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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**67<sup>th</sup> PLENARY SESSION**  
**Friday, 9 June (10.00 a.m.) –**  
**Saturday, 10 June 2006 (1.00 p.m.)**

**MEETING REPORT**

## **1. Adoption of the Agenda**

The agenda was adopted with the addition of point 7a, co-operation with the Congress on Regional and Local Authorities of the Council of Europe.

## **2. Communication by the Secretariat**

Mr Buquicchio informed the Commission that Korea had been accepted as a new member as of 1 June 2006, making it the third non-European member after Chile and Kyrgyzstan.

## **3. Republic of Korea**

The Venice Commission welcomed Mr Kon-hyun Lee, Judge at the Constitutional Court of Korea.

Mr Lee stressed that the Venice Commission had played an important role in disseminating information and ideas with respect to democracy and on holding democratic elections in Korea. He said that the Constitutional Court of Korea was going to celebrate its 20th anniversary in 2008 and that it had faithfully carried out its duty as the guardian of the Constitution and as a contributor to progress and democratisation of Korean society. Mr Lee pointed out that many Asian countries sought the Korean Constitutional Court's guidance in respect of constitutional matters.

He concluded that as an Observer State since 1999, Korea had developed a strong relationship with the Venice Commission and that he was looking forward to Korea building an even stronger relationship with the Venice Commission now that it was one of its members.

## **4. Report on the presentation of the annual report of activities 2005 to the Committee of Ministers (3 May 2006)**

Mr Ugo Mifsud Bonnici informed the Venice Commission on the presentation of the annual report of the activities 2005 to the Committee of Ministers. He said that Mr José Manuel Barroso, president of the European Commission, made very positive remarks about the Venice Commission and that its work during 2005 was already well known by the Ministers' Deputies. Mr Mifsud Bonnici noted that there was interest in supporting the Commission's contacts with the Arab world.

## **5. Co-operation with the Committee of Ministers**

Ambassador Pēteris Kārlis Elferts, Permanent Representative of Latvia to the Council of Europe, briefly spoke about the Memorandum of Understanding (MOU) between the European Union (EU) and the Council of Europe. He explained that the Heads of State and Government had made it clear at the Third Summit that the Council of Europe must continue to uphold its three pillars: democracy, human rights and the rule of law.

Mr Elferts explained that a sub-section in Mr Jean-Claude Juncker's report refers to the co-operation between the Venice Commission and the EU – co-operation that Mr Juncker believes should eventually be formalised. Mr Elferts explained that one of the reasons for which the draft MOU has not yet been adopted was due to the fact that the Parliamentary Assembly needed to be better consulted on this question.

Ambassador Neris Germanas, Permanent Representative of Lithuania to the Council of Europe, made some personal remarks with respect to the draft MOU: (1) it had seemed to be a negotiation between the EU states and the EU states in their capacity as member States of the Council of

Europe; (2) the Parliamentary Assembly had been insufficiently involved and (3) lastly, two choices were left, to either keep the momentum and adopt the draft MOU as soon as possible or to further negotiate it under the Russian Chairmanship.

Mr Erik Jurgens, Member of the Committee on Legal Affairs and Human Rights, Parliamentary Assembly, explained that the Parliamentary Assembly supported Mr Juncker's proposals made in his personal capacity and that it would like to be a partner in the draft MOU. In this respect, Mr Jurgens suggested that it would be useful to have, on the one hand an MOU between the EU and the Council of Europe and on the other an MOU between the Parliamentary Assembly and the European Parliament.

## **6. Co-operation with the Parliamentary Assembly**

Mr Peter Schieder expressed his satisfaction with respect to a clear result in the referendum on the independence of Montenegro and the respect of the demands made by the EU. He mentioned nevertheless that a legal constitutional line brought forward by the Venice Commission would have been more welcome. He referred to the Monitoring Committee of the Parliamentary Assembly, which issued a public statement on the constitutional reform in Bosnia and Herzegovina and said that this Committee would like the preliminary opinion on the draft amendments to the Constitution of Bosnia and Herzegovina prepared by the Venice Commission on 7 April 2006 (cf item 10 below), to be taken into account.

Mr Schieder also referred to the Committee on Equal Opportunities for Women and Men, which has now prepared further suggestions for the Venice Commission regarding the draft declaration on women's participation in elections (cf item 18), notably on gender parity in electoral lists i.e. whether it requires a constitutional basis and on whether or not an entirely new definition for family voting should be introduced. He said that the Political Affairs Committee of the Parliamentary Assembly finalised its report on external relations and spreading the values of the Council of Europe and that the Committee on Legal Affairs and Human Rights produced a report and will be receiving an opinion which will be debated on 27 June 2006 during the plenary meeting of the Parliamentary Assembly. He added that the Committee on Rules of Procedure and Immunities of the Parliamentary Assembly will soon finalise its report on institutional balance at the Council of Europe. In this respect, he invited the Venice Commission to make proposals by the end of June to be included in this report.

Mr Jurgens also mentioned the proposal by the EU to set up a Fundamental Rights Agency, which he saw as a real threat to the Council of Europe's instruments and activities. He underlined that the role of the Venice Commission must be upheld as a centre of expertise and that it should have a central position so that when constitutional issues were in front of the Parliamentary Assembly and the Committee of Ministers, it would be systematically called upon. This question would be tackled by the Parliamentary Assembly at its plenary meeting in June.

