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

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

**81<sup>st</sup> PLENARY SESSION**  
**(Venice, Friday, 11 December (9.30 a.m.) –**  
**Saturday, 12 December 2009 (1.00 p.m.)**

**81<sup>e</sup> SESSION PLÉNIÈRE**  
**(Venise, vendredi 11 décembre (9h30) -**  
**samedi 12 décembre 2009 (13h00)**

**SESSION REPORT**  
**RAPPORT DE SESSION**

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

The Agenda was adopted as it appears in document CDL-OJ(2009)004ann.

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

Mr Markert informed the Venice Commission that Mexico had made an official request for membership of the Venice Commission and that this will be included on the Committee of Ministers' agenda on 3 February 2010. He recalled that Switzerland currently holds the Committee of Ministers' chairmanship and that the Venice Commission would organise a conference together with the Swiss chairmanship on Democracy and decentralisation, which will take place in St Gallen in early May 2010.

Mr Markert went on to say that the Venice Commission will be celebrating its 20<sup>th</sup> anniversary in 2010 and that this will coincide with its plenary session next June.

He explained that the budget of the Venice Commission for 2010 has been adopted and that, although there is zero real growth, the budget has nevertheless increased due to the contributions made by states that have acceded to the Enlarged Agreement in 2009.

Mr Markert also explained that the Venice Commission has entered into a contract for € 600 000 with the EC to strengthen the rule of law in Central Asia, a programme that was previously financed by Germany. Furthermore, the EC intends to finance activities with Bolivia, especially in co-operating for the setting up of a multi-national constitutional court.

Mr Markert also informed the Commission that the Sub-Commissions are open to all members who are interested in the topic under discussion.

## **3. Election of the President, 3 Vice-Presidents and 4 members of the Bureau as well as Chairs of the Sub-Commissions**

Mr Helgesen invited the Venice Commission to elect its President, three vice-presidents and four members of the Bureau as well as the chairs of its Sub-Commissions for a period of 2 years.

Mr Jowell recalled that the Venice Commission had established a Committee of Wise Persons at its plenary session in October 2009, composed of Ms Suchocka, Messrs Jowell, Colliard, Tuori and van Dijk, to recommend a candidate for the next President of the Venice Commission. This Committee had taken extensive soundings from the members of the Venice Commission on this issue and on the appointment of vice-presidents and the chairs for the Sub-Commissions. The policy was, at all times, to seek a balance and a proper turnover.

Mr Jowell told the Venice Commission that the Committee had met in Paris for talks on 20 November 2009 and that it produced a compromise based on a list of ideal qualifications for the appointment of the new President, which they had drawn up. They identified two main roles for the President, one predominantly external role consisting of relations with member states, with the Council of Europe, with the Government of Italy, the Venice Region and the World Conference on Constitutional Justice (WCCJ) and the other focusing more on the president's responsibility for the work programme, dealing mainly with the quality of the Venice Commission's reports (opinions, studies) as the workload increases.

Mr Jowell went on to explain that the Committee of Wise Persons met with both Mr Buquicchio and Mr Helgesen and that it was satisfied that both were fully qualified for the position of President. In order to let the Venice Commission benefit from the complementary strengths of both candidates, the Committee suggested a compromise solution, notably to have Mr

Buquicchio as President and Mr Helgesen as First Vice-President and chair of a new Scientific Council, which should oversee the internal scientific programme of the Venice Commission as well as its committee structures and working methods.

This solution was met with the support of several members of the Venice Commission.

**Mr Buquicchio was elected President of the Venice Commission and Mr Helgesen was elected First Vice-President and Chair of the new Scientific Council, to be established.**

**The following two vice-presidents were also elected: Ms Flanagan and Mr Paczolay.**

**The members of the bureau were elected as follows:  
Ms Koufa, Messrs Zorkin, Lee and Endzins.**

**The Chairs of the Sub-Commissions were elected as follows:  
Mr Tuori (Fundamental Rights); Mr Hoffmann-Riem (Federal State and Regional State); Mr Dimitrijevic (International Law); Mr Velaers (Protection of Minorities); Ms Suchocka (Judiciary); Mr Jowell (Democratic Institutions); Mr Mifsud Bonnici (External Relations); Mr van Dijk (Working Methods); Mr Grabenwarter (Joint Council on Constitutional Justice) and Mr Colliard (Vice-President of the Council for Democratic Elections).**

Mr Buquicchio proceeded to explain to the plenary his vision for the future of the Venice Commission (his speech is attached to this report, see Appendix 1).

