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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

63RD PLENARY SESSION

Venice, Friday 10 June 2005 at 9.30am -

Saturday 11 June 2005 at 1pm

SESSION REPORT

1. Adoption of the agenda

The agenda was adopted without amendment.

2. Communication by the Secretariat

Mr Buquicchio informed the Commission of the numerous developments since the previous session. The most important event had no doubt been the holding of the Third Summit of Heads of State and Government of the Council of Europe in Warsaw on 16 and 17 May 2005.

The Action Plan adopted at the end of the summit gave the Venice Commission an enhanced role and called on member states to make use of the advice and assistance of the Commission for the further development of European standards, in particular in the field of the functioning of democratic institutions and electoral law. There was also a clear call for a general strengthening of co-operation with the European Union in areas of common interest, including through the Venice Commission. Lastly, the plan suggested that the Commission should step up its co-operation with constitutional courts and courts of equivalent jurisdiction.

Another outcome of the summit had been the decision to establish a Council of Europe Forum for the Future of Democracy to strengthen democracy, political freedoms and citizens' participation. This forum, which would be open to all member states and civil society, should act in close co-operation with the Venice Commission and other relevant Council of Europe bodies with a view to enhancing, through its reflection and proposals, the Organisation's work in the field of democracy.

Where other developments were concerned, Mr Buquicchio stressed the steady increase in the number of non-European countries in the Venice Commission, the Ministers' Deputies having accepted Chile's request to join the Commission at their 927th meeting on 25 May 2005. The Secretariat was therefore awaiting the appointment of a member for that country.

The Commission welcomed the recent elections of Mr Laszlo Solyom as President of the Republic of Hungary and Mr Christoph Grabenwarter as judge at the Austrian Constitutional Court.

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 Anne-Marie Nyroos, Permanent Representative of Finland to the Council of Europe, and Ambassador Daniel Bučan, Permanent Representative of Croatia to the Council of Europe.

Ambassador Nyroos said that the Committee of Ministers, like Finland, greatly appreciated the Venice Commission's contribution. For several months, the Committee of Ministers had been absorbed with the preparation of the Third Summit and the follow-up to it. The summit had recognised the Venice Commission's important role and had encouraged it to step up its co-operation with constitutional courts in the member states. More generally, the summit had been an opportunity to reiterate the Council of Europe's importance and irreplaceable role in promoting the rule of law, human rights and democracy. Ambassador Nyroos stressed the importance of channelling the Council of Europe's resources towards these objectives, which

should be borne in mind whenever an attempt was made to establish priorities. Regarding the setting up of a Forum for the Future of Democracy, the Finnish authorities felt that this body should give a special place to representatives of academic circles and NGOs. The forum's composition, terms of reference and working methods had not yet been determined and the Venice Commission could make suggestions to this effect. It was important, in any event, that there should be a close link between the Venice Commission and the forum. Ambassador Nyroos ended her statement by saying that the European Roma and Travellers Forum recently set up on the initiative of Finland should provide further opportunities to promote co-operation with the Venice Commission.

In his statement, Ambassador Bučan mentioned that co-operation between his country and the Venice Commission had been extremely fruitful so far, and stressed that his authorities attached great importance to its work. The Commission's contribution to monitoring of the constitutional reforms carried out in Croatia, particularly with regard to the rights of minorities, had been essential for ensuring a transition towards a genuinely democratic society. Croatia expected accession negotiations with the European Union to be launched shortly. This negotiation process with a view to EU membership would no doubt necessitate a further harmonisation of Croatian legislation with European standards and, in all likelihood, further constitutional changes. In this context the Croatian authorities would no doubt wish to receive further assistance from the Venice Commission. The ambassador also mentioned the Third Summit in Warsaw, whose results were valuable in terms of refocusing the work of the Council of Europe and its bodies, including the Venice Commission. Europe was characterised and defined by several key values, including respect for diversity. The ambassador therefore hoped that the Venice Commission would continue in future to offer its expertise in such a way as to ensure that member states' constitutional arrangements reflected as fully as possible this essential diversity.