Mr Luc van den Brande, on behalf of the Monitoring Committee, explained that for 2-3 years the discussions had revolved around the fact that new member States of the Council of Europe were monitored and that the „old“ member States were spared. The proposal made was to list the state of democracy in all member States, new and old alike, with the purpose of preparing a general report on the state of democracy in all member States of the Council of Europe. He explained that it would be important for the Venice Commission to take part in such a process.

## **7. Co-operation with the Council of Europe Development Bank**

Mr Raphaël Alomar, Governor of the Bank, briefly set out the Bank's primary role and explained that more focus was needed on transitional countries and that the Bank was looking into tackling this challenge.

Mr Alomar informed the Venice Commission that the Bank was celebrating its 50th anniversary this year, making it the oldest financial institution in Europe. He informed the Venice Commission that Georgia and Montenegro would be joining the Bank as its 39th and 40th member respectively. He explained that the relations with the Council of Europe and the follow-up of the Third Summit had further underlined the Bank's social role, an area that also concerned the Venice Commission as it touched infrastructure, judicial and administrative changes as well as judges. Mr Alomar said that this was an important development for the Bank and therefore the area of co-operation between the Bank and the Venice Commission should be extended.

### **7a. Comments by the Congress of Local and Regional Authorities of the Council of Europe**

Mr Keith Whitmore, President of the Institutional Affairs Committee of the Congress on Regional and Local Authorities of the Council of Europe, explained that the Congress was currently setting up a centre for inter-regional and cross border development and local democracy in Cyprus, Liechtenstein and Moldova.

Mr Whitmore invited the Venice Commission to take part, on a regular basis, in the meetings of the Institutional Committee.

## **8. Follow-up to earlier Venice Commission opinions**

### *a. Opinion on human rights in Kosovo: Possible establishment of review mechanisms CDL-AD(2004)033 ;*

Mr Scholsem recalled that the Commission, in its opinion on Human Rights in Kosovo: possible establishment of review mechanisms, had addressed the paradox of having a United Nations Agency which acts similarly to a State administration and which while being inspired and bound by human rights standards was exempted from any control of compliance with them. The Commission had proposed the setting up of a human rights advisory panel, composed of three independent experts, competent to review, upon individual applications, acts and regulations by UNMIK and to issue opinions on compliance with human rights standards and possibly recommendations to the Special Representative of the Secretary General. These opinions were to be made public and circulated widely.

Mr Scholsem informed the Commission that the SRSG in Kosovo had proceeded with the creation of such a Human Rights Advisory Panel through UNMIK Regulation 2006/12. Individual applications could be lodged with the Panel as of 23 April 2006. The appointment of the three members by the SRSG upon proposal by the President of the European Court of Human Rights was under way.

- b. *Opinion on the compatibility of the existing legislation in Montenegro concerning the organisation of referendums with applicable international standards* ([CDL-AD\(2005\)041](#))

Mr Markert recalled that, following the adoption of the Opinion of the Commission, the EU envoy, Ambassador Lajčak, had succeeded in brokering an agreement on the special law applicable to the referendum, including the threshold of 55% of positive votes for independence to be accepted. On 21 May 2006 the referendum had taken place with a very high participation of more than 86% and 55.5% of the voters had voted for independence. The international observers, including the Council of Europe observer delegation which had been assisted by a Venice Commission representative, had confirmed that the vote had been free and fair. The main aim of the Venice Commission Opinion, that the vote should enjoy legitimacy and be accepted both within Montenegro and internationally, had been reached.

## 9. Armenia

- a. *Report on recent constitutional developments*

Mr Harutunian informed the Commission on recent constitutional developments in Armenia and in particular about legislative changes which were required following the adoption of the new Constitution. Apart from the amendments to the Law on the Constitutional Court (adopted on 1 June 2006, see below), *inter alia* a new code on the judiciary with revised provisions on the Council of Justice, revised Rules of Procedure of Parliament, a Draft Law on Government as well as legislation on expropriation were in preparation. The last element was related to a judgement by the Constitutional Court, which had examined the Land Code upon request by the Ombudsman and had found it unconstitutional.

The Speaker of Parliament had resigned and the Deputy Speaker, Mr Torosyan, had been elected new Speaker of Parliament.

Mr Micaléff, representative of the Congress of Local and Regional Authorities of the Council of Europe, asked how Chapter 7 of the Constitution would be implemented. Mr Harutunian replied that a special law on the City of Yerevan was required. No final decision as to whether the election of the mayor would be direct or indirect had been taken.

- b. *Draft Opinion on amendments to the law on the Constitutional Court of Armenia*

Mr Cardoso da Costa presented the draft opinion (CDL(2006)050) on amendments to the law on the Constitutional Court of Armenia (CDL(2006)045 and 045rev) drawn up on the basis of comments by Messrs Cardoso da Costa and Paczolay (CDL(2006)046 and 047). The request for opinion had been made in March in Venice. At a meeting in April between the Armenian authorities and Mr Dürr, some of the comments made by the rapporteurs had been taken into account. The major remaining issues were the discretion of President and Parliament to dismiss or lift the immunity of a judge after the Court itself had taken a decision on that issue as well as mixed investigation commissions in electoral disputes involving judges of the Court and representatives from other state powers. Solution of the first issue would however require a constitutional amendment.

