



Strasbourg, 5 January 2005

Restricted
CDL-PV(2004)004

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

61st PLENARY SESSION
(Venice, 3 and 4 December 2004)

SESSION REPORT

1. Adoption of the agenda

The agenda was adopted without amendment.

2. Communication by the Secretariat

Among the numerous activities undertaken by the Commission since the previous session, the Conference on 15 years of constitutional experience in central and eastern Europe held in Warsaw on 19-20 November deserved special mention in that it had been the first event held during the Polish Chairmanship of the Committee of Ministers and illustrated the excellent co-operation that existed between the Commission and the ODIHR. By the end of the year, the Commission would be called on to provide assistance in the wake of the second round of the presidential election in Ukraine and to help prepare a new legal status for South Ossetia in Georgia.

3. Co-operation with the Committee of Ministers

Within the framework of its co-operation with the Committee of Ministers, the Commission held an exchange of views with Ambassador Alan Streimann, Permanent Representative of Estonia to the Council of Europe, and with Ambassador Daryal Batibay, Permanent Representative of Turkey to the Council of Europe.

Ambassador Streimann recalled the important role played by the Commission when Estonia won independence back in 1991, and in particular its assistance in drafting a new constitution and creating new institutions. The preparation of the 3rd Council of Europe Summit, to be held on 15 and 16 May 2005, was one of the main items on the Committee of Ministers agenda. Faced with the challenge of determining the future role of the Council of Europe and assessing its implications for the organisation, the Committee of Ministers was working on drafting the political declaration and a plan of action for adoption at the summit.

Ambassador Batibay spoke of the important role played by the Venice Commission, which had once again been highlighted during a recent visit by the Committee of Ministers "Ago Group" to the Caucasus states, to evaluate and monitor compliance with the commitments entered into by these countries.

The role played by the Venice Commission in the political and legal sphere was crucial, whether in terms of the need for political reconciliation with the opposition, the independence of the judiciary or the peaceful resolution of crisis situations such as the one in South Ossetia. Over the coming period, therefore, the Venice Commission would have a key part to play in promoting peace and stability throughout the Caucasus region.

Mr Buquicchio confirmed that the status of South Ossetia, and indeed the whole of the South Caucasus, was a key priority for the Venice Commission in establishing peace in the region. It was important that the Commission's contribution to this process be given due recognition at the forthcoming summit.

4. Co-operation with the Parliamentary Assembly

The Commission held an exchange of views with Mr Eric Jurgens, member of the Committee on Legal Affairs and Human Rights, on co-operation with the Assembly.

Mr Jurgens told participants that the Assembly's Monitoring Committee would be presenting its report on Georgia at the January session of the Assembly; the role of the Venice Commission in evaluating legal matters relating to Georgia remained very important. Another highlight of the forthcoming Assembly session would be the presentation of a report by the Committee on Legal Affairs and Human Rights on the circumstances surrounding the arrest and prosecution of senior executives in the Yukos affair (Russia).

Of the various opinions which the Venice Commission had prepared at the request of the Assembly, Mr Jurgens said the one on the protection of human rights in Kosovo had been particularly helpful; as in the case of the opinion given in connection with the Legal Affairs Committee's report on the lawfulness of detention conditions in Guantanamo Bay, the Committee on Legal Affairs and Human Rights was organising a hearing on this subject in December, which would be attended by Mr Nolte. Mr Jurgens also thanked the Commission for its urgent opinion on the referendum in Belarus, which had been very well received both within the Council of Europe and elsewhere.

5. Co-operation with the Congress of Local and Regional Authorities

Mr Delcamp told participants that Mr di Stasi was unable to attend the session.

Legislation on local and regional self-government was undergoing a process of globalisation that called for the Commission's attention. This process was occurring not just within the Council of Europe and the Congress but also within the European Union.