4. Co-operation with the Parliamentary Assembly

The Commission held an exchange of views with Mr Peter Schieder and Mr Erik Jurgens, members of the Parliamentary Assembly, on co-operation with the Assembly.

Peter Schieder welcomed the excellent co-operation which characterised relations between the Venice Commission and the Parliamentary Assembly. The Commission's scientific analysis inevitably stimulated the Assembly's political thinking. For example, the Venice Commission's opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative had enabled the Parliamentary Assembly's Committee on Political Affairs to put forward credible proposals for reviewing the powers of the High Representative in Bosnia and Herzegovina. As well as answering questions asked by the Assembly, the Venice Commission's opinions often gave the Assembly new ideas for reports, as in the case of the draft opinion on the compatibility of the "Gasparri" and "Frattini" laws in Italy with Council of Europe standards.

Mr Erik Jurgens informed participants that the Committee on Legal Affairs and Human Rights was currently very concerned about several issues on which the Venice Commission's expertise had been requested. For instance, the sixth report on implementation of the judgments of the European Court of Human Rights revealed the persistence or emergence of serious difficulties in such countries as Italy, Poland and Turkey. This state of affairs jeopardised the proper functioning of the Court because the Committee of Ministers and the Parliamentary Assembly had not been sufficiently successful in persuading some states to do their utmost to implement the Court's judgments. It was likely that the Parliamentary Assembly would ask the Venice

Commission to look into the matter again in the near future. Furthermore, the Assembly looked forward to receiving the Venice Commission's opinions on the prosecutor's office of the Russian Federation and on constitutional reform in Armenia so as to be able to discuss these issues very shortly. Lastly, Mr Jurgens referred to the recent rejection by France and the Netherlands of the draft Constitutional Treaty of the European Union. In his view, this development meant that the Council of Europe would have a special responsibility for maintaining its leadership in the area of human rights protection in Europe.

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

Mr Ian Micallef reported to the Commission on current Congress activities in the area of local democracy. He also mentioned that Congress delegations would be observing the forthcoming elections in Palestine, Moldova, Armenia and Azerbaijan, and perhaps even in Chechnya.

6. Co-operation with the Council of Europe Development Bank

Mr Raphaël Alomar, Governor, informed the Commission of the bank's activities. He said that the development plan for 2005-2006 set a geographical objective: to strengthen the bank's position in central, eastern and south-east Europe. The plan also comprised a sectoral objective, which was to step up the bank's work in the social field, including financing projects related to facilities for refugees and control of the effects of natural disasters. The Third Summit of Heads of State and Government of the Council of Europe had given the bank an expanded role and opened up new spheres of action. These developments should make it possible to create new synergies with the Venice Commission because the bank would invest more in projects concerning, for example, national minorities – including the Roma – in the Balkans, or the training of judges and civil servants.

7. Co-operation with the European Network of Councils for the Judiciary

Mr Luigi Berlinguer, President of the European Network of Councils for the Judiciary, informed the Commission of the activities of this network, which was a co-ordinating body for high councils of the judiciary and equivalent bodies in the European Union member states. The states which had a high council of the judiciary were members, the others were observers. The EU candidate states delegated a representative. The purpose of the network was to guarantee the independence of the judiciary while contributing to the work of the European institutions. The network's other main focuses were the rule of law and mutual trust and recognition. Its achievements included the outline decision on the European arrest warrant.

8. Follow-up to earlier Venice Commission opinions

Regarding the follow-up to Venice Commission opinions, the Secretariat informed the Commission of four opinions relating to Kosovo, Bosnia and Herzegovina and Armenia.

- *Kosovo: opinion on human rights – possible establishment of review mechanisms (CDL-AD(2004)033)*

At its plenary session in October 2004 the Commission had adopted an opinion on human rights in Kosovo at the Parliamentary Assembly's request. The Assembly had then debated a report on this question in December 2004. Subsequently, on 25 May 2005, UNMIK had submitted the main lines of a project for setting up within it a committee of independent experts tasked with checking that the acts of bodies operating in Kosovo under a UN mandate were consistent with human rights. It appeared that this project took account of proposals set out in the opinion adopted by the Commission. The working group responsible for preparing the opinion would make a more detailed assessment of this project and the Commission would be informed of this at the next plenary session.

