(VENICE COMMISSION)

COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT

(COMMISSION DE VENISE)

115th PLENARY SESSION
Venice, Scuola Grande di San Giovanni Evangelista
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115e SESSION PLÉNIÈRE
Venise, Scuola Grande di San Giovanni Evangelista
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SESSION REPORT/RAPPORT DE SESSION

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1. Adoption of the Agenda

The agenda was adopted without any amendments (CDL-PL-OJ(2018)002ann).

2. Communication by the President

The President welcomed members, special guests and delegations, and informed the Commission about the newly appointed members and substitute members. He also presented his recent activities (CDL(2018)018).

3. Communication from the Enlarged Bureau

The Commission was informed that at the meeting on 21 June 2018 the Enlarged Bureau decided to authorise the rapporteurs to prepare a preliminary opinion on the draft legislation on the judiciary of Romania (CDL-REF(2018)022, 023 and 024), in the first half of July, which will be sent to the Bureau members and the chair of the Sub-Commission on the judiciary for their input prior to its circulation, and which will be then submitted for endorsement by the Plenary in October.

The Plenary was informed about the interest shown by Canada and Argentina in the Commission's work and welcomed that these very important countries may be considering joining the Commission, subject to the agreement of the Committee of Ministers.

4. Communication by the Secretariat

The Secretary of the Commission gave practical information about the session. The Sub-Commission on Democratic Institutions had decided that the report on the recall of mayors was not ready for adoption, and would be postponed to the next Plenary session.

5. Co-operation with the Committee of Ministers

Ambassador Rémi Mortier, Permanent Representative of Monaco to the Council of Europe, praised the Venice Commission as a great tool in these times of crisis for constitutional democracies in Europe. The Venice Commission has acquired great legal and moral authority, but democracy and human rights in Europe are going through a difficult phase, especially due to reforms in some countries which undermine judicial independence, or to attacks on the authority of the ECtHR.

The Rule of Law checklist is particularly important to continue the dialogue between the Council of Europe and the member-States, and to affirm the values on which the Council is based. Ambassador Mortier mentioned specifically the UniDem Campus project in the Mediterranean Region which is particularly important for Monaco.

Ambassador Ivars Pundurs, Permanent Representative of Latvia to the Council of Europe, noted the Venice Commission's impeccable professional record, its unique working methods, and good co-operation both with the member-States and with countries beyond Europe. He reminded the Commission about Latvia's previous co-operation with the Venice Commission, and informed about the recent joint conference in Riga on the role of the constitutional courts in a globalized world. Ambassador Pundurs transmitted the support of his Government to the Venice Commission.

The President thanked the Ambassadors for the support shown to the Venice Commission by the member-States and reminded the Commission, once again, about the budgetary problems and how they affect the Commission's capacity to react quickly to new challenges.

He mentioned certain recent successes of the Venice Commission (i.e. the adoption of the law on anti-corruption courts in Ukraine), but also mentioned difficulties the Venice Commission has encountered in certain countries (in particular, the recent adoption of the "Stop Soros" law in Hungary, prior to the adoption of the opinion this being despite the criticism expressed in the draft opinion which had already been sent to the authorities).

6. Co-operation with the Parliamentary Assembly

Mr Sergiy Vlasenko, Member of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly informed the Commission that during the April plenary session, the Parliamentary Assembly adopted several reports and opinions including a report on the future of the ECHR system on the "Copenhagen Declaration, appreciation and follow-up" The reports on "Protecting human rights defenders" and on "New restrictions on NGO activities in Council of Europe member States" were adopted by the Committee and would be debated during the next plenary session of PACE. In this context, the Committee had given due consideration to the excellent opinion of the Venice Commission on "amending governmental ordinance N°. 26/2000 on associations and foundations" which the Committee itself had requested, "(CDL-AD(2018)004) and would consider with particular attention the opinion on the so-called "stop-Soros" legislative package, also requested by the Committee.

Mr Vlasenko expressed his appreciation to the Venice Commission for its important contribution to the establishment of a specialised anti-corruption court in Ukraine.

He further noted that the Monitoring Committee had held an exchange of views on the recent reforms of the Judiciary in Romania and decided to request an opinion of the Venice Commission on the pending amendments to three laws on the judiciary (item 12 of the agenda). The Committee had also decided to request an opinion on the amendments to the electoral legislation and related "harmonisation laws" adopted by the Turkish Parliament in March and April 2018.

Mr Vlasenko finally underlined the good co-operation between the Parliamentary Assembly and the Commission in the field of elections, with the participation of Venice Commission experts in election observation missions, as legal advisers to the PACE delegation, which was a real added value. PACE had observed, along with the Venice Commission, the presidential elections in Azerbaijan and in Montenegro; further election observations were planned in 2018.

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

Mr Leen Verbeek, Chair of the Monitoring Committee of the Congress, informed the Commission that the Committee would soon approve reports and recommendations on local and regional democracy on Slovenia, Georgia and Lithuania. It would also consider some complaints relating to the relations between opposition and ruling party representatives in municipal councils. The new guide "on administrative resources and fair elections" would also be presented to the Committee.

Two countries would be the subject of monitoring visits in 2018: Poland and Moldova. With regard specifically to Poland, the legal issues mostly at stake were the subjects of consultations during the creation of municipalities, the distribution of electoral districts, the property rights of local authorities and spatial planning.

Since March 2018, three electoral assessment missions had been undertaken, in the Netherlands, Tunisia and the Republic of Moldova.

The authorities of Belarus had requested the Congress to organise a seminar on local self-government, which would take place in September 2018.

The report on the recall of mayors and local elected representatives was awaited with great interest and would certainly be very useful to the Congress.

8. Exchange of views with the Consultative Council of European Judges (CCJE)

Mr Gerhard Reissner, former President of the CCJE, informed the Commission that Mr Gianni Buquicchio, President of the Venice Commission, and Mr Duro Sessa, President of the CCJE, had met in Oslo during the EMB Conference in April 2018 and had discussed topics which are common to both bodies. This included the opinion for Serbia on the amendments to the constitutional provisions on the judiciary, on which the CCJE also provided an opinion – both bodies tend to draw the same conclusions, since they both apply common European standards. Mr Reissner explained how the CCJE functions, that it replies to requests on issues raised by its member states and that he is aware of the overlap that exists between the work of the CCJE and the Venice Commission. He underlined, in this respect, the importance of exchanging information to avoid contradictions in opinions. Following the Secretary General's 2016 Report, the CCJE had prepared a report on the challenges to judicial independence and impartiality in the member States of the Council of Europe. This had led to the Action Plan adopted by the Committee of Ministers on the impartiality and independence of the judiciary. Mr Reissner concluded by stating that care must be taken that member States do not make the same request to several bodies of the Council of Europe or to bodies outside the Council of Europe and choose the resulting opinions which suit them best. The exchange of information between all the bodies concerned – whether in or outside the Council of Europe - was therefore crucial in preventing this type of misuse of opinions.