Within the Council of Europe, the strength of the European Charter of Local Self-Government with 39 ratifications had prompted the Congress to launch a debate in order to better address the new realities of local self-government, and in particular regional self-government which was still a controversial concept in some states. The Committee of Ministers had recently adopted a new draft European Charter of Regional Self-Government, which would be submitted to the 14th Conference of European Ministers responsible for local and regional government in Budapest in February 2005. The European Union, meanwhile, would be addressing local and regional aspects in Article 5 of the treaty "establishing a constitution for Europe". These two concurrent developments were also reflected in the establishment of closer ties between the EU's Committee of the Regions and the Congress of Local Authorities which had adopted joint resolutions that could pave the way for new forms of co-operation with the Commission, along the lines of the conference on representation of local and regional authorities at parliamentary level, in which the Venice Commission was already involved, or as part of the plans to draft a single document on the various mechanisms for safeguarding the rights of local and regional authorities.

Lastly, the recognition given in the draft European constitution to the role of national parliaments in the European construction process could be seen as a positive move since in France, for example, it would have the effect of amending the constitution to enhance the powers of the national parliament.

6. Follow-up to earlier Venice Commission opinions

In respect of follow-up to the Venice Commission's opinion on the rules of procedure of the Constitutional Court of Azerbaijan, Ms Martin said that the recommendations contained in the opinion had been largely disregarded by the Constitutional Court which had opted instead for a very detailed set of rules, failed to determine the general powers of the chambers, the president and judges and kept many of the seemingly pointless references to the principles enshrined in the constitution and the constitutional law on the Constitutional Court.

With regard to developments concerning the adoption of a law on the ombudsman in Bosnia and Herzegovina, Mr Tuori said that the new draft law incorporating the Commission's comments had suddenly, and for no apparent reason, been withdrawn from the Legislative Commission debates by the representative of the Minister for Human Rights and Refugees, in favour of another draft law which did not comply with the Commission's recommendations at all. The House of Representatives of the Bosnian Parliament had subsequently rejected this second draft and had instructed the Minister for Human Rights and Refugees to prepare a new draft law. The Commission said it was baffled by the behaviour of the Bosnian authorities which had sought its opinion only to withdraw the draft law without any explanation.

7. Armenia

Mr Tuori presented the opinion on three proposals for revising the Armenian Constitution, saying that it pertained solely to the constitutional provisions for which an amendment had been proposed, and was not concerned with the other sections of the Constitution, such as the preamble, which were unaffected by the reform. Mr Tuori further explained that the working group had used the draft constitutional reform prepared in 2001 with the help of the Venice Commission as a reference document.

The first draft was an improvement on the current Constitution, but it still had some major flaws. For example, it did not expressly prohibit the death penalty; in the media sector, it was left to ordinary law to regulate the activities and responsibilities of the media; on the subject of martial law and states of emergency, it diminished the power of the National Assembly to control the President's use of emergency powers. In comparison with the 2001 draft, moreover, the new draft gave the President increased authority at the expense of the National Assembly, thereby changing the balance of power. The draft also preserved the power of the President to elect and dismiss the mayor of Yerevan, which was contrary to European standards of local self-government.

The second draft could not be regarded as a comprehensive and coherent proposal for reform; it dealt only with political programmes and there appeared to be some confusion between the *legal and political* responsibilities of the political parties. It sought to introduce a sort of set of mandatory instructions, which was problematic in several respects.

The third draft was broadly in keeping with the 2001 draft and was a definite improvement on the existing Constitution. In particular, it contained an explicit prohibition of the death penalty. Like the first draft, it contained provisions on the Central Bank and the Audit Chamber which were to be welcomed, although the National Assembly ought to have supervisory powers in matters of public finance.

In regard to the first and third drafts, Mr Endzins, together with Mr Mifsud Bonnici and Mr Malinverni, said that the power of the President to initiate legislation did not constitute a breach of European standards *per se*.

Mr Harutunian said that the National Assembly intended to take the Commission's opinion on board when deciding which draft to choose in the next stage of the reform process. Once this decision had been made, the chosen draft would be revised and re-submitted to the Commission for opinion.

Mr Buquicchio told the Commission that Mr Torossyan, Deputy Speaker of the National Assembly, was planning to hold an exchange of views between a delegation from the Commission and the authors of the chosen draft, at the end of February/beginning of March 2005. The need to involve the opposition was widely recognised, and had recently been underlined by the Ago Group of the Council of Europe's Committee of Ministers. Positive signals seemed to be coming from the opposition, which might decide to participate in the reform process.