Several members of the Venice Commission expressed their wish to be consulted, in line with Article 7 of the Venice Commission's Revised Rules of Procedure<sup>1</sup>, regarding the appointment of the Secretary of the Venice Commission and recommended that Mr Markert, with his background, expertise and experience with the Venice Commission, would be ideal for the position of Secretary of the Venice Commission.

Mr Boillat, Director General of Human Rights and Legal Affairs of the Council Europe, explained to the Venice Commission the conditions under which the next Secretary of the Venice Commission will be recruited and that the provision in the Venice Commission's Rules of Procedure is not reflected in the Staff Regulations of the Council of Europe and is not binding on the Organisation. Nevertheless, he added that a way is likely to be found in order to seek the opinion of the Venice Commission. He reminded the Venice Commission that an impartial and objective procedure is followed for the appointment of the Secretary of the Venice Commission and that the Secretary General of the Council of Europe will choose the candidate who best fulfils the required criteria set out in the vacancy notice.

#### **4. 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 Athanassios Dendoulis, Permanent Representative of Greece, Ambassador Euripides L. Evriviades, Permanent Representative of Cyprus and Ambassador Hans-Dieter Heumann, Permanent Representative of Germany.

Ambassador Athanassios Dendoulis briefly outlined his appreciation of the Venice Commission, mentioning that in the mid-1980s, when he was first appointed Ambassador, an entity such as

<sup>1</sup> **Article 7 - Secretariat:** The Commission shall have a Secretariat serving under the authority of the Commission. The Commission shall be invited to give an opinion on the appointment of the Secretary and Deputy Secretary.

the Venice Commission was still unthinkable and that now such an entity is a necessity. He said that the Venice Commission successfully managed to assist in the consolidation of the rule of law in Central and Eastern Europe, taking into account cultural differences and political situations.

Ambassador Euripides L. Evriviades shared with the Venice Commission two major issues facing the Committee of Ministers, notably (1) the reform process of the Council of Europe and (2) the European Court of Human Rights in view of the upcoming Interlaken Conference. With regard to the reform process, he said that it was important to equip the Council of Europe with the necessary tools to meet future challenges in order to make it politically more relevant, consolidated and efficient. As regards the European Court of Human Rights, he explained that the upcoming Interlaken Conference under the Swiss Chairmanship of the Committee of Ministers will provide contracting parties with the opportunity to break through the obstacles that are blocking the Court and to lay solid grounds for its future viability. He urged the Venice Commission to contribute to the Interlaken Conference.

Ambassador Evriviades also reminded the Venice Commission that it is a legal body which is recognised for its independence, neutrality and impartiality and that this should remain so. He wondered if the Venice Commission, with its extension outside Europe, might be losing sight of the problems on the European continent. He urged the Commission to act resolutely in order to remain true to the vision of the founding fathers of the Council of Europe to create a Europe without any dividing lines. Finally, the Ambassador referred to the question of Cyprus in relation to the rule of law.

Ambassador Hans-Dieter Heumann outlined the importance of the rule of law, especially for those countries that had undergone a major “transformation” since 1989 i.e. the new democracies. He explained that Germany has a specific understanding for the situation in Central and Eastern Europe due to the experience with the former GDR. He also said that the Central Asia initiative is part of a larger effort to spread the rule of law in that area and explained that from a foreign policy point of view, the promotion of the rule of law is an instrument not only for human rights, but also an economic tool for reconciliation, peace and prosperity. He informed the Venice Commission that the German Foreign Ministry was fully aware of and appreciates the work it carries out.

Mr Helgesen added that old democracies should be encouraged to be as eager to use the Venice Commission as the new democracies are.

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

The Commission held an exchange of views on co-operation with the representatives of the Parliamentary Assembly of the Council of Europe.

Mr Holovaty, Member of the Monitoring Committee of the Parliamentary Assembly (also representing the Legal Affairs and Human Rights Committee), informed the Venice Commission that two reports adopted by the Legal Affairs and Human Rights Committee will be debated in January 2010, one on judicial corruption, which will note that judicial corruption undermines *inter alia* the rule of law and is embedded in a number of Council of Europe member states; and the other on discrimination on the basis of sexual orientation and gender identity, points out that lesbian, gay, bisexual and transgender people across Europe still face deep-rooted prejudice and widespread discrimination.