Mr Buquicchio added that the aim of both the Venice Commission and the CCJE was to strengthen the independence and impartiality of the judiciary, but that unfortunately the judiciaries in many member states of the Venice Commission were increasingly coming under threat and that our constant vigilance was required.

9. Follow-up to earlier Venice Commission opinions

The Commission was informed on follow-up to:

> *Constitutional amendments as adopted at the second reading in December 2017 by the Parliament of Georgia (CDL-AD(2018)005)*

Since June 2017, the Venice Commission has adopted three opinions concerning the Constitutional reform in Georgia, which it generally assessed positively. The most important aspect of the constitutional reform was the passage to a proportional election system which was limited however by three mechanisms: a 5% threshold for legislative elections, the prohibition of party blocs and the distribution of unallocated mandates to the winning party (the so-called bonus system).

On 26 September 2017, the Parliament adopted the revised constitution at the third hearing. However, the entry into force of the proportionate election system was postponed to October 2024.

The Opinion adopted in March 2018 by the Commission examined a last set of draft amendments according to which during the 2020 parliamentary elections exclusively, the political parties will be allowed to form electoral blocks and the election threshold will be 3%. Moreover, the previous system of distribution of unallocated mandates which favored the

strongest parties is replaced by a system of equal distribution which will apply after the elections of 2024.

In March the Commission welcomed those “measures” as factors which alleviate the detrimental effects of the postponement of the entry into force of the proportional election system for smaller parties. On 24 March the Parliament adopted the last set of amendments at its third and final reading. The revised Constitution will enter into force after the presidential elections which will be held in October 2018.

> *Opinion on the Draft Act amending the Act on the National Council of the Judiciary of Poland, on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts of Poland (CDL-AD(2017)031)*

In its December 2017 opinion, the Commission criticised the new method of election of the judicial members of the National Council for the Judiciary (by Parliament), the retroactive lowering of the retirement age of judges of the Supreme Court which led to the early removal of up to 40% of the judges, the creation of two new super-chambers within the Supreme Court, one for “extraordinary appeals” and the other for disciplinary cases against judges, as well as the hierarchical system of courts’ management, placing the court’s presidents under the control of the Minister of Justice.

Since July 2017, the Minister of Justice has removed, single-handedly, a total of 131 presidents and vice-presidents of Polish courts, and, in March, new members of the National Council for the Judiciary were elected according to the new rules. In essence, the ruling majority had already achieved its goals in renewing the top echelon of the judicial system. The European Commission, last December, launched the so-called Article 7 procedure against Poland. In April and May 2018 the Polish Sejm voted certain amendments to the laws, which however could be described as essentially cosmetic. A few positive changes (such as the requirement for the Minister of Justice to consult the college of the relevant court before the dismissal of its president and the narrowing down of the catalogue of authorities which could submit an extraordinary appeal) did not change the general direction of the reform. The European Court of Justice (ECJ) would now have to decide a case brought by an Irish high court judge who concluded that the rule of law in Poland had been "systematically damaged".

> *Opinion on the Draft Law of Ukraine on Anticorruption Courts and on the Draft Law of Ukraine on Amendments to the Law on the Judicial System and the Status of Judges (concerning the introduction of mandatory specialisation of judges on the consideration of corruption and corruption-related offences) (CDL-AD(2017)020)*

In its Opinion the Venice Commission supported the establishment of an effective Anti-corruption Court in Ukraine and the involvement of international experts in selecting its judges, while criticising some aspects of the draft law submitted to it at the time. President Poroshenko, who had been reluctant to support the establishment of a specialised anti-corruption court, reacted immediately to the opinion and submitted a draft law to establish such a Court. This draft was, however, widely criticised by the international community and civil society as not likely to lead to the establishment of a truly effective and independent court. Several international organisations called on Ukraine to provide for a court fully in line with the Venice Commission’s recommendations and the IMF linked the disbursement of credits to Ukraine to the adoption of such a law.

Following an invitation by the Speaker of the Verkhovna Rada, Venice Commission delegations held several exchanges of views in Kyiv on amendments to the draft, focusing on the need to clearly define its jurisdiction and the involvement of international experts in the selection of its judges, who, according to the opinion, should have a crucial role. On 7 June the Verkhovna

Rada adopted a law which seems to satisfy the requirements of the Venice Commission. In particular, it makes it impossible to appoint somebody as a judge to the Court if 3 or more of the 6 experts designated by international organisations object to the candidate. There remains a controversial provision, introduced at the last moment, that appeals against cases, which started in the ordinary courts prior to the establishment of the anti-corruption court will not go to the appeals chamber of the anti-corruption court but to the ordinary appeals court. It seems, however, possible that this provision will be removed.

Opinion on the law on national referendum of Ukraine (CDL-AD(2013)017)

On 27 April the Constitutional Court of Ukraine, referring to Venice Commission texts, declared the law on the national referendum unconstitutional, both on procedural and on substantive grounds, since the law enabled the Constitution to be amended directly by referendum, without following the constitutional amendment procedure requiring a qualified majority in the Verkhovna Rada. In the Venice Commission's opinion this aspect of the law had been strongly criticised. The issue is in effect much older since already in its opinion on the referendum launched by President Kuchma in 2000 (CDL-INF(2000)011) the Venice Commission had underlined that the Verkhovna Rada could not be bypassed by the President submitting constitutional amendments directly to referendum. It had insisted on this point repeatedly in its subsequent opinions on planned constitutional reforms in Ukraine, since also other Presidents had been tempted by the idea of increasing their powers by referendum. This judgment by the Constitutional Court now removed a threat for the functioning of democracy in Ukraine.

Opinion on the draft law on principles of the state language policy of Ukraine (CDL-AD(2011)047)

In 2011, the Commission examined two successive drafts laws on Ukraine's policy regarding the use of the state language and the country's minority languages. The Commission had criticised both texts for their unbalanced approach to the protection of minority and regional languages (and in particular the Russian language), on the one hand, and to the need to consolidate the state language and its knowledge by all, on the other.

Based on the second draft examined by the Venice Commission, the Law on the Principles of State Language Policy was passed in 2012, providing for the possibility of official bilingualism in regions where national minorities exceed 10% of the local population. This gave rise to criticism and protest in the country. At the same time, based on its provisions, a number of regional and local councils recognised Russian, and in the Western regions other languages, such as Hungarian and Romanian, as regional languages.

In February 2014, the Verkhovna Rada repealed the law, but the decision was not signed by that time President of Ukraine. Therefore, when the Commission adopted, in December 2017, its opinion on provisions relating to language education in the 2017 Education Act of Ukraine, the 2012 law was still in force.

On 28 February 2018, the Constitutional Court of Ukraine declared it unconstitutional for procedural reasons.