- *Bosnia and Herzegovina: opinion on the draft law on amendments to the law on the ombudsman for human rights (CDL-AD(2004)031)*

In 2004 the Commission had given an opinion on the restructuring of ombudsmen institutions in Bosnia and Herzegovina, on the basis of an "action plan" approved in April 2004 by the representatives of the institutions concerned and the state. The institutions of Bosnia and Herzegovina had since been trying unsuccessfully to implement this plan. In May 2005, Parliament had once again referred the draft law back to the Council of Ministers for amendment. The proposed amendments did not seem to affect compliance with standards in the matter of ombudsman institutions.

- *Bosnia and Herzegovina: opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative (CDL-AD(2005)004)*

The opinion had aroused very great interest in various quarters, including the Parliamentary Assembly and the Committee of Ministers, which had discussed it before inviting the authorities of Bosnia and Herzegovina to begin reflecting upon the recommendations contained therein. The opinion had also aroused keen interest in Bosnia and Herzegovina, as evidenced by the fact that it had immediately been translated into Bosnian and that the supply of copies had quickly run out. Mr Markert said that he had taken part in a presentation of this opinion at a round table held in Banja Luka, from which it had emerged clearly that the main political forces in Republika Srpska were more interested in maintaining the status quo than in embarking upon the reforms proposed by the Commission.

- *Armenia: opinion on the law of the Republic of Armenia on political parties (CDL-AD(2003)005)*

The reporting member, Mr Hans Heinrich Vogel, said that many recommendations set out in the Commission's opinion adopted in 2003 had been taken into account in the two subsequent procedures for amending the law on political parties. However, some recommendations, such as those concerning the registration procedure or the cases in which parties could be dissolved, had not yet been incorporated. Mr Tigran Torossian, Vice-Speaker of the Armenian National Assembly, said that there must be a misunderstanding because, to his knowledge, all the suggestions made by the Venice Commission had eventually been taken into account in the various amendment procedures. However, he informed the Commission that the National Assembly was ready to hold fresh discussions with the rapporteurs to identify and settle any technical difficulties still outstanding, in order to close this issue once and for all.

9. Armenia

Mr Tuori reminded participants that co-operation between the Venice Commission and the Armenian authorities in the area of constitutional reform had begun in 2001. After the failure of the constitutional referendum in 2003, a new reform process had been launched in January 2004 with the Commission's co-operation. In October 2004, the Commission had given an opinion on the three draft constitutional amendments which had been formally submitted to the National Assembly. On 10 May 2005, one of them had been approved at the first reading: the "second interim opinion" concerned this amendment. It was a text containing a certain number of improvements, especially in the chapter on human rights, but which failed to resolve three basic issues: the separation of powers, the independence of the judiciary and the election of the mayor of Yerevan.

Mr Endzins and the Secretariat had visited Yerevan on 2 June 2005 and had met with the President of the Republic, the Speaker and Vice-Speaker of the National Assembly, the leaders of the parliamentary parties and opposition representatives, including the authors of the amendments rejected by the National Assembly.

A work schedule had been agreed and a meeting was planned to finalise a text complying with European standards in the three areas mentioned, in Strasbourg on 23-24 June 2005. The working group would keep the Parliamentary Assembly informed of progress in this area.

Mr Tigran Torossian, Vice-Speaker of the National Assembly, explained that substantial changes were perfectly possible between the first and second readings. The Armenian authorities and the Venice Commission had already identified the three areas in which major amendments were needed, and the authorities had decided to introduce those amendments. The text that was to be finalised would have to be sound and consistent with the relevant standards, and would have to be brought to the attention of, and approved by, all political forces and civil society if the constitutional referendum scheduled for October 2005 were to be successful (for this to be the case, more than a third of those registered on the electoral rolls must vote in favour).

The Commission adopted the second interim opinion on constitutional reforms in the Republic of Armenia, as set out in document CDL-AD(2005)16.