Mr Holovaty also informed the Venice Commission that during its last meeting in November, the Monitoring Committee held its first hearing with the chairpersons of three Council of Europe human rights monitoring mechanisms: the European Committee of Social Rights, the Advisory Committee of the Framework Convention for the Protection of National Minorities and the European Commission against Racism and Intolerance on the rights of persons belonging to

vulnerable groups in the light of the recent financial crisis. The Monitoring Committee decided to make greater use of these bodies' work when assessing how vulnerable groups in monitored countries are faring in the justice system, employment, housing and education.

At the Monitoring Committee's next meeting on 17 December, it will adopt two reports on the functioning of democratic institutions in Albania and in Bosnia and Herzegovina and Mr Holovaty added that the Venice Commission's work in this area is well known and that there is an important role for it to play in this area in the future.

Mr Holovaty said that the situation in Moldova will also be discussed, where the Parliament failed to elect a President of the Republic on 7 December so that, in line with the legislation in force, Parliament must be dissolved and parliamentary elections must be held in 2010. The Monitoring Committee's co-rapporteurs for Moldova's monitoring called for constitutional changes in the interests of the country and called upon the authorities to refer this matter with the utmost urgency to the Venice Commission so as to start work on the various options for constitutional change.

He also explained that co-operation is increasing between the Bulgarian authorities and the Council of Europe, notably the Venice Commission, as regards the independence of the judiciary.

Mr Holovaty expressed his disappointment that the Monitoring Committee's request for an opinion by the Venice Commission on the compatibility with European standards of the lack of recognition of a legal personality for the religious communities in Turkey (which includes examining the question of whether the Greek Orthodox Patriarchate of Istanbul has the right to use the adjective "Ecumenical") - will only be discussed at this session and the opinion adopted at the next session in March 2010.

He pointed out that the opinion would have been useful for the Assembly's debate in January on freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (Eastern Greece). Mr Holovaty therefore requested the Venice Commission to transmit the draft Opinion, once prepared by the rapporteurs and under their own responsibility, to the Assembly, provided that it was ready in time for the Assembly's part-session in January 2010.

Mr Markert informed the Venice Commission that the rapporteurs will meet in Paris on 15 January to finalise the draft opinion.

With respect to the situation in Moldova, Mr Markert explained that the Constitutional Court of that country had requested an *amicus curiae* opinion from the Venice Commission regarding a complex question on the interpretation of two articles of the Moldovan Constitution – one on the election of the President of the Republic (Article 78.5) and the other on the dissolution of Parliament (Article 85.3). He said that the Venice Commission should be involved in Moldova's constitutional reform.

## **6. Co-operation with the Congress of local and regional authorities of the Council of Europe**

As no representative of the Congress was present this item was not taken.

## **7. World Conference on Constitutional Justice**

Mr Dürr recalled that since 1996, in addition to its work with the Conference of European Constitutional Courts, the Venice Commission had established co-operation with a number of regional bodies uniting constitutional courts and equivalent bodies such as the Association of Constitutional Courts speaking the French language, the Southern African Chief Justices

Forum, the Ibero-American Conference on Constitutional Justice, Asian Constitutional Courts and the Union of Arab Constitutional Courts and Councils. In January 2009, the Commission had invited all the Courts members of these bodies to the first World Conference on Constitutional Justice in Cape Town on the emergence of a global human rights jurisprudence. 93 Courts and 10 regional and linguistic groups had participated in this successful event. The participants had adopted a Declaration ([www.venice.coe.int/WCCJ](http://www.venice.coe.int/WCCJ)), which called for the establishment of the World Conference as a permanent body and set up a Bureau composed of the regional and linguistic groups in order to prepare a Statute for this Conference. The Bureau had met a first time in Mérida, Mexico in April 2009 and was to meet after the plenary session to further discuss the draft statute and the preparation of the next Conference (called Congress), which is to take place in Rio de Janeiro on 16-18 January 2011. The tools for this co-operation were the Venice Forum Newsgroup and publication of case-law in only one language in the CODICES database, which was quite cost effective compared to the paper publication in two languages of the case-law of courts in member and observer states in the Bulletin on Constitutional Case-Law. The Committee of Ministers had approved the use of the additional budgetary contributions of Brazil and Peru to create an additional position for a lawyer in the Secretariat in order to deal with the increased workload.

Mr Hoffmann-Riem insisted that the World Conference should be further discussed within the Venice Commission.

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

### *- Bosnia and Herzegovina*

Mr Markert informed the Commission that, as already announced at the last session, senior representatives of the European Union and the United States had made a proposal for constitutional reform in Bosnia and Herzegovina, which was based on the Commission's Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative (CDL-AD(2005)004) and the Opinion on the Draft Amendments to the Constitution of Bosnia and Herzegovina (CDL-AD(2006)019). The reaction by the local political leaders was disappointing. While it seems still possible that additional competencies required for European integration will be granted to the State level, progress in making the State institutions more functional and their structure compatible with the European Convention of Human Rights seems unlikely.