Mr Paczolay added that while the opinion also made some other, more technical, remarks the main purpose of the amendment, the introduction of the individual complaint, had been settled in conformity with the rapporteurs' comments.

Mr Harutunian thanked the Commission and the rapporteurs for their work and pointed out that the Court would try to settle some of the remaining issues in the Rules of Procedure of the Court to be drafted.

**The Commission adopted the opinion on amendments to the law on the Constitutional Court of Armenia (CDL-AD(2006)017).**

## **10. Bosnia and Herzegovina**

Mr Tuori presented the preliminary Opinion on constitutional reform (CDL(2006)027) on behalf of the reporting members. In accordance with the decision taken at the last session, due to the urgency of the matter the Opinion of the reporting members had been sent as a preliminary Opinion to the authorities in early April. Since then it had lost some of its relevance because the proposed reform had failed to reach the required two-thirds majority within one of the two chambers of parliament.

The proposed reform tried to remedy some of the flaws in the present constitutional situation which had been identified in the Commission's March 2005 Opinion. In particular, it aimed at increasing the responsibilities at the State level especially with respect to EU integration, it strengthened the powers of the Council of Ministers, it reduced the powers of the Presidency and it streamlined parliamentary procedures. These reforms had not been carried however as far as would be desirable. As regards human rights, the draft had not been presented by the presidency to parliament since the text was not well drafted. In any case, there was no urgent need to revise the Constitution in this respect since it already incorporates the main international human rights treaties.

**The Commission endorsed the opinion on the draft amendments to the Constitution of Bosnia and Herzegovina as it appears in document CDL-AD(2006)019.**

## **11. Georgia**

Mr Hamilton presented the draft opinion (CDL(2006)051) on the draft Law of Georgia on Property Restitution and Compensation on the Territory of Georgia for the Victims of Conflict in the Former South Ossetia district (CDL(2006)043), drawn up on the basis of comments by Messrs van Dijk, Aurescu, Bartole and himself (cf. CDL-AD(2006)007 interim opinion).

Mr Hamilton described the background to the problem and underlined the complicated nature of the situation. He highlighted the purpose of the draft law as a confidence building measure and warned that the law could even result in a worsening of the situation if it failed. He emphasised the necessity of continuing consultations between the parties. He mentioned that the Commission had carried out missions to North Ossetia/Russian Federation and Georgia, a meeting had been held with the South Ossetian *de facto* authorities in Tskhinvali. Further Mr Hamilton insisted that the law would not be effective without appropriate financial and security measures.

The draft opinion stresses main improvements made to the new draft law, however a number of issues remain problematic. In order to be acceptable for the Ossetian side, the title would need to be changed possibly taking into consideration the definition of the "conflict" included in the text of the draft law. It is important to make a clear distinction between the right to return and the right to restoration of property. At the same time an effective possibility for the sale of returned property at market price should be ensured. As regards the composition of the Restitution Commission, the

possibility of nomination of candidates should also be given to former Georgian citizens displaced due to the conflict. The provisions relating to the Commission's structure should be changed so as to have three members on a committee as well as a permanent appeal committee of three members. An appeal to the Supreme Court of Georgia remains problematic (though the draft law envisages the possibility of a cassation appeal only) due to the lack of confidence in the Supreme Court from the Ossetian side. Therefore, the draft opinion suggests that international advisers sit and deliberate with the Supreme Court when it decides on appeals against the decisions of the Restitution Commission. Mr Bartole pointed out that although appropriate rules with respect to the right to a hearing exist in the legislation of Georgia referred thereto in the draft law, they should also be included explicitly in the text of the law itself.

Mr Vardzelashvili, Deputy Minister of Justice of Georgia, noted that the draft had been initiated by the President of Georgia and was part of the Peace Plan of President Saakashvili for the settlement of the conflict in South Ossetia. The South Ossetian *de facto* authorities had also included it in their peace plan, however their participation in the process remained minimal. A number of legislative measures aimed at facilitating the implementation of the law are planned in Georgia. The law on free legal aid is being drafted, envisaging among other issues free legal aid for the victims of the conflict.

**The Commission adopted the opinion on the draft Law of Georgia on Property Restitution and Compensation on the Territory of Georgia for the Victims of Conflict in the Former South Ossetia district (CDL-AD(2006)010).**

### 13. Serbia and Montenegro

#### *a. Draft law on churches and religious communities of the Republic of Serbia*

The Commission was informed that, on the basis of the comments by Mr Christians (CDL(2006)030) on the draft law on churches and religious communities of the Republic of Serbia (CDL(2006)029), the OSCE mission to Serbia and the Council of Europe Office in Belgrade had issued a joint press release expressing regret that the draft law did not meet European standards and especially the requirements deriving from the European Convention on Human Rights, ratified by Serbia and Montenegro in 2004.

President Tadic had signed the law on 27 April 2006 and had explicitly mentioned that the draft was not in accordance with European standards and should be amended in the near future.