The Commission decided to adopt the opinion, entitling it “the interim opinion on constitutional reform in Armenia” (CDL-AD (2004)44).

With regard to the law on the procedure for conducting gatherings, meetings, rallies and demonstrations of the Republic of Armenia, Ms Flanagan told the Commission that a draft amendment to this law had just been received by the Commission. An opinion on this draft law would be prepared shortly.

8. Azerbaijan

There were no activities under way with Azerbaijan although the Commission was expecting to be consulted about a possible revision of the Electoral Code.

9. Bosnia and Herzegovina

Mr Scholsem recalled that in Resolution 1384, the Parliamentary Assembly had asked the Commission to examine the powers of the High Representative, the compatibility of the Constitution with the European Convention on Human Rights and the efficiency and rationality of the present constitutional arrangements in Bosnia and Herzegovina. A delegation from the Commission had visited the country at the end of October. The delegation had met the High Representative, the Constitutional Court, the constitutional committees of the parliaments of the state and the entities and representatives of the main political parties. Following the visit, an opinion would be prepared by the rapporteurs and submitted to the Commission for adoption at the next session in March.

Mr Sadikovic expressed his belief that Bosnia and Herzegovina, as it stood at present, was not a functional state and that radical structural reform was needed.

10. Georgia

Mr Hamilton presented the opinion on the proposal for a constitutional law amending the Georgian Constitution.

This proposal had been framed by the Georgian NGO "Liberty Institute" but had been submitted to the Commission for opinion by the Georgian Minister of Justice. The Commission recalled that because of its workload, only proposals from government authorities could be submitted to it for opinion.

The draft constitutional reform which concerned only the chapter on fundamental rights and the chapter on the judiciary, had no explanatory memorandum, making it difficult at times to assess the planned reforms, in particular the proposed abolition of the Constitutional Court and the consequent widening of the powers of the Supreme Court. Although the exercise by the Supreme Court of constitutional review powers was not contrary to European standards, the decision to abolish an existing, functioning constitutional court could be justified only on specific grounds, which in this case had not been explained. Quite apart from that, the constitutional functions of the Supreme Court were insufficiently defined and co-ordinated with the appeal functions in the draft in question.

As far as fundamental rights were concerned, the text was extremely detailed, in some cases excessively so, and deviated from the definitions given in the European Convention on Human Rights, which might give rise to ambiguities and misunderstandings. The provision on the abolition of the death penalty was to be welcomed.

Mr Denis Petit, representing the ODIHR, told the Commission that the OSCE mission in Tbilisi had been asked by the Georgian Ministry of Justice to examine the "Liberty Institute" text; it had appointed an expert, Mr Gérard Batliner, who had prepared comments which basically echoed

those made by the Commission's rapporteurs. He felt that this text contained a number of welcome new features, but needed streamlining. The abolition of the Constitutional Court was clearly problematic, and should in any case be preceded by extensive public debate before it was even considered.

The Commission took note of the comments made by Messrs van Dijk and Hamilton on the proposal for a constitutional law amending the Georgian Constitution and instructed the Secretariat to prepare a joint opinion with the OSCE/ODIHR.

The Secretariat told the Commission that in response to a request from the Georgian Minister of Foreign Affairs, asking the Commission to help find a solution to the problems in South Ossetia, a Commission delegation was planning to visit Georgia from 27 to 28 January 2005.

11. Italy

Mr Tuori told the Commission that the visit by a Commission delegation to the Italian authorities scheduled for November 2004 in order to prepare the opinion on the compatibility of the Gasparri and Frattini laws with European standards had had to be postponed at the request of the Italian authorities. The visit would now take place on 13 January 2005.

12. Moldova

Mr Paczolay presented the opinion on the draft law designed to amend and supplement the Moldovan Constitution concerning the filing of individual applications with the Constitutional Court, prepared on the basis of comments by Mr Nolte and himself at the request of the Constitutional Court of Moldova and the Permanent Representative of Moldova to the Council of Europe.