Joint opinion on the draft checklist for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level of the Congress of Local and Regional Authorities of the Council of Europe (CDL-AD(2017)006)

Further to a request by the Congress, the Venice Commission adopted in March 2017 a joint opinion with the OSCE/ODIHR on the compatibility of the Congress' draft checklist for compliance with international standards and best practices preventing misuse of

administrative resources during electoral processes at local and regional level with international standards in the electoral field and the related reference documents of the Venice Commission. The Commission's opinion concluded that the checklist is in conformity with international electoral standards as established *inter alia* by the Venice Commission and OSCE/ODIHR documents dedicated to the misuse of administrative resources during electoral processes.

However, the opinion suggested several improvements, in particular to make the checklist more user-friendly. These improvements could not be made before the adoption of the Checklist on 20 March 2017. They were however made in the document entitled "Administrative resources and fair elections – a practical guide for local and regional politicians and public officials" (see also item 7 above). In particular, this document includes lists of questions entitled "reference points to assess the situation" which make it practical and user-friendly.

10. Armenia

Mr Artak Zeynalyan, Minister of Justice of Armenia, reminded the Commission that Armenia had gone through a non-violent revolution and positively answered the challenge; while the former authorities had resigned with dignity since they no longer had the trust of the people – this being an expression of democracy – the new government had an absolute democratic mandate and the trust of the people. A number of irregularities had marred the previous elections. While some improvements on election day had taken place in 2017 through technical changes, vote bribing had still occurred and the misuse of administrative resources had been unprecedented. Early parliamentary elections were of primary importance but had to be preceded by legislative and practical changes. Attention would be given to Venice Commission opinions, as well as to observation reports. In particular, there was a need to clean voters' lists, to prevent double voting and to ensure the rights of observers. The revision of the electoral code would be inclusive, and include political parties – parliamentary and non-parliamentary - and civil society representatives. The electoral system should be changed to a purely proportional one, electoral lists revised, more efficient complaints and appeals ensured and double voting efficiently fought.

Ms Arpine Hovhannisyan, Vice President, National Assembly of Armenia, informed the Commission that the Prime Minister as well as the opposition agreed on the organisation of extraordinary elections, which would be preceded by amendments to electoral legislation including the introduction of a closed list proportional system and the regular cleaning and updating of electoral registers. Two working groups on electoral reform had just been created, one by the National Assembly – including all parties represented in the Assembly - and one by the Prime Minister – including government officials and civil society organisations. At any rate, the revision should be inclusive, society educated and the administration fully informed. Ms Hovhanissyan considered that the Venice Commission's recommendations were very important in shaping democracy and was surprised that a civil society representative had expressed the view that the opinion of the Venice Commission was not necessary since the elections would take place in September, while there was no official declaration to that effect. She was very happy that the Minister of Justice assured that the elections and the revision of electoral code would take place in a time and manner in conformity with international standards and that the opinion of the Venice Commission would be asked for.

Mr Zeynalyan added that parliamentary elections would take place within one year and that all recommendations would be taken into account by the government. Ms Hohvanissyan's concerns would be taken into account and discussed in more detail.

11. Serbia

Ms Suchocka informed the Commission that the request for an opinion on the amendments to the constitutional provisions on the judiciary had been made by the Minister of Justice of Serbia in April 2018. The rapporteurs received a great amount of information before, during and after their visit to Serbia from associations, NGOs and from the Ministry of Justice of Serbia. The draft opinion was discussed at the Sub-commission on the Judiciary on 21 June 2018, where several modifications were made to the draft opinion and agreed upon. The main issues concerned: the separation of powers and the importance of including a clear rule in the Constitution of Serbia on checks and balances; the accountabilityy of judges without affecting their independence; the compositionof the High Judicial Council (HJC) and striving to find a best solution for an anti-deadlock mechanism and the importance of having *ex-officio* members in the HJC, as it facilitates dialogue among the various actors. Ms Suchocka reiterated that the Venice Commission only makes proposals or recommendations, but that concrete solutions must be found by the country concerned.

Mr Buquicchio underlined that this opinion was important for Serbia in general and in particular for the process of its EU accession negotiations.

The Commission then held an exchange of views with Ms Nela Kuburović, Minister of Justice of Serbia. She explained that the current Constitution had been adopted in 2006 and needed to be improved, as pointed out in the Opinion of the Venice Commission adopted at the time (CDL-AD(2007)004) notably as regards the provisions on the judiciary – to address the issue of the independence of judges and the autonomy of prosecutors. The National Strategy for 2013-2018 adopted by the National Assembly had the aim of preparing the judiciary to take on new challenges that require changes to be made to the Constitution. She then explained the entire procedure of the drafting of the amendments to the Constitution and the public consultation that was carried out as well as the subsequent request for an opinion made to the Venice Commission on these amendments. She ended her intervention by stating that the draft opinion was useful for Serbia and would provide a good precedent for the Venice Commission and for Serbia.

The Commission adopted the Opinion on the draft amendments to the constitutional provisions on the judiciary previously adopted by the Sub-Commission on the Judiciary on 21 June 2018 (CDL-AD(2018)011).

12. Hungary

Mr Kuijer explained that on 22 March 2018 the PACE Legal Affairs Committee had requested an Opinion from the Venice Commission on the Hungarian Government's "Stop Soros" legislative package. During the visit of a joint delegation of the Venice Commission and the OSCE/ODIHR to Budapest, which took place on 24-26 May, the delegation was informed that the draft package had not been maintained on the agenda of the newly elected Parliament and that a new package was being prepared. On 31 May 2018, the Venice Commission received a second letter from the Chairperson of the Committee on Legal Affairs and Human Rights confirming that the initial opinion request of 22 March also covered the newly proposed legislative amendments "to the extent that they affect NGO activities in Europe". Therefore, the present opinion concentrated in particular on the Draft amendment to the Criminal Code of Hungary with some references to the Police Law.

Draft Article 353A of the Criminal Code criminalises anyone "who engages in organising activities in order to facilitate the initiation of an asylum request in respect of a person, who in their native country or in the country of their habitual residence or in another country through

which they have arrived, is not subject to persecution". It also criminalises organisational activities in order to assist a person entering Hungary illegally or residing in Hungary illegally, in obtaining a title of residence.

The draft Opinion criticised first that the general reasoning of the draft package refers to the package as "Stop Soros Act" and recommended the removal of this reference in order to respect the principle of "equality before the law". It also criticised the lack of public consultation during the legislative process in line with the 2007 CM Recommendation on the Legal Status of the NGOs.

The draft criminal provision was criticised for not being sufficiently "foreseeable". It criminalises "facilitating" the initiation of an asylum procedure, although initiating an asylum request itself is not a crime. Moreover, although the provision concerns the "crime of facilitating irregular migration", it is not clear how an NGO employee is expected to know at the border which asylum seeker falls into the category of –irregular- migrants under the draft criminal provision. The organisational activities criminalised under the draft provision are not listed in an exhaustive manner and there is a possibility of sanctioning any kind of conduct which corresponds in practice to any organisational activity. The draft provision does not differentiate "financial gain" as the strict counterpart of a criminal activity from "any income" generated in the ordinary operations of NGOs, which may jeopardise the ordinary funding of NGOs.