Ms Flanagan reminded participants that the Armenian law on the procedure for conducting gatherings, meetings, rallies and demonstrations had been in force since spring 2004, but was not in keeping with European standards and required substantial amendment (CDL-AD(2004)039). The Armenian authorities were currently working on the amendments. A first attempt had been unsuccessful (CDL-AD(2005)007). On 17 March 2005, Ms Flanagan, accompanied by the Secretariat, and OSCE/ODIHR experts had met Mr Tigran Torossian and Mr Davit Harutyunyan, Minister for Justice, in Yerevan in order to work out appropriate solutions. Following this working meeting, a new text had been prepared and adopted at first reading in May 2005. This text contained numerous improvements and provided satisfactory solutions to a large number of problems in the law currently in force. However, two problems remained unresolved: the possibility of holding spontaneous gatherings (which were prohibited under the present law and which would only become possible, under the text approved at first reading, if they started with less than 100 people) and the prohibition or limitation of the right to

hold gatherings at specific locations identified in the law, some of which seemed unreasonable (such as the headquarters of the national television company or the opera house).

Ms Flanagan explained that the joint opinion prepared by herself and the OSCE/ODIHR experts referred to the draft law before the first reading: it therefore needed to be updated in line with the changes that had been made in the meantime.

The Commission stressed that it was crucial that these amendments be approved before the start of the campaigns for the local elections and the constitutional reform.

The Commission endorsed the interim joint opinion of the Venice Commission and the OSCE/ODIHR on the proposed amendments to the Armenian law on the procedure for conducting gatherings, meetings, rallies and demonstrations (CDL-AD(2005)021).

Mr Hjörtur Torfason introduced the draft interim joint opinion of the Venice Commission and the OSCE/ODIHR on the revised draft amendments to the electoral code of Armenia, as approved by the Council for Democratic Elections (CDL-EL(2005)010). The draft opinion, based on comments by Messrs Taavi Annus and Jessie Pilgrim, concerned the 19 April 2005 version of the draft amendments to the Armenian electoral code, and had already been forwarded to the Armenian authorities. The revised draft amendments followed most of the recommendations made by the two organisations, but improvements were still needed, especially with regard to the composition of electoral commissions, voter lists and appeals. Furthermore, effective application of the law was crucial.

Mr Tigran Torossian said that the Armenian Parliament had adopted the revised electoral code at the second reading. This text would be submitted to the two organisations for a final opinion once the translation was available.

The Commission endorsed the interim joint opinion of the Venice Commission and the OSCE/ODIHR on the revised draft amendments to the electoral code of Armenia (CDL-AD(2005)019) and decided to forward it to the Armenian authorities.

10. Azerbaijan

Mr Hjörtur Torfason introduced the draft interim joint opinion of the Venice Commission and the OSCE/ODIHR on the revised draft amendments to the electoral code of Azerbaijan, as approved by the Council for Democratic Elections (CDL-EL(2005)013). The draft opinion, based on comments by Messrs Georg Nolte, Peter Paczolay and Rumen Maleev, had already been forwarded to the Azerbaijan authorities.

Mr Huseynov said that, after the meeting between the Azerbaijan authorities and representatives of the Venice Commission and the OSCE/ODIHR held in Strasbourg on 31 May 2005, the Azerbaijan authorities had laid before parliament a set of revised draft amendments, a copy of which he had submitted to the secretariat of the Commission.

The revised electoral code would be submitted to the two organisations for a final opinion once it had been adopted. The Commission decided to mention this in the opinion.

The Commission endorsed the interim joint opinion of the Venice Commission and the OSCE/ODIHR on the draft amendments to the electoral code of Azerbaijan (CDL-AD(2005)018) and decided to forward it to the Azerbaijan authorities.

11. Bosnia and Herzegovina

- a) *Draft opinion on possible solutions to the matter of decertification of police officers in Bosnia and Herzegovina*

In the light of new information sent to the Secretariat by the Office of the High Representative, the Secretariat proposed that the Commission postpone its consideration of this draft opinion.