**The Commission endorsed the comments of Mr Christians, CDL-AD(2006)024.**

#### *b. Constitutional situation in Montenegro*

Mr Ranko Krivokapic, President of the Parliament of Montenegro, confirmed that the referendum on Montenegro's independence had been organised satisfactorily and that there was no doubt about the legitimacy of the results. He informed the Commission that, following the referendum, the parliament had declared Montenegro's independence. To avoid a hiatus during the transitional period, Montenegro would abide by international rules and undertook to draw up a new constitution with all dispatch. The constitution would take ample account of the proposals made by the Venice Commission members MM Bradley and Jambrek in 2004 when a draft constitution in accordance with the Charter of the Union was discussed. The new draft constitution was at present being

prepared in parliament, and should be adopted before the end of the year after the election and formation of a constituent assembly. The constitution would be divided into several chapters, Chapter I enshrining the sovereignty of the citizens, Chapter II covering human rights in a manner consistent with European standards and with the “*acquis communautaire*”, and also embodying the rights of minorities, Chapter III defining the political and economic system and giving the parliamentary regime pride of place in view of the country’s size. Questions relating to education and local democracy would also be addressed by the constitution. The draft constitution would be sent this summer to the Venice Commission for comments. Mr Krivokapic hastened to thank the Commission for its support to the democratic process in Montenegro.

#### **14. Ukraine**

*a. Possible introduction of the entitlement for former Government members to resume their parliamentary seat in Ukraine*

Mr Tuori explained that the Ukrainian parliament interpreted the Constitution as giving it the right to dismiss single ministers, which was arguable and controversial. Against this background, the Commission had been requested to assess the possibility of removing the current impossibility for an MP who resigned in order to become a minister to resume his or her parliamentary seat in case of dismissal.

Mr Tuori pointed out that such removal would only be possible through a constitutional amendment. He underlined that the incompatibility in question was hardly compatible with the principle of parliamentary democracy, given that it stressed the separation between parliament and the government.

Mr Scholsem stressed that the incompatibility in question coupled with the possibility of a vote of non-confidence in a single minister perturbed the functioning of the government. The incompatibility existed in some other European countries, where different mechanisms were foreseen in order for the MP to resume his seat. The Belgian system, so-called *siege ejectable*, where the alternate of MPs who had become ministers had to leave his or her place to the latter, risked however having an impact on the decision by the parliament to withdraw confidence in the government.

Several members informed the Commission that the incompatibility between parliamentary and governmental functions existed in their country as well.

Mr Holovaty, Minister of Justice of Ukraine, explained that the parliament had interpreted its powers under the Constitution to dismiss those who it had appointed as providing for the possibility of a vote of non-confidence in a single minister.

Several members argued that such a possibility ran counter to the principle of collective responsibility of the government.

**The Commission took note of the comments of the rapporteurs and instructed the Secretariat to prepare a consolidated opinion for the October Plenary Session.**



*b. Draft opinion on possible constitutional and legislative improvements to ensure the uninterrupted functioning of the Constitutional Court of Ukraine*

Mr Paczolay presented the draft opinion (CDL(2006)049) on possible constitutional and legislative improvements to ensure the uninterrupted functioning of the Constitutional Court of Ukraine drawn up on the basis of comments by Messrs Endzins, Mazak (CDL(2006)044) and himself.

He briefly described the existing deadlock related to the functioning of the Constitutional Court of Ukraine and recalled that the Venice Commission had issued a declaration in this respect in December 2005. Having stressed the complicated nature of the problem, Mr Paczolay pointed out the main possible solutions envisaged in the opinion. In particular, the possibility of establishing a default mechanism for a judge to stay in office after the expiry of his/her mandate until a successor takes office; ensuring that the activities for filling the vacancy start well in advance so that selection of a candidate is finalised in time; in case of an inaction of one appointing authority, providing for the transfer of the appointment powers to another constitutional body and envisaging at the same time certain means of pressure in case of the aforementioned body's failure to comply with the newly obtained obligation. In this respect Mr Paczolay drew the Commission's attention to several changes made to the text, including exclusion of the possibility for the President to dissolve the Congress of Judges. As regards the President's power to dissolve the Verkhovna Rada in case of its failure to comply with the appointment obligation having been devolved to it, such a possibility could be introduced through appropriate constitutional amendments. It was suggested that devolution of appointment powers be done only to ensure that a sufficient number of judges are appointed to form a quorum. Taking an oath in a written form, as well as the possibility for judges to be sworn in by the President of the Court was underlined.

Political sensitivities related to the appointment of the judges of the Constitutional Court were discussed. In this regard, Mr Bradley suggested a modification to the wording of paragraph 12 of the draft opinion. Given that the issue is related to a particular political situation and that in the absence of political will it would be difficult to fill the vacancies, Mr Jurgens, Member of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, suggested that the issue also be raised again by the Parliamentary Assembly again.

Mr Holovaty thanked the Commission for the opinion and informed participants that the situation had not changed in Ukraine since the very beginning of the stalemate. He emphasised the crucial importance of the Constitutional Court for the country and pointed out that a number of issues were on the list waiting for examination by the Court, including the Constitutional amendments adopted by the Verkhovna Rada. Mr Holovaty asked the Commission to clarify in the conclusions of the opinion which of the proposed measures required constitutional and which legislative amendments only.