The Commission welcomed the introduction of individual applications in Moldova; such a move was wholly in keeping with European standards and should make for better protection of fundamental rights.

Under the draft, it was proposed to add a seventh judge, appointed by the President of the Republic, to help the Court deal with the extra workload. The increase in the number of judges and the procedure for appointing judges called for two comments. Firstly, since the President of the Republic was elected by a qualified majority of members of parliament, the introduction of a seventh judge, to be appointed by the President, as envisaged in the draft amendments, would serve to widen the pool from which Constitutional Court judges could be recruited. Secondly, as a counterweight to the government's power to appoint two judges, the draft opinion recommended that the two judges elected by Parliament be elected by a qualified majority.

The draft opinion called for the creation of chambers within the Court to deal with the extra workload. Several members spoke on this subject, arguing that even though there might be a case for creating chambers for constitutional courts which heard individual complaints, matters relating to a court's internal organisation were best left to the law on the constitutional court and had no place in the constitution.

A further discussion was held on the references to assault in paragraph 14 of the opinion. It was proposed that a reference to violations of a law or court decision be inserted in paragraph 14.

The Commission adopted the opinion, as amended, on the draft law to amend and supplement the Constitution of Moldova on the filing of individual applications with the Constitutional Court, as set out in document CDL-AD(2004)043.

13. Russian Federation

The Commission examined, with a view to its adoption, the draft opinion ([CDL\(2004\)122](#)) on the law establishing new procedures for electing and dismissing heads of executive authorities of subjects of the Russian Federation ([CDL\(2004\)114](#)) prepared in the light of comments by Messrs Malinverni, Nolte, Scholsem, Fogelklou and Lesage. The law, as amended by the draft law, appears in document [CDL\(2004\)121](#). This draft opinion had been prepared at the request of the Parliamentary Assembly's Monitoring Committee.

Mr Scholsem outlined the salient points of the opinion. The Commission had been asked to look into the matter by the Parliamentary Assembly's Monitoring Committee, which wished to know whether this draft was not incompatible with the Russian Constitution and whether it conformed to European standards. The purpose of the law was to change the federal system in the following areas:

- 1) heads of executives were no longer to be elected directly, but were to be elected by the legislative assemblies of subjects of the Russian Federation on a proposal from the Russian President;
- 2) the President of the Russian Federation had the right to dissolve assemblies if they twice rejected the President's candidate for the post of head of executive of a Federation subject;
- 3) heads of executives were to be less accountable to the legislative assemblies;
- 4) the Russian President could dismiss the head of executive of a Federation subject at any time.

The Commission could not usurp the authority of the Russian Constitutional Court and examine the "constitutionality" of the draft law. It could merely express its opinion on how it related to existing norms. With regard to European standards, Mr Scholsem said that federal states were something of an exception in Europe and that it was difficult to say which federal system was the best. The rapporteurs had compared Russia to other federal and regional states in Europe. According to the rapporteur, comparative analysis of the draft reform showed that the legislative assemblies would be weakened as a result. Another rather worrying provision was the one which gave the President of the Federation the power to dismiss the head of executive of a Federation subject and to dissolve a subject's legislative assembly. Mr Scholsem's last comment concerned the composition of the Federation Council (the upper house of the Russian parliament). Once the draft law was adopted, half of this body would be directly dependent on the Russian President, because it was made up of representatives of the executive.

Mr Lesage agreed with Mr Scholsem's comments but wished to clarify a few points. He reminded the Commission that the draft in question was being debated by the Russian Duma even as the Commission was holding its plenary session and that there was a possibility that it might be extensively amended. He said that the procedure envisaged in the draft was an investiture rather than an appointment procedure and that the right to dissolve an assembly could be also be seen as a way of settling disputes. The title of the opinion, too, was wider than the original remit and he proposed that it be amended.

Mr Fogelklou said that the Russian Constitution was very flexible as regarded the composition of authorities in the Federation subjects. It allowed for the possibility of adjusting the balance of power. The desire to strengthen the executive, which was a single system under the Constitution, was not in itself unconstitutional therefore. The nature of Russian federalism was changing, however, and some of the changes proposed would seem to create an imbalance in the federal system.