The Commission decided to postpone consideration of the draft opinion on possible solutions to the question of decertification of police officers in Bosnia and Herzegovina (CDL(2005)016rev).

- b) *Comments by Messrs van Dijk, Jambrek, Malinverni and Matscher on the nature of the proceedings before the Human Rights Chamber and the Constitutional Court*

As emphasised by MM Giorgio Malinverni and Franz Matscher in explaining their respective positions and those of their colleagues Pieter van Dijk and Peter Jambrek, it emerged that the four rapporteurs agreed on the main points: Annexes 4 and 6 to the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina should be treated as international treaties, while both the Human Rights Chamber and the Constitutional Court were “domestic” bodies within the meaning of Article 35.1 of the European Convention on Human Rights.

The Commission decided to instruct the Secretariat to prepare, on the basis of the rapporteurs’ comments (CDL(2005)041), a consolidated version of the “amicus curiae” opinion on the nature of proceedings before the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina and to forward it to the registry of the European Court of Human Rights by 28 June 2005 (CDL-AD(2005)020).

12. Georgia

In the absence of Mr John Khetsuriani, the Secretariat gave some information on recent constitutional developments in Georgia. Parliament had not adopted the constitutional reform proposed by the government. In the Commission’s opinion, this proposed reform raised a number of problems in terms of the independence of the judiciary.

Regarding the status of South Ossetia, in March Mr Markert had participated in an informal meeting at which representatives of both sides had come together to discuss the settlement plan proposed by President Sakashvili, a meeting which had revealed the great difficulty of finding common ground between the parties concerned. The latest news was encouraging, however, because there was hope that the recent agreement between Georgia and the Russian Federation providing for the withdrawal of Russian troops from Georgia would remove one complicating factor. The next conference on the status of South Ossetia would be held in Batumi in July 2005, and the Secretariat would be taking part.

13. Italy

Ms Quadri, representative of the Italian Ministry of Telecommunications, reiterated the arguments she had already submitted to the Commission in March 2005. In particular, she expressed her belief that the Integrated Communications System (SCI) took account of market trends very effectively and realistically. She also believed that it could not be claimed that the government could influence the management of RAI.

Ms Bono, representative of the Presidency of the Council of Ministers, referred to the arguments put to the Commission in March 2005. She stressed that any provision for incompatibility between public office and ownership would be contrary to the constitutional principles of equality and respect for private property. She added that a political sanction was the most severe sanction for a politician, and it would therefore be wrong to regard it as ineffective.

Mr Jan Helgesen, reporting member, explained that the working group had adopted a functional and pragmatic approach: it had merely considered the question submitted to it by the Parliamentary Assembly and had accordingly assessed the compatibility of the two laws in question with the Council of Europe's standards, which for the most part were laid down in recommendations and resolutions of the Committee of Ministers and the Parliamentary Assembly and were therefore "soft law". The working group had not considered the constitutionality of the Gasparri and Frattini laws and had not entered into the political controversy surrounding them. Neither had it considered these laws in relation to EU regulations, as stressed by Mr Peter Paczolay.

Mr Kaarlo Tuori, member of the working group, said that the two criteria recommended in the Gasparri law for establishing the existence of a dominant position, which, in the media, was prohibited *per se*, seemed incapable of preventing dominant positions, and had in fact relaxed the conditions existing previously: as a result, the private channel Retequattro, which, according to the Constitutional Court, should have been broadcast by satellite, was now authorised to continue broadcasting in analogue. The working group thought that an audience share indicator should be combined with the current limit of 20% of channels. The group also thought that the SCI could allow a company to have an extremely large revenue share on particular markets while remaining below the 20% limit for the sector as a whole. It should not be used at this stage - at least not with this very broad definition - in place of the "relevant market" criterion, as that could reduce the effectiveness of the instruments designed to protect pluralism. In general, the working group did not agree with the Italian authorities that the switch to digital would in itself resolve the current serious problems of concentration in Italy by simply increasing the number of channels available.