The Venice Commission and the OSCE/ODIHR acknowledged that in principle a legal provision concerning facilitating irregular migration may pursue the legitimate aim of prevention of disorder or crime but considered that the reasoning of the draft legislation presented by the Hungarian authorities and the surrounding rhetoric raise serious doubts about the legitimacy of the aim behind the draft provision.

As to the necessity and proportionality of the draft provision, although its title is "illegal migration", because of the lack of clarity, it may apply in practice virtually to a large number of migrants irrespective of whether they are "illegal or not". Also, the draft provision does not provide a humanitarian exception and financial gain is not an element of the crime but only an aggravating circumstance. Moreover, the draft provision proposes a new category of content related speech limitations, such as "preparing and distributing information materials" and restricts in a disproportionate manner advocacy and the public campaigning activities of NGOs. The criminalisation of providing "material resources" for committing the criminal offence of facilitating may also deter donors from providing funds, which conflicts with the freedom of associations to seek, receive and use resources. The conviction of an NGO member for having committed a criminal offence may also have consequences on the legal entity, including the winding up of this legal entity, limiting its activity or imposing a fine.

The draft amendments introduced to the Police Act – new powers of police officers of preventing a person from entering the 8-kilometre zone counted from the borderline- would constitute a restriction of free movement under Article 2 of Protocol No. 4 to the ECHR. The draft provision was criticised for not imposing temporal restrictions to this measure.

Mr Kuijer explained that the draft legislative package had been adopted by parliament on 20 June 2018 without awaiting the adoption of the present Opinion by the Venice Commission on 22 June 22. This was regrettable.

In conclusion, the Opinion reiterated that only intentionally encouraging migrants to circumvent the law could give rise to criminal prosecution but assistance by NGOs to asylum seekers applying for asylum and lodging appeals could not be regarded as such circumvention. In the light of the above reasons, the Opinion recommended that Article 353A of the Criminal Code should be repealed.

Mr Balázs Orbán, State Secretary, Cabinet of the Prime Minister of Hungary, reminded the Commission that irregular migration has been a very important problem in Hungary since 2015 and explained that the legislation in force to prevent irregular migration was not sufficient to tackle this problem. He underlined that currently illegal migration is not only about the relation between the individual – illegal migrant - and the State, but the role of intermediary organisations could not be underestimated. The main purpose of the new legislation was to clearly separate legally acceptable migrants and others; the action of non-governmental organisations to facilitate illegal migration was of a criminal nature. He also pointed to the courts' task to elaborate and clarify the offence in question in practice. Mr Orban invoked a "rebus sic stantibus" clause in relation to Hungary's obligations under international law.

Mr Orbán also considered that the legislation under examination could not be qualified as ad hominem and that the criticism that no public consultation has been conducted before the adoption of the legislation was unfounded.

Mr Buquicchio, referring to a number of Opinions adopted by the Venice Commission in respect of Hungary, also on the basis of the requests made by the Parliamentary Assembly, underlined the importance of continuous co-operation between Hungary and the Venice Commission.

Mr Grabenwarter reiterated that the provision under examination did not fulfil the criteria of clarity and underlined that States have a legal obligation under the Vienna Convention to respect international standards, including the ECtHR judgments. Mr Vermeulen highlighted that the legislation under examination was not only about smugglers, but rather targeted organisations which assist migrants. He proposed an amendment in the Opinion in order to better clarify that assisting migrants in applying for asylum should not be considered as facilitating irregular migration. Mr Clayton agreed with this proposal and added that criminalising legal advice and assistance to migrants could also be problematic in view of Article 6 ECHR in the ensuing legal proceedings. Mr Barrett emphasised that the opinion examined the legislation only to the extent that it affects NGO activities, but supported Mr Vermeulen's proposal.

Mr Marcin Walecki regretted the adoption of the draft package before the plenary of the Venice Commission took place and considered that the public consultation conducted by the Hungarian authorities was not in line with CM(2007)014 Recommendation of the Committee of Ministers of the Council of Europe.

Mr Warchol shared the assessment presented by Secretary of State Mr Orbán, and stressed that he was against the adoption of this Opinion.

Mr Buquicchio therefore called for a vote.

The Commission adopted, with one vote against, the joint opinion with the OSCE/ODIHR on the compatibility with international human rights standards of the Hungarian Government's new "Stop Soros" draft legislative package to the extent that it affects NGO activities in Europe (CDL-AD(2018)013). previously adopted by the Sub-Commission on Fundamental Rights on 21 June 2018.

13. Romania

Both the President of Romania and the Monitoring Committee of the Parliamentary Assembly had asked the Venice Commission to prepare an opinion in respect of three drafts, amending to a large extent existing laws on the status of judges and prosecutors, on the judicial organisation and on the Superior Council of Magistracy. In this context, the rapporteurs had made a visit to Bucharest, on 11-12 June 2018.

Mr Tuori informed the Commission on behalf of the rapporteurs that the current reform is taking place in a very complex and tense political context, marked by controversy and heated debate on important issues of relevance for the independence of the judicial system and its members. Romania's substantial - and successful - efforts to fight corruption in recent years appear as a common denominator of most developments related to Romania's judiciary, including the three draft laws. In the rapporteurs' view, there were important aspects in the three drafts which, taken alone, but especially when considered together, with their cumulative effects, could have an adverse impact on the independence of Romanian judges and prosecutors, as well as on the quality and efficiency of the judicial system. As a consequence, the country's fight against corruption might also be undermined.

Mr Florin Iordache, Chair of the Joint Special Parliamentary Commission for amending the Judicial Laws of Romania, presented the main aims and lines of the reform and explained how, in the view of their authors, the three drafts would contribute to reinforcing the independence and professionalism of justice. He also informed the Commission of the different steps in the legislative process and the improvements brought to the initial drafts following several Constitutional Court decisions.

Mr Bodgan Dima, State Advisor, Presidential Administration, presented the position of the President of Romania on the compatibility of the reform with European standards regarding the independence of justice and the rule of law. In the view of the Romanian President, the three draft laws raise important procedural and substantive shortcomings. Mr Dima referred in particular to potential threats to the independence of the magistracy and of individual magistrates - judges and prosecutors, as well as to proposed amendments posing a danger to the very functioning of the judicial system as a whole.

The Commission authorised the rapporteurs to prepare a preliminary opinion to be sent to the Romanian authorities in July 2018, after prior consultation of the Bureau and the chair of the Sub-Commission on the judiciary.

14. Georgia

Mr Grabenwarter presented the draft *amicus curiae* brief for the Constitutional Court of Georgia on the effects of the decisions of constitutional courts in civil and administrative cases. The brief replied to the questions raised by the President of the Constitutional Court with an analysis of comparative law. The brief found that there was a variety of systems, ranging from moderate *ex tunc* systems to strict *ex nunc* systems, with a specific rule for the instant case. No model was particularly dominant.