Mr Baglay felt that the Commission was putting itself in an awkward position by examining a draft law at the same time as it was being debated by the national parliament. Russian parliamentarians would read the Commission's opinion when the law in question might already have been adopted. For information, he said that 250 amendments were being discussed by the Russian parliament. It seemed a pity to comment on a draft that might not even exist the day after the meeting. He nevertheless congratulated the rapporteurs on their excellent work and broadly concurred with their assessment and conclusions. On the subject of the composition of the Federation Council, he shared the Commission's concerns and said that, unfortunately, the Constitutional Court had been unable to examine this matter because the provisions on the composition of the upper house were part of the Constitution and the Court could not rule on the constitutionality of the Constitution. He hoped that the planned reform of the Federation Council would resolve this issue. Mr Baglay concluded by saying that strengthening the executive was a necessary measure in order to centralise the fight against corruption and organised crime and that once the internal situation had returned to normal, the federal structure would be re-examined in the interest of the sub-federal authorities.

The Commission decided to adopt the opinion, entitling it “Opinion on the draft federal law¹ amending the federal law “On general principles governing the organisation of legislative (representative) and executive state authorities of constituent entities of the Russian Federation” and the federal law “On fundamental guarantees of Russian Federation citizens’ electoral rights and right to participate in a referendum”(CDL-AD(2004)042) and to forward it to the Monitoring Committee of the Parliamentary Assembly of the Council of Europe.

14. Serbia and Montenegro

Mr Bradley informed the Commission that at the end of November a delegation had visited Podgorica to discuss constitutional reform in Montenegro. The Constitutional Charter of the State Union of Serbia and Montenegro required that the Montenegrin Constitution be brought into line with this Charter. At the request of the parliament, a group of experts had prepared a report on how best to proceed. According to these experts, the adoption of a brand new constitution was desirable and, to this end, given the discontinuity in the constitutional development process, it was not essential to observe the rules on constitutional revision set out in the existing constitution. The Venice Commission delegation had held discussions *inter alia* with the group of experts and the parliament's constitutional committee. The group of experts would prepare a revised version of their report which would reflect the discussions with the Venice Commission delegation.

Mr Lavin presented the joint opinion prepared by the Commission, the Human Rights Commissioner and the Directorate General of Human Rights of the Council of Europe on the law on the ombudsman of Serbia. He said that the requirement to exhaust all legal remedies before applying to the ombudsman made it difficult for the latter to take swift, effective action. Also, providing a constitutional underpinning for this institution would help prevent parliament from

¹ Version submitted by the President to the Duma on 28 September 2004.

changing certain aspects of it. The opinion also expressed doubts about the need for the ombudsman to have a degree in law.

The Commission adopted the joint opinion prepared by the Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe on the law on the Ombudsman of Serbia (CDL-AD (2004)041).

15. Ukraine

Ms Martin informed the Commission of a request for opinion from the Congress of Local and Regional Authorities of the Council of Europe on the draft national strategy on reform of the system of territorial organisation. The draft opinion would be submitted for adoption at the next session of the Commission.

Mr Markert reported on participation in the mission to observe the presidential elections in Ukraine, under the co-operation agreement with the Parliamentary Assembly. The Assembly was pleased with the format of this co-operation. It was possible that experts from the Venice Commission would be asked to assist in the observation mission which would travel to Ukraine if the second round of the Ukrainian presidential election were repeated, and that they would be asked to help monitor elections in various other Council of Europe member states in 2005.

16. Women's participation in elections

Mr Luchaire and Ms Suchocka outlined their comments ([CDL\(2004\)112](#) and [127](#)) on Parliamentary Assembly Recommendation 1676(2004) on women's participation in elections. Mr Luchaire said that in some cases, parity was preferable to strict equality. While he approved the text as a whole, he had a few comments to make on specific points; the total ban on voting by proxy was too strict, for example. Ms Suchocka said it was important to have a legal text, but she also stressed the need to change people's habits. These sentiments were echoed by various members.