**The Commission adopted the draft opinion on possible constitutional and legislative improvements to ensure the uninterrupted functioning of the Constitutional Court of Ukraine with amendments (CDL-AD(2006)016).**

*c. Draft constitutional amendments on the Prokuratura of Ukraine*

Mr Hamilton, presenting his comments (CDL(2006)042) on the draft law, noted that the draft was a step in the right direction which however did not go far enough. The draft made the prosecutor's office a part of the judiciary but the consequences of this choice were not very clear. Earlier the Commission had strongly criticised the constitutional amendment on the *prokuratura*

adopted in December 2004 which tended towards re-establishing the former Soviet system. The new draft now abrogated the general supervisory power of the *prokuratura* but retained some specific supervisory powers, including a new power to intervene in order to protect human rights, as well as a blanket provision that the *prokuratura* would exercise other powers as provided for by law. There was also no provision for an input by a non-political body such as a judicial council in the appointment procedure.

Ms Suchocka indicated that her comments (CDL(2006)041) were fully in line with Mr Hamilton's comments. The draft was a step forward at the constitutional level but the ordinary law would be decisive. Both the role of the *prokuratura* to protect human rights and the blanket provision authorising the legislator to grant additional powers should be deleted.

Mr Cornu, appointed as expert on this matter by the Directorate General of Legal Affairs, said that his comments (CDL(2006)040) went in the same direction. The draft provided for a readjustment of the system while a break with the previous situation was called for. While the supervisory power was abrogated formally, it might come in again through the back door. The procedures for appointment and dismissal of the Prosecutor General left room for political interference. The qualifications required to become Prosecutor General could exclude outside candidates and should not be included in the text of the Constitution.

Mr Titarchuk from the Prosecutor General's office of Ukraine thanked the experts for their comments. He could not reply to them in detail since he had only just received them and without a translation into Ukrainian. He welcomed that the experts regarded the draft as a step forward and that they supported abolishing the vote of no confidence in the Prosecutor General. On the other hand, he warned against changing the system too radically and importing models from abroad. He suggested further discussion with the experts in Kyiv.

In the ensuing discussion the importance of respect for the principle of separation of powers was underlined. If the prosecutor's office was to be considered part of the judiciary, its role had to be confined to criminal prosecution and defending the interests of the government in court. The notion of public interest was vague and defining their interests should be left to the people themselves and not done by prosecutors on their behalf. It also had to be ensured that the Prosecutor General was accountable. There was agreement that the draft was a step in the right direction but that a more radical transformation was required.

**The Commission invited the rapporteurs**

- 1. to visit Kyiv before its next session for discussions with various Ukrainian authorities;**
- 2. to submit a draft consolidated Opinion for adoption at its next session.**

**15. Remedies to the excessive length of proceedings**

Mr Aurescu recalled that the reflection on the matter of the effectiveness of remedies in respect of the unreasonable length of proceedings had been launched by the Romanian authorities and had been one of the priorities of the Romanian Chairmanship of the Council of Europe.

The draft submitted to the Commission was based on the replies to the relevant questionnaire in respect of 39 States. Mr Aurescu encouraged Commission members to check whether the relevant information was accurate and to let the Secretariat know before the end of August.

Mr Aurescu underlined that the draft did not address the causes for excessive delays, as these were the object of the specific works of the CEPEJ. Its objective was to identify not the ideal or model solution to this problem, but a list of alternative solutions which each State could then choose and combine according to their specific needs.

Ideally, a remedy for excessive delays should provide a combination of tools for accelerating pending procedures and compensatory measures for terminated procedures.

Civil, administrative and criminal proceedings had each very specific characteristics, which had been taken into consideration in the preparation of the report, but also common problems.

The outcome of the discussions before the Plenary would be used to prepare the conclusions of the study, which would be submitted to the Commission in October 2006.

Mr Matscher underlined that remedies were of course closely connected to the causes of excessive procedural delays. Each kind of procedure, civil, administrative and criminal, presented special features; administrative proceedings, in particular, were only of pertinence to the extent that they fell within the scope of the application of Article 6 ECHR. He suggested that each Commission member, when examining the accuracy of the information concerning his country, should seek the assistance of an expert.

Mr Jurgens underlined that some 3,000 cases concerning the execution of judgments in which the European Court had found a breach of Article 13 in respect of the length of proceedings were pending before the Committee of Ministers.

Mr Bradley considered that the assumption that it would be appropriate for States to provide a specific remedy for excessive procedural delays was arguable. It would not be possible to identify a single remedy which would respond to all specific needs. The analysis of the causes for delays was very complex but was necessary; the limitation to those procedures which fell within the remit of Article 6 ECHR was an artificial one.

Mr Malinverni recalled that by virtue of the principle of subsidiarity, it was for the national authorities to address and solve the issue of excessive length of procedures. Specific national remedies appeared to be essential, although each State disposed of a margin of appreciation. States could in particular extend the guarantees of Article 6 to procedures to which Article 6 was not applicable according to the case-law of the European Court.

Mr Zorkin and Mr Torfason agreed with Mr Bradley that an analysis of the causes for excessive delays would be necessary.

Mr Mifsud Bonnici underlined that an appropriate allocation of resources was necessary.