### *- Ukraine*

Mr Markert then informed the Commission on the follow-up to the joint opinion by the Venice Commission and OSCE/ODIHR on the law on amending some legislative acts on the election of the President of Ukraine ([CDL-AD\(2009\)040](http://www.venice.coe.int/CDL-AD(2009)040)). At the end of October 2009 the Constitutional Court gave a decision on the said law, declaring certain provisions criticised by the above mentioned joint opinion unconstitutional. Certain provisions of the law have therefore been cancelled. This decision resolves several problematic items which were among the Commission's recommendations, in particular geographical criteria for the nomination of members of electoral commissions, a part of the restrictions on the right to appeal and the limitations on the electoral rights of citizens living overseas. Following this decision and also taking into account the joint opinion, the President of Ukraine then introduced to Parliament in November 2009 a draft law amending the law on the presidential elections. This text included most of the Venice Commission's recommendations. The draft was adopted in the first reading. It has nevertheless not yet been finally adopted as the necessary majority was not reached.

### *- Montenegro*

Mr Huseynov recalled that the Montenegrin authorities had invited the Venice Commission to a

follow up mission in order to assist them in implementing the opinion on the previous draft Law. In Podgorica, Mr Huseynov met with the working group composed of the Ombudsman, government officials and experts; the work was very constructive, and the working group showed willingness to follow the Venice Commission's recommendations. A revised draft Law had been prepared and had just been submitted to the Venice Commission for assessment, to be prepared for March 2010.

- *Kyrgyzstan*

Ms Flanagan recalled that in 2008 the Commission jointly with OSCE/ODIHR had assessed a set of draft amendments to the Law on freedom of assembly of Kyrgyzstan, which had later been adopted despite the Commission's criticism. A further set of draft amendments had been prepared subsequently by a working group chaired by the Ombudsman; the Commission and OSCE/ODIHR had positively assessed this draft, which was still in the process of being finalised. In November 2009, Ms Flanagan had participated in a meeting of this working group. The discussions had been interesting, but the support which this draft had in the country remained unclear. The Commission reiterated its willingness to assist the authorities in the necessary reform of the legislation on freedom of assembly currently in force.

## 9. Armenia

Mr Hoffmann-Riem recalled that the Commission had been assisting the Armenian authorities in the preparation of amendments to the civil code in the area of responsibility of the media for damages for quite a long time, and two opinions had already been adopted on this matter. Thanks to the continuous and fruitful co-operation with the Armenian authorities, further amendments had been made which brought the text even closer to the Commission's recommendations, although some improvement was still recommended. The draft was now before Parliament.

**The Commission endorsed the final opinion on the revised draft Law on amending the civil code of Armenia (CDL-AD(2009)056)**

## 10. Azerbaijan

The rapporteurs explained that the draft Law on the status of municipalities under consideration implemented the new Article 148 of the Constitution, a provision which the Commission had previously assessed and criticised. Article 148, the only constitutional provision on local self-government, was expected to open the way to a broad legislative reform in this field. The draft Law under consideration, instead, was very limited. In addition, it raised certain issues which needed to be addressed, notably: the broad competence for unspecified "supervisory authorities" to apply sanctions, including the dissolution of a municipal council, without a clear relationship of proportionality between the sanction and the gravity of the irregularity; the impossibility for the municipal council in question to participate in this procedure; the unclear provision on the suspension of the mandate, which appear to conflict with already existing provisions; the possibility of merging or dividing municipalities, which conflicts with the law in force.

Mr Aliyev underlined that this Law was an important one for his country, where local self-government had been introduced only recently. The authorities' main goal at this stage was to create the responsibilities of the local authorities and to win the confidence and trust of the public in these authorities, while teaching the former how to control the latter.

This Law was an interim one, and would be followed by a more comprehensive reform. The procedural details would be provided in separate laws. Mr Aliyev thanked the Venice Commission for its assistance.



**The Commission adopted the Opinion on the draft Law on the status of municipalities (CDL-AD(2009)049)**

The Commission examined, with a view to adoption, the draft Opinion ([CDL\(2009\)185](#)) on the draft Law about obtaining information on activities of the Courts of Azerbaijan ([CDL\(2009\)184](#)) drawn up on the basis of comments by Messrs Gumi and Kask.