The Commission endorsed the comments made by Mr Luchaire and Ms Suchocka ([CDL\(2004\)112](#) and [127](#)) on Recommendation 1676(2004) of the Parliamentary Assembly on women's participation in elections and instructed the Secretariat to prepare, in co-operation with the rapporteurs, a consolidated opinion to be forwarded to the Commission of Ministers by 1 February 2005.

17. Other constitutional developments

- *Japan*

Mr Iwai outlined the two major constitutional developments that had occurred that year in Japan.

A constitutional reform had been initiated by the Prime Minister, Mr Koizumi, who had asked his liberal democratic party to prepare a draft constitution by November 2005. The opposition party had decided to follow his lead and would present its own draft constitution. A research mission consisting of the ruling party and the parliament had been set up and had studied various European constitutions as well as the constitution of the European Union. Among the points being discussed was the direct election of the prime minister, the introduction of new human rights not recognised sixty years ago, the setting-up of defence forces and the creation of a

constitutional court. The ruling party must first submit a draft law so that a national referendum could be held on the question of the constitutional revision, for although provision for constitutional revision did exist in Japan, there was no specific provision concerning the procedure to be followed. The party would submit this draft law at the next parliamentary session in 2005.

The second major development concerned the introduction from 2009 of a quasi-jury system, which was something between the jury system found in common law countries and the system of lay judges employed in certain European countries. Six lay persons would sit alongside three professional judges in certain criminal trials, and would decide both verdicts and sentences. The aim of this reform was to make the justice system more democratic and to promote a better understanding of the justice system among the public at large.

- *France*

Mr Lancelot informed the Commission of the ins and outs of a decision taken on 19 November 2004 by the Constitutional Council on the constitutionality of the Treaty of Rome “establishing a constitution for Europe”. The provisions on state obligations (such as “the area of freedom, security and justice”, “foreign policy” and “common security policy”) which transferred powers to the Union, or changed the procedures for exercising powers already transferred, called for a revision of the French Constitution before France could ratify this treaty. The same applied to the new powers conferred on national parliaments to oppose a “simplified revision” of the treaty or to ensure compliance with the “principle of subsidiarity”, as some additions would have to be made to the French Constitution if members of parliament and senators were to be able to actually exercise these rights. There was no question that the effect of the Treaty here would be to strengthen the national constitution. Neither Article I-6 of the treaty, which affirmed the primacy of EU law over national law, nor the Charter of Fundamental Rights of the European Union called for any revision, however. It was interesting to note that, in its decision, the Constitutional Council dismissed the preliminary question of the constitutional nature of the treaty, taking the view that the Treaty of Rome “establishing a constitution for Europe” was a treaty like any other.

- *Mexico*

Mr Muñoz Ledo reported on the latest constitutional developments in Mexico. He reminded participants that his country was in the process of changing its political system in an effort to achieve a more effective form of power-sharing. At present, there were three proposals for reform of the federal system which were expected to be examined by the Constitutional Committee fairly soon. Mr Muñoz Ledo also mentioned the problems with the electoral system – the high cost of campaigns, the role of the media and the large number of voters living in the USA (15 million). He felt that the electoral law needed revising. The speaker mentioned other issues being discussed by the government, such as the fact that there was no formal prohibition of the death penalty (which was banned by law) in the Constitution and the possibility of switching to a semi-presidential system.

Mr Muñoz Ledo reported on moves to create a commission on “constitutional consistency” which could look at ways of resolving the problems he had just mentioned and said he hoped that this new, informal body would be able to turn to the Venice Commission for advice.

- *Republic of Korea*

Mr Oh spoke of the assistance provided by the Commission in the countries of central and eastern Europe, which had also paved the way for expansion of the European Union and was therefore a source of inspiration for regional co-operation in Asia. Since the setting-up of a European-style Constitutional Court in 1988, constitutional justice had become an established feature of Korean society, in its efforts to establish constitutionalism and protect fundamental rights. The Constitutional Court had recently given two rulings which were of major political importance in Korea. First, it had unanimously rejected the National Assembly's decision to impeach the country's President. The Constitutional Court had also declared the draft law to relocate Korea's capital unconstitutional, ruling that the question of the country's capital was an integral part of the Constitution and that consequently, such a move could not be made simply by passing a law. With regard to North Korea, the issue of denuclearisation was still on the agenda and every effort was being made to find a peaceful solution to the crisis. Korea was still planning to become a fully-fledged member of the Commission and all the necessary steps were being taken to this end. Korea would thus be able to draw on the Commission's considerable experience in order to share and promote common values.