The Georgian legislation established an *ex nunc* system, but the legislation did not provide for a direct answer to all the aspects of the effects of decisions of the Constitutional Court on final judgments of the ordinary courts that were based on legal provisions that were found unconstitutional. It did not fall short of European standards that the Civil Procedure Code of Georgia did not include decisions of the Constitutional Court as explicit grounds to reopen final court decisions. In interpreting the applicable provisions, it would be up to the Constitutional Court to find a balance between the principles of individual remedy and legal security.

The Commission adopted the *amicus curiae* brief for the Constitutional Court of Georgia on the effects of the decisions of constitutional courts in civil and administrative cases (CDL-AD(2018)012)..

15. Kosovo

Mr Vilanova Trias introduced the draft opinion which welcomed that the Government of Kosovo had submitted this first request for a legal opinion, four years after Kosovo became a full member of the Commission in 2014. He stressed that the draft law under scrutiny contained significant amendments to the Law on the Financing of Political Entities and the Law on General Elections. It clarified the definition of a contribution to a political entity, strengthened publication requirements with respect to information on political entities' finances and included new tools for monitoring compliance with the rules. At the same time, the draft opinion recommended several further amendments, in particular giving the competent Office under the Central Election Commission a clear mandate for financial monitoring, strengthening its independence and operational capacities, enhancing the regime of sanctions available for infringements of party and campaign funding rules and providing for consistent appeal channels. Mr Vilanova Trias also referred to some amendments adopted by the Council for Democratic Elections. In particular, the need to involve various political parties – including from the opposition – more broadly and effectively in the further legislative process should be given more emphasis.

Mr Mentor Borovci, Director of Legal Office, Office of the Prime Minister of Kosovo, welcomed the draft opinion which included very useful recommendations, and which would be taken into account in the current reform process. It was planned that the draft law, once further refined, would be adopted by the Government and sent to Parliament in September 2018. Mr Borovci furthermore pointed out that various political parties had been invited to a public hearing on the draft law. In this respect, Mr Dimitrov stated that during their visit to Pristina the rapporteurs had noted a lack of interest of political parties in the current reform. It was crucial that every effort be made to ensure the participation of different political forces in the further process.

The Commission adopted the opinion on the draft law on amending and supplementing the Law on the Financing of Political Entities (CDL-AD(2018)016), previously adopted by the Council for Democratic Elections.

16. Malta

Mr Hirschfeldt introduced the draft opinion prepared at the request of the Ministry for European Affairs and Equality of Malta, on the Draft Act amending the Constitution, on the Draft Act on the Human Rights and Equality Commission, and on the Draft Act on Equality (CDL-REF(2018)013, 014 and 019), previously examined by the Sub-Commission on Fundamental Rights on 21 June 2018. As he explained, the three draft laws aimed at incorporating European Union and international regulations in the field of equality and non-discrimination into the Maltese legal order. The proposal was to create a multi-mandate human rights and equality commission, which, in turn, would establish a Board - a new adjudicative authority. The establishment of such a quasi-judicial authority was problematic since its competency overlapped with the constitutional competency of the courts, which, under the constitution, have the original competency in human rights matters. In addition, the Board did not provide for the judicial guarantees of independence and fair trial; this did not exclude that the Board may be given some adjudicative functions but this would require changing its institutional design. This seemed to be suggested by the Maltese Constitution itself. The Draft Act on Equality dealt with the definition of discrimination and equality and was less problematic.

Mr Carlo Zadra suggested that the problem of the independence of the Board may also raise a question from the standpoint of European Union law. He referred to the CCJE judgement of 27 February 2018 in case C-64/16. Mr Vermeulen explained that, under the ECtHR, the existence of an appeal against a decision of a quasi-judicial body may be seen as a sufficient safeguard under Article 6 of the ECHR, but that the proposed model was still problematic: in particular, it

was odd that there are two alternative avenues – one offering judicial guarantees the other not offering them.

The Commission adopted the Opinion on the Draft Act Amending the Constitution (introducing the Human Rights and Equality Commission), the Draft Act on the Human Rights and Equality Commission, and the Draft Act on Equality (CDL-AD(2018)014), previously adopted by the Sub-Commission on Fundamental Rights.

17. Montenegro

Mr Dimitrov explained that Montenegro had been faced with the risk of an institutional blockage. A new Judicial Council was to be elected prior to the expiry of the current one on 2 July 2018, but the election of the four lay members by parliament with a qualified majority had seemed unlikely, given that the opposition had been boycotting parliament since shortly after the parliamentary elections in 2016.

Ms Cartabia reiterated that the Venice Commission had repeatedly underlined the importance of ensuring the democratic functioning of state institutions. While qualified majorities were essential to guarantee a balanced composition of notably the safeguard institutions, effective anti-deadlock mechanisms were necessary to prevent institutional blockages.

The Montenegrin authorities proposed to amend the legislation so as to extend the mandate of the current Judicial Council in case of failure or delay in the election of the new members. The draft opinion however suggested allowing for the former lay members to sit on the new Judicial Council, preferably for a limited amount of time, until parliament would elect the new members. A temporary President of the Judicial Council would be elected to perform this function until the full composition of the Judicial Council would be in place. The authorities' proposal to enable parliament, instead of electing the four lay members at once, to elect only some of them appeared useful in this context.

Mr Nikola Saranović, Deputy Minister, Director General at the Directorate for International Cooperation and projects, Ministry of Justice of Montenegro, explained that the law on the Judicial council and the Courts of Montenegro was an ordinary law but of constitutional importance. The procedure for the election of the lay members of the Judicial council by qualified majority (two-thirds in the first round, followed if need be by three-fifths a month later) had been added by a constitutional law with the aim of increasing the democratic legitimacy of the lay members. However, the paralysis of the Judicial Council would affect the independence of the judiciary, the separation of powers and the Rule of Law in Montenegro: for this reason, it was imperative to provide for a solution anticipating the crisis. The Montenegrin authorities were in favour of the suggestions made in the draft opinion.

Ms Granata-Menghini added that two clarifications would be added, relating to the limited duration of the temporary mandate of the former lay members and to the criteria for choosing which former lay members would sit on the new Judicial Council in case of partial elections.

The Commission adopted the opinion on the draft law on amendments to the law on the Judicial Council and Judges of Montenegro (CDL-AD(2018)015).

18. Study on Recall of Mayors and other local elected representatives

Ms Karakamisheva-Jovanovska informed the Commission that, following a first examination of a preliminary draft report in March 2018 by the Sub-commission on Democratic Institutions, a

revised text had been prepared, also taking into account information received from over 20 members of the Commission, on national legislation and practice concerning the recall of mayors and local representatives. The revised text was approved by the Council for Democratic Elections and subsequently submitted to the Sub-Commission on Democratic Institutions, at their meetings on 21 June 2018,The latter, while generally agreeing on the conclusions , made additional suggestions in particular for further clarification concerning the relevance of distinction between mayors and members of local councils for recourse to popular recall, as well as of the prohibition of the imperative mandate in this respect.