Where RAI was concerned, Mr Kaarlo Tuori said that a role for parliament in supervising public service broadcasting was perfectly acceptable, particularly in the light of the political culture of some countries, including Italy. However, the role of the parliamentary committee on broadcasting should not cover issues relating to programmes and the drawing up of service contracts.

Mr Kaarlo Tuori ended by underlining the marginal position of the print press in the Italian market. All measures to protect and encourage it were welcome.

Mr Christoph Grabenwarter explained the main arguments put forward in the opinion on the “Fratini” law. Standards in this area were not very highly developed: the code of conduct drawn up by the Committee of Ministers was merely a source of inspiration where elected representatives were concerned, and the case-law of the European Court of Human Rights offered only a few guiding principles. The working group had also made use of OECD recommendations, adapting them as appropriate.

The Fratini law, whose scope was not confined to the media sector (although this was the only sector that the Commission had looked into), provided for incompatibility between public office and entrepreneurial activities. However, there was no incompatibility between public office and ownership. The provisions of the Fratini law relating to ownership were difficult to apply in practice: for this reason, the working group felt that they were incapable of resolving the specific problems which had originally created the need for a law on conflict of interest in Italy.

Mr Kaarlo Tuori pointed out that the law also did not contain a general provision on incompatibility with public office which made it possible to exclude specific situations, including a conflict of interest with ownership.

Mr Erik Jurgens thanked the Commission for this opinion, which he thought very balanced and technical and therefore likely to make a significant contribution to the work of the Parliamentary Assembly in this field.

Several members of the Commission expressed the view that, in any democratic legal system, it should not be possible to combine the positions of prime minister and leading media magnate, whether by virtue of general principles or under specific laws. This principle seemed so obvious that it was difficult to find legal arguments. It was above all a matter of the political responsibility of elected representatives.

Mr José Cardoso da Costa stressed that no European constitution seemed to provide for incompatibility between public office and property ownership: he therefore felt that the Commission was in the process of setting a new limit on the holding of public office, whereas the problem seemed to be more ethical than political. For this reason, Mr José Cardoso da Costa could not follow the Commission and abstained.

Ambassador Pietro Lonardo asked that the comments which the two representatives of the Italian Government had just submitted to the Commission be appended to the Commission’s opinion.

After discussion, the Commission decided to distribute the Italian authorities’ comments under the references CDL(2005)050 and CDL(2005)051.

The Commission adopted the opinion on the compatibility of the Gasparri and Fratini laws in Italy with the Council of Europe’s standards in the area of freedom of expression and media pluralism, as set out in document CDL-AD(2005)17.

14. Russian Federation

Ms Suchocka and Mr James Hamilton, reporting members, introduced the draft opinion on the federal law on the prosecutor’s office of the Russian Federation, drawn up at the request of the

Parliamentary Assembly's Monitoring Committee. Despite improvements to the relations between the prosecutor and the courts, the law still adopted an approach to the prosecutor's role that corresponded far more to the Soviet *prokuratura* than to the European model. The supervision of legality stood out as the main function of the *prokuratura*, overshadowing its role in criminal proceedings. The powers of the *prokuratura* were much too wide and encroached on those of the executive and the legislature. The institution was too powerful for it to be possible to raise the issue of its independence from the other branches of government, but there was still a risk that it might be used by the Presidency for its own ends.

While it was true that precise European standards were lacking in this field, the many and varied powers of the *prokuratura* were not consistent with Committee of Ministers Recommendation (2000)19. A reform of the institution putting the main emphasis on criminal proceedings in accordance with Parliamentary Assembly Recommendation 1604(2003) seemed desirable.

Ms Hanna Suchocka suggested including the word "*prokuratura*" in the title of the opinion in order to highlight the fact that the institution differed considerably from a western prosecution service.

Mr Serhiy Holovaty pointed out that it was not a problem specific to Russia, because many post-Soviet states were still confronted with an excessively powerful *prokuratura*.

The Commission adopted the opinion on the law on the *prokuratura* (prosecutor's office) of the Russian Federation as set out in document CDL-AD(2005)14.