**The Commission took note of the draft study, instructed each member to examine the accuracy of the information collected by the Secretariat concerning his or her country by the end of August 2006 and instructed the rapporteurs to present the study for adoption at the October Plenary Session.**

## **16. Other constitutional developments**

### *Albania*

Mr Omari informed the Commission of recent constitutional developments in Albania.

Two recent legislative initiatives by the majority had drawn strong criticism from the opposition, which considered that the draft laws in question sought to place certain institutional entities under the control of the executive.

In December 2005 the Albanian parliament had approved a law on changes in the organisation and functioning of the Supreme Council of Justice. Under the terms of the law, the nine members of this body elected from among the judges (out of fifteen members in all) had to choose between the office of judge and that of council member, and accordingly discharge their office as member on a full-time basis. For the parliamentary majority, the purpose of these measures was to rule out conflict of interests as part of the government's policy of fighting corruption and abuse of power. The opposition, on the other hand, saw it as an attempt to change the composition of various constitutional organs, without regard for their members' mandate, to the advantage of the majority. The provision had been referred to the Constitutional Court and repealed on the ground of incompatibility with the constitution notably because the Supreme Council of Justice should be composed mainly of serving judges in order to keep it in contact with the judiciary, while the Court had held unconstitutional the amendment providing for suspension of the office of judge or council member according to the choice made by the person concerned.

On 2 May 2006 the Albanian parliamentary assembly had approved the appointment of a commission of inquiry into the application by a group of members of the present majority to have proceedings instituted for the dismissal of the Chief Prosecutor who was under suspicion of collusion and abetting organised crime. While the Constitution provided for the possibility of setting up a commission of inquiry to address a specific issue, the purpose of the commission raised a difficulty, according to the opposition, in that it would go against the legislation that prevented a parliamentary commission from laying criminal charges or performing functions assigned to the courts, and would moreover be contrary to a Constitutional Court decision that parliamentary oversight must be exercised without interfering in the activity of the other powers or encroaching on the purview of the investigative or the judicial authorities.

The opposition had applied to the Constitutional Court which had declared the application admissible.

## **17. Co-operation with the Conference of Constitutional Courts of Latin America, Spain and Portugal**

Mr Léon de la Torre Kraiss, Member of the Cabinet of the President of the Constitutional Court of Spain, presented the Conference of Constitutional Courts of Latin America, Andorra, Portugal and Spain - or Ibero-american Conference of Constitutional Justice as a new regional framework of co-operation between constitutional courts.

After first meetings of the Courts in Lisbon (1995), Madrid (1998) and in Antigua, Guatemala (1999) it had taken more than six years for the creation of the new and more ambitious Ibero-american Conference of Constitutional Courts.

In October 2005, twenty Constitutional Courts and Constitutional Chambers of Supreme Courts of Latin America, Portugal, Andorra and Spain met in Seville and confirmed their interest in a permanent framework of co-operation. They commissioned the Constitutional Court of Spain to present draft statutes of the Conference, which were approved in a preparatory meeting of the Conference in Santa Cruz, Bolivia by already 22 Courts just one week ago.

The Statutes include inter alia the following goals of the Conference:

1. Supporting the independence and impartiality of the Courts;
2. Enhancing close and permanent working relationships and exchange of information between the Courts;
3. Assisting the setting up of networks capable of handling know-how and the sharing of experiences.
4. Supporting policies for the accessibility of constitutional justice;
5. Supporting studies and their publication in the field of constitutional justice;
6. Establishing close co-ordination with other networks in the region with similar objectives.

Member Courts cover their own expenses whereas the Secretariat General is sponsored by the Constitutional Court of Spain (the Secretary General is Mr Pablo Pérez Tremps). The Conference is also supported by the Spanish Co-operation Agency and by some European co-operation programmes.

Current projects include the setting up of a web-site and the first in a series of capacity building seminars for lawyers, advisors and close collaborators of the Magistrates to be held in November 2006 in Bolivia.

At a further Conference to be held in Santiago, Chile, in October 2006 on the topic of the Constitutional Judge and the challenges faced specifically in the region, channels of co-operation with the Venice Commission could be studied. This collaboration could include mutual links as well as an exchange of documentation and specific studies.

Mr Cardoso da Costa welcomed the renewed vigour of the Ibero-american Conference. As the then President of the Constitutional Court of Portugal he had had the pleasure to host the first Conference in 1995.

Mr Luchaire expressed his pleasure that the Constitutional Court of Andorra participated in the Conference.

Mr La Pergola warmly welcomed the creation of the Ibero-american Conference. He pointed out that the Venice Commission and he personally had long standing contacts with Latin America. Spain and Portugal were natural partners for Latin America in such co-operation.

**The Commission welcomed the creation of the Ibero-american Conference of Constitutional Justice and expressed its readiness to establish close co-operation with this Conference.**

### **18. Report of the meeting of the Sub-Commission on Constitutional Justice (8 June 2006)**

Mr Torfason informed the Commission about the discussions on the draft vade mecum (overview) of the opinions of the Venice Commission in the field of Constitutional Justice prepared by the Secretariat (CDL-JU(2006)029).