The Commission decided to postpone the adoption of the report to a future meeting and invited the rapporteurs to pursue their work on the draft report.

19. Venice Principles on the protection and promotion of the Ombudsman Institution

Mr Helgesen reminded the Commission that last year, at its June session, the Commission, upon his proposal, had decided to launch a drafting process which would enumerate all principles that the Ombudsman institution needs from its establishment to its effective functioning. A working group made up of Mr Helgesen, Mrs Err, Mr Sorensen, Mr Hirschfeldt and Mr Totozani, former Ombudsman of Albania and former President of the Association of Mediterranean Ombudsman, had prepared a first version of the Principles on the protection and promotion of the ombudsman Institution, named “the Venice Principles”, which had been distributed under the reference CDL(2018)017.

In April 2018, a large written consultation process was launched and proved very successful. The working group received comments from the United Nations Human Rights Office of the High Commissioner, the UN Special Rapporteur on the situation of Human Rights Defenders, the Commissioner for Human Rights of the Council of Europe, the OSCE/ODHIR Office, and the Fundamental Rights Agency. At the level of Ombudsman Associations, the Association of Mediterranean Ombudsmen, the Association of Ombudsman and Mediator of the Francophonie, the European Network of National Human Rights Institutions, and the International Ombudsman Institute also sent their comments.

The Steering Committee for Human Rights of the Council of Europe (CDDH) had also been included in this consultation process.

The working group had just met, carefully analysed all comments and made some amendments to the draft bearing in mind that the set of principles should remain short and applicable to the variety of models of Ombudsman institutions. This set of principles is meant to be part of soft law and to strengthen and protect the Ombudsman institution. An oral consultation with all stakeholders would take place this Autumn.

Ms Brigitte Ohms, Member of the Steering Committee for Human Rights (CDDH), welcomed on behalf of the CDDH, the timely initiative of the Venice Commission as well as the first draft submitted for consultation. The CDDH at its plenary meeting (19-22 June 2018) adopted a Draft Declaration on the need to strengthen the protection and promotion of the civil society space, prepared by the CDDH-INST, and decided to transmit this text to the Committee of Ministers for possible adoption. It had also been mandated by the Committee of Ministers to update Recommendation R (85) 13 on the institution of the Ombudsman.

The work of the CDDH and of the Commission were fully complementary, the CDDH would provide its comments at the latest in October.

Mr Ribo, Regional President of the European Chapter of the International Ombudsman Institute (IOI), welcomed on behalf of the IOI the Commission’s initiative and work. IOI

strived for a high level of principles and had already made some preliminary comments on the draft. IOI welcomed the planned additional set of consultations; it would forward the draft to all regional presidencies of the IOI's 190 members and send additional comments to the working group in due course.

Several members congratulated the rapporteurs for the content of the first draft submitted for consideration and made a few proposals for amendments.

Mr Helgesen informed the Commission that several points proposed had already been addressed by the working group and invited all members to send their comments to the secretariat at their earliest convenience.

20. Co-operation with other countries

Hungary

Mr Tamás Sulyok, President, Constitutional Court of Hungary, informed the Commission that his Court was fulfilling its duties as the principal organ for the protection of the Fundamental Law and as the protector of the fundamental rights of individuals. Since 2012, his Court had 17 times referred to the opinions of the Venice Commission, for example in electoral cases, on freedom of assembly, on the independence of the judiciary, on freedom of religion, on the rights of national minorities and on the principle of the rule of law in criminal cases. Judgment 33/2017 had admitted the right of judges to appeal against the orders of the President of the National Judicial Office. In decision 12/2017 the Court found unconstitutional a general national security screening for judges. The Court had referred pending cases on the Act on Higher Education and the law on the transparency of NGOs to the Court of Justice of the European Union as a means to foster dialogue among national and international judicial institutions.

The recent 7th Amendment of the Fundamental Law did not affect the Constitutional Court but a new Supreme Administrative Court was to be established. In line with decision no. 38/2012 of the Constitutional Court, the 7th Amendment established an obligation of the State and of local governments to provide accommodation for homeless people. Local government decrees declaring it unlawful to live in public areas could be imposed only in the interest of public order, the protection of health and cultural heritage.

According to the 7th Amendment, the exercise of the freedom of opinion and freedom of assembly should be balanced with the respect of the right to private and family life and the right to home. The Constitutional Court would establish this balance on the basis of a proportionality test, applying the German doctrine of *„schonender Ausgleich".*

President Buquicchio welcomed that the Constitutional Court referred in its judgments to opinions of the Venice Commission.

Republic of Korea

Mr Jinsung Lee, President of the Constitutional Court of the Republic of Korea, provided the Commission with a brief history of the rule of law in his country. In 1948, the Republic of Korea introduced its first Constitution, but presidents tended to omit its application and strengthened their authority and lengthened their terms of office instead. It took some time for the Supreme Court to declare laws unconstitutional and it was not until the 1987 uprising (June Struggle or Hangul) that changes to the Constitution were made, introducing human rights and establishing a constitutional court. In October 2018, a symposium would be organised by the Constitutional Court to celebrate its 30th anniversary, a time period during which it has heard 33 000 cases and has, among others, struck down a presidential decree allowing for arrests without a warrant and a statute with deep-rooted discrimination against women. It culminated last year with the

impeachment of the President of the Republic, Ms Park, for the grave violation of the principle of democracy and the rule of law. Two lessons were retained from this: (1) that laws are not sufficient to uphold the rule of law, they need to be observed and (2) that justice is based on humanity and an even playing field was needed for minorities. He ended his presentation by stating that sustainable peace can only be achieved through justice and that we might have the privilege of witnessing peace on the Korean peninsula in the near future.

Mr Buquicchio reminded the Commission that the Republic of Korea was initially an Observer state with the Venice Commission and was very keen to learn from Germany's reunification process. Today, the Republic of Korea was a full member of the Commission and the President of the Republic of Korea, Mr Moon, had just launched a constitutional reform in which the Venice Commission would like to be involved.

Albania

Mr Garrone informed the Commission that, on 13 October 2017, an Ad-Hoc Parliamentary Committee "On the Implementation of the Electoral Reform" had been established to address the recommendations of the OSCE/ODIHR Reports on the last three elections of 2013, 2015 and 2017, with the aim of preparing draft amendments to the Electoral Code and other election related legislation.