18. Amendments to the Rules of Procedure

Ms Suchocka presented the draft amendment to the rules of procedure, as set out in document CDL(2004)123. This draft had been prepared by the Ethics Committee and contained provisions designed not only to better ensure that members acted independently and impartially but also to avoid any appearance of a conflict of interest.

In the discussion, some amendments to the text were proposed and accepted.

<p>The Commission adopted the new Art. 3.bis of the Rules of Procedure and one amendment to Art. 13.</p>

19. UniDem Governing Board

Mr Luchaire, Chair of the UniDem Governing Board, presented the meeting report. Three UniDem seminars were planned in 2005, based around the following themes:

- the organisation of elections by an impartial body, under the joint programme between the Venice Commission and the European Commission on "Democracy through free and fair elections"; the seminar would be split into two parts, focusing on two aspects of independence, namely transparency and impartiality;
- the two chambers; this seminar, which was being held at the request of the Congress of Local and Regional Authorities of the Council of Europe, would concern mainly federal and regional states, but also other states which had a second chamber organised along territorial lines; it would include North America and would take place at the end of the year; the seminar would be preceded by a study based on contributions from members from countries which had a second chamber;
- the status of international human rights treaties: this seminar would take place in September or October, would look mainly at the relationship between these treaties and national constitutions and legislation and would be organised in co-operation with the IACL.

A seminar on legal protection against acts committed by the international community might be held in 2006.

20. Sub-Commission on Constitutional Reform

The results of the Sub-Commission's work had been presented in the discussion on the opinion on constitutional reform in Armenia (see item 7 above) and the request to examine the powers of the High Representative in Bosnia and Herzegovina (see item 9 above).

21. Council for Democratic Elections

Mr Jurgens, Chair of the Council for Democratic Elections, informed the Commission of the results and conclusions of the latest meetings.

Further to the **10th meeting** of the Council for Democratic Elections (9 October 2004):

The Commission endorsed the comments made by Ms Herdis Thorgeirsdottir and Mr Masters on media monitoring during election observation missions ([CDL-EL\(2004\)012](#) and [013](#)).

The Commission adopted the joint opinion of the Venice Commission and the OSCE/ODIHR on the draft amendments to the Electoral Code of Armenia (CDL-AD(2004)049; cf. [CDL\(2003\)052](#) and [CDL\(2004\)074](#)).

Mr Buquicchio said that this opinion had already been sent to the Armenian authorities, who would submit a revised version of the draft revision of the Electoral Code in response to the Commission's opinion. The revised Code would be adopted in the early part of 2005.

Further to the **11th meeting** of the Council for Democratic Elections (2 December 2004):

The Commission discussed the opinion on the law ([CDL\(2004\)115](#)) on local elections in Romania, prepared in the light of comments by Messrs van Dijk and Mifsud Bonnici ([CDL-EL\(2004\)027](#)). Mr Mifsud Bonnici said that the law did not present any particular problems, except as regarded Art. 7, which made it difficult for several lists from the same minority to participate in local elections. Mr Aurescu said that a letter from the Permanent Representation of Romania to the Council of Europe had been sent to members, explaining the *ratio legis* of the text in question.

The Commission adopted the opinion on the law on local elections in Romania (CDL-AD(2004)046) and decided to forward it to the Parliamentary Assembly of the Council of Europe.

Mr Jurgens said that the Council had examined two reports on restrictions on the right to vote, one based on the European Convention on Human Rights, by Mr Matscher (CDL-EL(2004)023), and the other presenting a comparative perspective, by Ms Lazarova Trajkovska (CDL-EL(2004)022). He proposed that they be adopted, subject to a few additions which would be made to Ms Lazarova's report in the light of information submitted late. The reports would be forwarded to the Parliamentary Assembly, with a note indicating that they dealt with the right to vote and eligibility, but not with termination of office.