15. Serbia and Montenegro

Consideration of this item was postponed to the next meeting.

16. Ukraine

Messrs Sergio Bartole and Kaarlo Tuori, reporting members, introduced the draft opinion on the constitutional amendments adopted in Ukraine on 8 December 2004. The Commission had already given an opinion (CDL-AD(2003)19) on the draft version of these amendments. While the text had since been improved, several problems remained, especially with regard to the mandate of deputies and the role of the *prokuratura*. The amendments relating to this institution were a backward step in relation to the obligations entered into by Ukraine upon acceding to the Council of Europe. Furthermore, while the aim of helping to ensure a more stable majority in parliament appeared justified, the method chosen did not seem right. It would be better to draw inspiration from the German example of the constructive vote of no confidence.

The Commission adopted the opinion on the amendments to the Ukrainian Constitution as set out in document CDL-AD(2005)015.

17. Other constitutional developments

- *Bulgaria*

Mr Stankov gave a detailed presentation on the recent constitutional changes in Bulgaria. These had been necessary to enable the Bulgarian Parliament to ratify the treaty of accession to the European Union on 11 May 2005. Some major new elements had thus been introduced into the Bulgarian Constitution, in particular the principle of the primacy of EU law over national law and the possibility of bringing Bulgarian citizens before international criminal courts under certain conditions. This set of constitutional reforms would not be the last as further far-reaching reforms were planned in certain areas, including the judicial system and the local government system.

- *Croatia*

The Commission held an exchange of views with Ms Vesna Skare-Ozbolt, Minister for Justice of Croatia. She said that her country supported the work of the Venice Commission, whose expertise was invaluable to member states engaged in constitutional and legislative reforms. Croatia had itself benefited from the Commission's advice and opinions on numerous occasions during its transition process. The Croatian Government wished to enlist the Venice Commission's assistance again in the future. Once the negotiation process with the European Union was started up, many constitutional and legislative amendments would have to be prepared in order to bring Croatian law into line with the *acquis communautaire*.

- *Iraq*

The Secretariat reminded participants that both the Committee of Ministers and the Parliamentary Assembly had asked the Commission on several occasions whether it could contribute to the drafting of a new Constitution for Iraq. The European Commission had also approached the Venice Commission in this connection. While refusing to send members to Iraq in the current situation, the Venice Commission had nevertheless endeavoured to develop co-operation in this area. Together with the Friedrich Naumann Foundation, it had embarked on the organisation of a series of seminars on the drafting of a constitution for Iraq. These seminars were mainly held in Amman, in Jordan. The first meeting of this kind had taken place in June 2005. Mr Mifsud Bonnici had taken part in this meeting, accompanied by Mr Dürr on behalf of the Secretariat. Their contribution had been well received by the Iraqi participants and there would probably be follow-up in a form yet to be determined. It should be borne in mind, however, that the date set for adoption of the Constitution was 15 August 2005, although there were indications that it might be postponed for six months.

- *Kyrgyzstan*

Following the recent events in Kyrgyzstan, this country had embarked on major constitutional reforms. The European Union had already approached the Venice Commission to make an assessment of these reforms, and, since then, a formal request to this effect had been received from the Kyrgyz authorities. An initial on-site visit by MM Kestutis Lapinskas and Anders Fogelklou, accompanied by Mr Markert on behalf of the Secretariat, was planned before the end of June 2005. The authorities had set up a Council for Constitutional Reform, which had already submitted specific proposals. Co-operation with the Kyrgyz authorities in this area should therefore intensify in future.

- *"The former Yugoslav Republic of Macedonia"*

The Commission held an exchange of views with Ms Liljana Ingilizova-Ristova, President of the Constitutional Court. She said that her country's Constitutional Court was one of the oldest in the region as it had existed for nearly 40 years. The court, which was now widely recognised and respected for its independence and the quality of its work, had greatly contributed towards strengthening the rule of law in the country and would continue to play a very important role in future reform processes.

18. OSCE/ODIHR guidelines on freedom of association

After a preliminary discussion, at the request of several members who had not had time to read the draft opinion CDL(2005)047, adoption of this text was postponed to the next session.