On 16 February 2018, the Albanian Speaker forwarded an official request to the President of the Venice Commission to assist the work of the Ad-Hoc Committee. The proposed activities for the Venice Commission's expert assistance had been defined in close co- ordination with the co-chairs and other international partners in order to ensure maximum coherence and complementarity. They were intended to target the following areas:

1. New Voting Technologies (NVT)
2. Out-of-country voting for emigrants
3. Campaign issues (media/party finance)
4. Election administration

Venice Commission Experts had prepared reports on: new voting technologies (for a workshop which took place 6 June), and out-of-country voting (for a workshop on 27 June). Venice Commission experts would also participate in workshops to be organised by the OSCE on campaign issues and election administration.

Bosnia and Herzegovina

Mr Garrone informed the Commission that, in the *Ljubic* case, the Constitutional Court of Bosnia and Herzegovina had struck down some provisions of the Election Law of Bosnia and Herzegovina concerning the election of the House of Peoples of the Federation of Bosnia and Herzegovina. The Venice Commission had provided an *amicus curiae* opinion in this case, where it considered that the House of Peoples of the Federation was mainly intended to represent the constituent peoples (and others). The Commission favoured an interpretation of the electoral law in conformity with this provision of the Constitution of the Federation, without taking a position on its conformity to the state's constitution. The *Ljubic* case had not been implemented up to now. The status quo did not appear to be an option since it was difficult to consider that there was no loophole to fill in the electoral legislation after the decision of the Constitutional Court in the *Ljubic* case. If the law were not amended and no elections to the House of Peoples of the Federation took place after the direct elections (including to the cantonal assemblies) to be held on 7 October, there would be no election of the delegates of the Federation to the House of Peoples of Bosnia and Herzegovina, nor any election to the Presidency and the Government of the Federation.

As agreed by the political parties of the Federation of Bosnia and Herzegovina, in the context of the EU/US facilitation efforts on electoral reform, and following a formal request made by the European Union, a Venice Commission delegation attended a series of meetings with the relevant electoral stakeholders in order to provide expert assistance in the process of on-going discussions on necessary changes to the electoral legislation. These meetings had taken place on 22-24 May as well as on 4-6 June. The discussion had been limited to the election of the House of Peoples of the Federation. It had involved representatives of the political parties, at the highest level during the second visit.

There were divergent visions and interpretations of the decision of the Constitutional Court by, on the one side, the HDZ (Croat) party and, on the other side, the Sarajevo-based parties. The latter considered that there should be a representative of each constituent people from each canton in the House of Peoples of the Federation except when there is no such representative in the cantonal assembly – as said in the present text of the Constitution of the Federation of Bosnia and Herzegovina. The provision guaranteeing this minimal representation had however been challenged before the Constitutional Court by a member of HDZ, Ms Kristo. The HDZ would favour a solution where the members of the House of Peoples from one ethnic group would be as far as possible elected from the cantons where this people is in a majority. During the first visit, the stakeholders had mainly reiterated their positions. During the second one, there seemed to be an opening, in particular after the interventions of representatives of the EU and the US at a high level. However, a new meeting organised by the EU and US delegations with high-level delegations on 7 June had not led to any solution.

This had brought a number of parties to propose the adoption of a law on Electoral Constituencies and the Number of Mandates of the Parliament of the Federation of Bosnia and Herzegovina, at entity (Federation) level. The House of Representatives of the Federation of Bosnia and Herzegovina had adopted this law very quickly, on 20 June, while the HDZ had boycotted the debates. It was difficult to know whether this might lead to the adoption of the law by Parliament, not to mention possible constitutional disputes.

Mr Knezevic reminded the Commission that the deadlines for implementing the *Ljubic* decision had not been respected and that, in such a situation, there was a risk for a number of institutions of Bosnia and Herzegovina not to be constituted, and therefore of a constitutional crisis. It was unlikely for the Constitutional Court to take a decision on the *Kristo* case before the elections.

21. Information on constitutional developments in other countries

France

Mme Bazy Malaurie informe la Commission des développements constitutionnels à venir en France qui figureront dans un projet de loi constitutionnelle, de loi organique et de loi ordinaire. Parmi les principaux points de la réforme : les présidents de la République ne seront plus membres de droit du conseil constitutionnel ; les membres du parquet seront nommés par le Président de la République uniquement sur avis conforme du Conseil supérieur de la magistrature, en matière de discipline c'est l'avis de ce dernier qui prévaudra ; la Cour de justice de la République sera supprimée et remplacée par la Cour d'appel de Paris qui statuera sur les crimes et délits commis dans l'exercice de leurs fonctions par les ministres ; le Conseil économique, social et environnemental sera remplacé par la Chambre de la société civile, qui sera systématiquement saisie des projets de lois à caractère économique, social et environnemental et qui aura pour fonction d'organiser les consultations publiques et traiter les pétitions; l'interdiction de cumul des fonctions ministérielles avec des fonctions exécutives dans une collectivité territoriale sera prévue comme l'introduction d'une différenciation de compétences à l'intérieur des collectivités territoriales, la spécificité de la Corse sera également reconnue.

Au niveau du Parlement les dispositions qui vont être introduites visent à compléter la réforme de 2008 qui avait organisé le travail parlementaire, notamment, en réduisant le nombre de navettes possibles entre les deux chambres, en donnant davantage de poids au travail des commissions parlementaires pour ne concentrer le débat en séance publique que sur les questions essentielles ; le contrôle et l'évaluation des politiques publiques seront également renforcés. La réforme prévoit une diminution du nombre des députés et des sénateurs, l'introduction d'une dose de proportionnelle au niveau de 15% pour l'élection des députés, un redécoupage des circonscriptions ainsi qu'une limitation du cumul des mandats dans le temps pour les députés et les sénateurs.

Kazakhstan

Mr Rogov informed the Commission that a constitutional reform had started in Kazakhstan in 2017, which had led to the redistribution of 35 presidential powers to parliament, government and central-state bodies. The new constitutional elements included strengthening parliament, leading to changes being introduced into many constitutional laws, including the law on the status of judges. In February 2018, it was announced that the legal procedure in Kazakhstan would be modernised by 2025. The aim of this reform is to achieve a high level of trust in state institutions and courts. It also aims to fight corruption (zero tolerance), enhance legal awareness of citizens, as well as tackle property and ownership issues to create an environment conducive to economic growth and healthy competition. Criminal law and tort was also being revised, a bill on advocacy and legal assistance was currently being drafted and the criminal procedure was being modernised as were law enforcement agencies. An administrative code was also currently being drafted and administrative justice would be introduced into the state *apparatus*. He ended by thanking the Venice Commission for its assistance in this reform.