The Commission adopted the reports by Ms Lazarova Trajkovska and Mr Matscher (CDL-AD(2005)001 and 002) on restrictions on the right to vote, subject to a few addenda to be made by the Secretariat in agreement with the rapporteurs, and decided to forward them to the Parliamentary Assembly of the Council of Europe.

The Commission adopted Mr Masters' comments ([CDL-EL\(2004\)026](#)) on the draft declaration of principles for international election observation ([CDL-EL\(2004\)25](#)).

Mr Jurgens said that a revised version of the report on electoral rules and affirmative action in favour of minorities, prepared by Ms Lazarova Trajkovska ([CDL-EL\(2004\)020rev](#)), would be submitted to the Commission for adoption at its next session; account would be taken of the comments made by the OSCE High Commissioner for National Minorities.

Joint guidelines with the OSCE/ODIHR and the European Commission on media monitoring during election observation missions would also be discussed at the next session (cf. [CDL-EL\(2004\)024](#)).

22. Date of the next session

The Commission confirmed the date of the 62nd plenary session: 11-12 March 2005; the meetings of the sub-committees and the Council for Democratic Elections would be held as usual the day before the plenary session.

LIST OF PARTICIPANTS

ALBANIA/ALBANIE :	M. Luan OMARI
ANDORRA/ANDORRE :	M. François LUCHAIRE
ARMENIA/ARMENIE :	Mr Gaguk HARUTYUNYAN
AUSTRIA/AUTRICHE :	M. Franz MATSCHER
AZERBAIJAN/AZERBAIDJAN	Mr Lätif HUSEYNOV (Apologised/Excusé)
BELGIUM/BELGIQUE :	M. Jean-Claude SCHOLSEM
BOSNIA AND HERZEGOVINA/ BOSNIE-HERZEGOVINE	M. Cazim SADIKOVIC
BULGARIA/BULGARIE :	Mr Anton STANKOV (Apologised/Excusé) Mr Todor TODOROV
CROATIA/CROATIE :	Mr Stanko NICK
CYPRUS/CHYPRE :	Mr Panayotis KALLIS (Apologised/Excusé) Mr Petros CLERIDES
CZECH REPUBLIC/ REPUBLIQUE TCHEQUE :	Mr Cyril SVOBODA (Apologised/Excusé) Ms Eliska WAGNEROVA
DENMARK/DANEMARK :	Mr Henrik ZAHLE (Apologised/Excusé)
ESTONIA/ESTONIE :	Mr Taavi ANNUS
FINLAND/FINLANDE :	Mr Kaarlo TUORI
FRANCE :	M. Olivier DUTHEILLET DE LAMOTHE (Apologised/Excusé) M. Alain LANCELOT
GEORGIA/GEORGIE ::	Mr John KHETSURIANI Mr Zurab KORGANASHVILI
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TABLE OF CONTENTS

1.	Adoption of the agenda	1
2.	Communication by the Secretariat	1
3.	Co-operation with the Committee of Ministers	2
4.	Co-operation with the Parliamentary Assembly	2
5.	Co-operation with the Congress of Local and Regional Authorities	3
6.	Follow-up to earlier Venice Commission opinions	3
7.	Armenia	4
8.	Azerbaijan	5
9.	Bosnia and Herzegovina	5
10.	Georgia	5
11.	Italy	6
12.	Moldova	6
13.	Russian Federation	7
14.	Serbia and Montenegro	8
15.	Ukraine	9
16.	Women's participation in elections	9
17.	Other constitutional developments	9
	- <i>Japan</i>	9
	- <i>France</i>	10
	- <i>Mexico</i>	10
	- <i>Republic of Korea</i>	11
18.	Amendments to the Rules of Procedure	11
19.	UniDem Governing Board	11
20.	Sub-Commission on Constitutional Reform	12
21.	Council for Democratic Elections	12
22.	Date of the next session	13
	LIST OF PARTICIPANTS	14
	TABLE OF CONTENTS	18