The Commission decided to resume consideration of the draft opinion on the OSCE/ODIHR guidelines on freedom of association at its next plenary session.

19. Study and seminar on the role of the Second Chamber

Mr Garrone invited Commission members who had not yet answered the questionnaire on the role of the second chamber to do so as soon as possible. The seminar on this subject, which was being organised in co-operation with the Congress of Local and Regional Authorities of the Council of Europe, should take place in 2006.

20. Report of the meeting of the Sub-Commission for the Protection of Minorities (9 June 2005)

The Chair of the sub-commission, Mr Franz Matscher, explained that a process of reflection on citizenship and minority rights had been launched a little over a year before. An initial exchange of views between members of the sub-commission and representatives of other Council of Europe bodies (the Parliamentary Assembly, the Advisory Committee on the Framework Convention for the Protection of National Minorities, the Committee of Experts of the European Charter for Regional or Minority Languages) and international bodies active in this field (the Office of the OSCE High Commissioner on National Minorities and the UN Committee on Human Rights) – the "Forum on National Minorities" – had taken place in Strasbourg in May 2004. This process of reflection had been continued within the sub-commission, once again with the participation of external experts.

While it had still been widely accepted one or two decades previously that full minority rights could be reserved for citizens only, there had since been a clearly perceptible change. There were many who now believed that states should make wider use of other, less restrictive criteria to determine who could benefit from the rights granted to minorities. The problem did not apply so much to fundamental rights in the traditional sense, because all persons covered by the jurisdiction of the state could benefit from them independently of any consideration related to citizenship. But it did apply to other, more specific rights which states should implement – including by taking positive measures – in respect of minorities, in such areas as the media, education or relations with the authorities. The sub-commission thought that it would be useful to try and determine, for each of the rights deriving from numerous instruments, what criteria

could possibly be applied in place of citizenship if this criterion were no longer used. The Chair said that the sub-commission should be in a position to present a study on this question at a forthcoming plenary session.

21. Report of the meeting of the Council for Democratic Elections (9 June 2005)

Mr Hjörtur Torfason, Chair, informed the Commission of the results and conclusions of the meeting.

The questions relating to Armenia and Azerbaijan had been dealt with under items 9 and 10.

The Council for Democratic Elections had approved a joint questionnaire on election observation, in accordance with the Parliamentary Assembly's request in Resolution 1320(2003), which included questions that should appear in all election observation questionnaires used by the Council of Europe and the OSCE and was computer processible. It had taken note of document CDL-EL(2005)009, which contained the additional questions which it would be desirable to include in questionnaires on election observation.

The Commission adopted the joint questionnaire on election observation (CDL-AD(2005)013) and took note of the more detailed version (CDL-EL(2005)009); it decided to forward them to the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe.

22. Other business

The Secretariat reported that the International Society for Military Law and the Law of War had expressed an interest in developing co-operation with the Venice Commission. Practical steps to this effect could be taken at the congress which the society would be holding in May 2006 on the rule of law in peace operations. This congress would address such issues as the extraterritorial application of human rights obligations, the protection of prisoners, or the prospects in Kosovo with regard to international and national responsibilities in the post-conflict period.

With regard to the request from the Turkish authorities for a compilation of case-law on the primacy of international law over domestic law, the Secretariat informed the Commission that the reporting member, Mr Olivier Dutheillet de Lamothe, was now in a position to forward his research findings to the Turkish authorities.

23. Date of the next session and proposals for sessions in 2006

The Commission confirmed the date of its 64th plenary session: 21-22 October 2005. Sub-commission meetings and a meeting of the Council for Democratic Elections would take place as usual on the day before the plenary session. The date of the last session in 2005 was also confirmed: 16-17 December 2005.

The Commission also set dates for its plenary sessions in 2006:

66 th plenary session	17-18 March
67 th plenary session	9-10 June

68 th plenary session	13-14 October
69 th plenary session	15-16 December

Sub-commission meetings and meetings of the Council for Democratic Elections would take place as usual on the day before the plenary session.

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