22. Information on Conferences and Seminars

The Commission was informed on the results and conclusions of:

15th European Conference of Electoral Management Bodies on "Security in elections" (Oslo, 19-20 April 2018)

Mr Kask informed the Commission that the 15th European Conference of Electoral Management Bodies (EMBs) on "Security in elections" had been organised in co-operation with the Norwegian authorities. This topic was especially important in the present context. The Conference had gathered around 150 participants from 31 countries, including not only members of Election Management Bodies, but also academics, representatives of international organisations and NGOs. The conference as well as the conclusions had addressed various aspects of security; first, classical aspects of security concerning individuals as well as buildings and installations dedicated to elections, including the issues of elections under a state of emergency or in a post-conflict environment; second, the threats linked to the use of digital technology, which included cyber-attacks on the electoral process on the one side and misinformation, disinformation and "fake news" during electoral campaigns on the other side. References had been made to the major relevant documents of the Council of Europe, including the Budapest convention on cybercrime and the Council of Europe recommendation for standards on e-voting. EMBs should co-operate with other state institutions such as the police and investigation institutions not only in-country but also out-of-country; concerning misinformation, disinformation and fake news on social networks, there was a need to co-operate with private actors such as Facebook or Twitter.

Séminaire UniDem-Med « Améliorer la relation entre l'administration et les citoyens : un impératif démocratique » (Rabat, 23-26 avril 2018)

Mme Martin informe la Commission de la tenue, du 23-26 avril 2018, à Rabat, de la septième édition du Campus UniDem Med, qui avait pour thème « l'amélioration de la relation entre l'administration et les citoyens », sur une proposition du Ministère de la réforme de l'administration et de la fonction publique du Royaume du Maroc. M. Vilanova y a contribué comme M. Naciri qui en a modéré et résumé les travaux. Le séminaire a été inauguré en présence du Ministre en charge de la réforme de l'administration et de la fonction publique, M. Mohammed Benabdelkader.

Le séminaire a rassemblé plus de cinquante participants, réunissant des experts partageant l'expérience de la Slovénie, de l'Estonie, de l'Allemagne et de l'Autriche avec des hauts cadres de l'administration de l'Algérie, de la Jordanie, du Liban, du Maroc, de la Tunisie et du Palestine[1].

Le prochain séminaire UniDem Med aura lieu à Tunis, du 23 au 26 septembre 2018, avec pour thème : « Transformation et innovation dans le service public : défis et opportunités ».

2nd Scientific Electoral Experts' Debates "Equal Suffrage" (Sinaia, Romania, 3-4 May 2018)

Following the First Scientific Electoral Experts Debates which took place in Bucharest in 2016, the Second Scientific Electoral Experts Debates were organised by the Venice Commission in co-operation with the Permanent Electoral Authority of Romania in Sinaia, on 3-4 May 2018, These debates were dedicated to equal suffrage and would lead to a publication in the Romanian Journal of Electoral Studies. The reports had concerned various aspects of the principle of equality, relating to gender and minorities as well as equal voting power and equality in a changing environment; the report on constituency delineation and seat allocation had been introduced. The event had gathered around 100 participants from all over the world and will, hopefully, become a tradition.

The Scientific Debates were followed by a conference entitled "Free elections, parliaments and nation building" organised by the Permanent Electoral Authority with a special focus on political science and history.

23. Communication from the Scientific Council

Mr Helgesen informed the Plenary about the initiative of the Scientific Council to launch a study on separate opinions in constitutional courts, which, due to the divergence of State practice, would be a descriptive document.

He further reminded the Plenary about the conference held in Lund (Sweden) in 2000 on constitutional reforms in Central and Eastern Europe. The Scientific council proposed to organise a similar conference in co-operation with Lund University, in Spring 2019

He finally introduced two compilations of Venice Commission opinions and reports on qualified majorities and anti-deadlock mechanisms (CDL-PI(2018)003) and on Social and Economic Rights (CDL-PI(2018)005), and explained their relevance for the Commission's work.

[1] Cette dénomination ne saurait être interprétée comme une reconnaissance d'un État de Palestine et est sans préjudice de la position de chaque État membre du Conseil de l'Europe sur cette question.

The Commission endorsed the initiatives of the Scientific Council to prepare a report on separate opinions of constitutional judges and to co-organise a conference in Lund in Spring 2019, and endorsed the two compilations of the Venice Commission: on qualified majorities and anti-deadlock mechanisms (CDL-PI(2018)003) and on Social and Economic Rights (CDL-PI(2018)005).

24. Report of the meeting of the Council for Democratic Elections (21 June 2018)

Mr Kask informed the Commission that Lord Balfe had been elected as Vice-President of the Council for Democratic Elections and that Mr Vilanova Trias had joined as a new substitute member.

The Council had discussed the study on the recall of mayors and proposed certain amendments; it would come back to the issue at its next meeting further to the decision of the Sub Commission on Democratic Institutions to examine it again in October (see item 18). In addition, the Council had adopted the draft opinion on the legislation relating to the financing of political parties in Kosovo (see items 15).

Venice Commission representatives had taken part in a number of activities since the last session, especially in Albania and Bosnia and Herzegovina (see item 20) as well as in Kyrgyzstan and Ukraine. The drafting of the report on electoral dispute resolution should start in the next months.

The Council had taken note of the update of the VOTA database, which gave access to electoral laws and opinions of the Venice Commission based on country and topic and has been developed in co-operation with the Mexican Electoral Tribunal of the Judicial Power of the Federation. This was a major achievement since it contains a total of 488 texts available in English, French or Spanish, including:

- 65 Constitutions or election-related excerpts of the Venice Commission member States and other countries
- 25 main reference texts of the Venice Commission in the field of elections and political parties such as the Code of good practice in electoral matters
- 242 national laws and 156 Commission opinions on the electoral legislation of individual countries, generally prepared jointly with the OSCE/ODIHR

The Council had also discussed possible further co-operation with the European Union in order to have similar standards in the OSCE, the Council of Europe and the European Union.

Mr Helgesen stated that a committee had been created in Norway to draft new legislation on elections and included Mr Holmøyvik and himself; the Venice Commission had taken part in one of its meetings in April. The mandate of this committee made it clear that it had to comply with international standards as defined by the Venice Commission; similar developments had taken place concerning the revision of the legislation on the judiciary.

Mr Vargas Valdez addressed the issue of social media in elections, on which he had prepared a report which had led to a first discussion in the Council. A revised version would be prepared as a joint document of the Venice Commission and the Division of media and Internet governance of the Council of Europe. This issue was topical and had been addressed by the Secretary General in his Report on the State of Democracy, Human Rights and the Rule of Law; it had also raised the interest of the Parliamentary Assembly of the Council of Europe as well as of the OSCE/ODIHR. The issue had also been addressed during the last Conference of Election Management Bodies in Oslo. The report noted *inter alia* that the new technologies

were very useful but that information was centralised in the hands of a few actors; it also addressed privacy issues and acknowledged the diversity of solutions.

25. Other business

There were no items under other business.

26. Dates of the next sessions

The schedule of sessions for 2018 was confirmed as follows:

116th Plenary Session	19-20 October 2018
117th Plenary Session	14-15 December 2018

The schedule of sessions for 2019 was confirmed as follows:

118th Plenary Session	15-16 March 2019
119th Plenary Session	21-22 June 2019
120th Plenary Session	11-12 October 2019
121st Plenary Session	6-7 December 2019

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

Link to the list of participants