The draft had been welcomed by the Sub-Commission as a useful tool not only for members of the Commission preparing their comments on draft laws on constitutional courts but also for drafters of constitutions and laws themselves and even for researchers. The Sub-Commission agreed that such documents would also be useful in other fields dealt with by the Venice Commission.

The Secretariat informed the Sub-Commission that it will continue to work on the vademecum's structure and content and that it would be published on the Commission's website, where it should be regularly updated.

The Sub-Commission decided that the document should continue to be based on citations rather than presented in a narrative form and that it should include only texts that have been adopted by the Venice Commission (excluding individual comments of the members and Secretariat memorandums).

Several remarks were made by the members as regards the document's structure and particular aspects of the terminology used and the Secretariat was instructed to make the necessary changes.

The members of the Sub-Commission will be invited to provide comments on a revised version of the document to be prepared by the Secretariat in a written procedure.

### **19. Report of the meetings of the Council for Democratic Elections (18 March and 8 June 2006)**

Ms Lazarova Trajkovska, Vice-President of the Council for Democratic Elections, informed the Commission of the results and conclusions of the meeting. The Commission was examining the draft declaration on women's participation in elections ([CDL-EL\(2006\)010rev](#)). Following the adoption of the Venice Commission's observations to the Committee of Ministers on Parliamentary Assembly Recommendation 1676 (2004) on women's participation in elections ([CDL-AD\(2005\)002](#)), the Committee of Ministers had invited the Venice Commission to consider the question whether the relevant provisions of the Code of Good Practice in Electoral Matters ([CDL-AD\(2002\)023rev](#)) dealing with electoral equality could be strengthened or supplemented to take account of some of the proposals made by the Assembly. It had invited the Venice Commission, in the framework of the Council for Democratic Elections, to associate the Parliamentary Assembly, the Congress of Local and Regional Authorities of the Council of Europe, the CDEG and the CDLR with this work (CM/AS(2005)Rec1676 final, para. 6). The draft before the Commission was the outcome of this work. After discussion, the Commission decided to make three amendments to the text, one of which incorporated the Parliamentary Assembly's proposal concerning family voting.

**The Commission adopted the declaration on women's participation in elections (CDL-AD(2006)020) and decided to transmit it to the Committee of Ministers of the Council of Europe.**

Mr Sanchez Navarro presented the draft report on the participation of political parties in elections ([CDL-EL\(2006\)016rev](#)), which constituted a general study of the question and had been examined

in the last instance by the Council for Democratic Elections at its meeting in March, and proposed that it be adopted.

**The Commission adopted the report on the participation of political parties in elections (CDL-AD(2006)025).**

Ms Lazarova Trajkovska informed the Commission that the draft referendum guidelines would be submitted to the next meeting of the Commission for adoption (cf. [CDL-EL\(2006\)024](#)).

The draft report on electoral law and electoral administration in Europe ([CDL-EL\(2006\)023](#)) was submitted for discussion by the Commission, which decided to adopt it with two amendments.

**The Commission adopted the report on electoral law and electoral administration in Europe (CDL-AD(2006)018).**

**The Commission adopted without discussion :**

- **the revised election evaluation guide (CDL-AD(2006)021) , to be transmitted to the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe;**
- **the joint opinion of the Venice Commission and the OSCE/ODIHR on the amendments to the electoral code of “the former Yugoslav Republic of Macedonia” (CDL-AD(2006)022; cf. [CDL-EL \(2006\)021](#)), deciding to transmit it to the authorities;**
- **the joint opinion of the Venice Commission and the OSCE/ODIHR on the Election Code of Georgia, as amended up to 23 December 2005 (CDL-AD(2006)023; cf. [CDL-EL\(2006\)009](#)) ;**
- **the draft joint opinion of the Venice Commission and the OSCE/ODIHR on the amendments to the Electoral Code of the Republic of Armenia ([CDL-EL\(2006\)026](#); cf. [CDL-EL\(2006\)019](#) and [020](#)).**

Ms Lazarova Trajkovska informed the Commission of the following:

- the pursuit of co-operation in electoral matters with Croatia, in connection with the law on direct election of the members of local authorities;
- the holding of the 3<sup>rd</sup> Conference of European Electoral Management Bodies, organised by the Venice Commission in conjunction with the Russian authorities, which had taken place in Moscow on 22 and 23 May 2006 in the context of the Russian Chairmanship of the Committee of Ministers of the Council of Europe and had dealt with development and codification of international standards in the field of elections; the next such conference would be held in Strasbourg in 2006 and should be preceded by the annual meeting of the ACEEEO (Association of Central and Eastern European Election Officials);
- the Commission’s participation in the observation of the referendum on self-determination in Montenegro;
- the intention of the Council for Democratic Elections to examine, at the request of the Office of the OSCE High Commissioner on National Minorities, the question of the dual voting rights of persons belonging to national minorities.

## **20. Restructuring of the Sub-Commissions – Follow up to the meeting of the Enlarged Bureau**

Mr Endzins informed the Commission that the Enlarged Bureau had approved the proposals for restructuring the sub-commissions appearing in document CDL(2006)048.

### **The Commission**

- agreed that henceforth there would be, in addition to the two joint organs (Joint Council on Constitutional Justice and Council for Democratic Elections) the following Sub-Commissions :

**Democratic institutions;**  
**Human rights;**  
**Judiciary;**  
**Federal and regional state;**  
**Protection of minorities;**  
**International law.**  
**External relations (i.e. for co-operation outside Europe);**  
**Administrative and budgetary questions;**

- invited all members and substitutes to indicate before the next session the sub-commissions they wished to join;

- agreed to provisionally elect the chairpersons of new sub-commissions at its next session from among the members of the Enlarged Bureau, with a term of office until the next elections to the Enlarged Bureau in March 2006.

## **21. Other business**

## **22. Date of the next session and proposals for dates of the sessions 2007**

The Commission confirmed the date of its 68<sup>th</sup> Plenary Session: 13-14 October 2006.

The final session for 2006 was confirmed as follows:

69<sup>th</sup> Plenary Session                      15-16 December

In addition, the Commission fixed the schedule of sessions for 2007 as follows:

70<sup>th</sup> Plenary Session                      16-17 March  
 71<sup>st</sup> Plenary Session                      8-9 June  
 72<sup>nd</sup> Plenary Session                      19-20 October  
 73<sup>rd</sup> Plenary Session                      14-15 December

Sub-Commission meetings and meetings of the Council for Democratic Elections will take place as usual on the day before the Plenary Sessions.



## LIST OF PARTICIPANTS

<b>ALBANIA/ALBANIE :</b>	M. Luan OMARI Mr Ledi BIANKU
<b>ANDORRA/ANDORRE :</b>	M. François LUCHAIRE
<b>ARMENIA/ARMENIE :</b>	Mr Gagouik HARUTUNYAN
<b>AUSTRIA/AUTRICHE :</b>	M. Franz MATSCHER
<b>AZERBAIJAN/AZERBAIDJAN</b>	Mr Lätif HUSEYNOV
<b>BELGIUM/BELGIQUE :</b>	Mr Jan VELAERS (Apologised/Excusé) M. Jean-Claude SCHOLSEM
<b>BOSNIA AND HERZEGOVINA/ BOSNIE-HERZEGOVINE</b>	M. Cazim SADIKOVIC (Apologised/Excusé)
<b>BULGARIA/BULGARIE :</b>	Mr Anton STANKOV (Apologised/Excusé)
<b>CHILE</b>	Mr José Luis CEA EGANA (Apologised/Excusé)
<b>CROATIA/CROATIE :</b>	Mr Stanko NICK
<b>CYPRUS/CHYPRE :</b>	Mr Frixos NICOLAIDES (Apologised/Excusé) Mr Myron NICOLATOS (Apologised/Excusé)
<b>CZECH REPUBLIC/ REPUBLIQUE TCHEQUE :</b>	Mr Cyril SVOBODA (Apologised/Excusé)
<b>DENMARK/DANEMARK :</b>	Ms Eliska WAGNEROVA (Apologised/Excusée)
<b>ESTONIA/ESTONIE :</b>	Mr Henrik ZAHLE (Apologised/Excusé)
<b>FINLAND/FINLANDE :</b>	Mr Oliver KASK
<b>FRANCE :</b>	Mr Kaarlo TUORI
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<b>GREECE/GRECE :</b>	Ms Kalliop KOUFA (Apologised/Excusée)
<b>HUNGARY/HONGRIE :</b>	Mr Peter PACZOLAY Mr Laszlo TROCSANYI
<b>ICELAND/ISLANDE :</b>	Mr Hjörtur TORFASON
<b>IRELAND/IRLANDE :</b>	Ms Finola FLANAGAN (Apologised/Excusée)
<b>ITALY/ITALIE :</b>	Mr James HAMILTON Mr Antonio LA PERGOLA <b>(Président/President)</b> Mr Sergio BARTOLE Mr Guido NEPPI MODONA
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<b>KYRGYZSTAN/KYRGHYZSTAN :</b>	Mr Bo-yoon BAE
<b>LATVIA/LETTONIE :</b>	Ms Cholpon BAEKOVA
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<b>LUXEMBOURG :</b>	Mme Lydie ERR (Apologised/Excusée)
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<b>MOLDOVA :</b>	Mr Nicolae ESANU
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<b>NORWAY/NORVEGE :</b>	Mr Jan HELGESEN
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<b>UKRAINE :</b>	Mr Serhiy HOLOVATY Mr Konstantyn MAZUR
<b>UNITED KINGDOM/ ROYAUME-UNI</b>	Mr Jeffrey JOWELL (Apologised/Excusé) Mr Anthony BRADLEY

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Ambassador Pēteris Kārlis ELFERTS, Permanent Representative of Latvia to the Council of Europe

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Mr Peter SCHIEDER, President of the Committee on Foreign Politics, Austrian Parliament  
Mr Erik JURGENS, Member of the Committee on Legal Affairs and Human Rights

#### **CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF THE COUNCIL OF EUROPE/CONGRES DES POUVOIRS LOCAUX ET REGIONAUX DU CONSEIL DE L'EUROPE :**

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#### **EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE/COMMISSION EUROPEENNE POUR L'EFFICACITE DE LA JUSTICE (CEPEJ)**

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\*\*\*\*\*

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Mme Ferahi LAROUCI, Membre du Conseil constitutionnel

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Mr Derrick WORSDALE

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