Mr Kask presented the draft Opinion on the draft Law about obtaining information on activities of the Courts of Azerbaijan. He explained that such laws are not very common in Europe because provisions on access to information and court documents are usually part of a more general law on access to information or codes on court procedure. The rapporteurs therefore suggest that the provisions be integrated into another, more general, law regulating access to information. Another issue identified by the rapporteurs in the draft Law is the fragmented nature of websites containing court decisions. The rapporteurs recommended that all court decisions in Azerbaijan be centralised into one website for easy access, notably by legal professionals. The rapporteurs also recommended that the public nature of the examination procedure for candidates for positions in courts, be reconsidered. For instance, only the results of “pass” or “fail” should be published, not the content of questions nor the answers given by candidates. The rapporteurs also underlined that clarification is needed with respect to the guarantee of the independence of judges in deciding specific cases, as the presidents of courts seem to have large decision-making powers with respect to how much information on a specific case may be accessible to the public.

**The Commission adopted Opinion (CDL-AD(2009)055) on the draft Law about obtaining information on activities of the Courts of Azerbaijan.**

**11. Bulgaria**

Mr Bartole recalled that the Commission had previously adopted an opinion on the concept of normative acts in Bulgaria: the Law under consideration had subsequently been prepared taking into account the Commission’s Opinion, and the Bulgarian authorities were to be congratulated on this good work, in particular for understanding and promoting the principle that good legislation helps implement the rule of law and legal certainty, and for listing all the possible sources of law under the Bulgarian Constitution. As concerned European legislation, the Opinion recommends that the Law focus on its internal preparation. The Opinion further recommends addressing Parliament as well, to the extent that despite being free in respect of the content, it had to respect the drafting rules.

**The Commission adopted the Opinion on the draft Law on Normative Acts of Bulgaria CDL-AD(2009)053).**

**12. Georgia**

Mr Demetrashvili, Chairman of the State Constitutional Commission of Georgia, informed the Commission about the advancement in the constitutional reform. Civil society had accepted the need for a reform, and all parties had started to work together. The previous opinions adopted by the Venice Commission on the Constitution of Georgia were being taken into account. Currently, the work was focussed on decentralisation. The new chapter on local self-government was about to be adopted and would be promptly sent to the Venice Commission for opinion.

In respect of the Law on assemblies and demonstrations in Georgia, as amended in the summer of 2009, Mr Minashvili explained that the Georgian authorities had considered very carefully the rapporteurs' comments, prepared in October. The authorities wished to eliminate any possibility for abuse by the law-enforcement agencies. Accordingly, the Law provided for clear, foreseeable and strictly tailored limitations to the exercise of freedom of assembly, and set out the principles of legality and proportionality.

The rapporteurs had criticised, in particular, the twenty-meter blanket restriction on demonstrations around the entrance of governmental buildings. An appeal on this point was currently pending before the Constitutional Court.

Mr Minashvili further informed the Commission that draft amendments would be finalised and sent to it for opinion within one month.

Ms Flanagan welcomed the information that the draft amendments were in preparation and would be received shortly. An opinion would be submitted to the Plenary in March, either only on the amendments which had already been adopted in the summer of 2009, or else, hopefully, on the new amendments to be prepared.

In respect of the amendments to the Law on occupied territories, Mr Aurescu recalled that in October 2008 the Commission had adopted an Opinion on the Law on occupied territories, and in October 2009 it had analysed a set of amendments to this Law, which had been prepared along the lines of the Commission's Opinion. Subsequently, a further set of revised amendments had been submitted to the Commission and was now before it. This last version of the amendments represented a significant step forward, notably in that it included "confidence building measures" among the reasons justifying unhindered access to the occupied territories, abolished the restriction on inheritance rights, provided for the possibility of revising the Law in two years' time, as previously recommended by the Commission. Certain issues remained unsolved, and one in particular – the fact that humanitarian aid would be unhindered, but only when qualified as "emergency" – deserved attention. The rapporteurs recommended removing this qualification, as being redundant and carrying the risk of unduly restrictive interpretation. They noted, however, that a partial improvement had been made and the authorities had given assurances that the formula would not be interpreted in contradiction of Geneva Convention IV. Special attention would need to be given to the implementation of the Law, which would have to be adequately monitored.

Mr Musin expressed the view that the Law on occupied territories was incompatible with the provisional measures indicated by the International Court of Justice.

Ms Taktashvili disagreed with this view. She expressed her gratitude to the Commission for the assistance in this important matter. She reiterated that the aim of the Georgian authorities was to protect the rights of the Georgian citizens in the occupied territories. The Georgian authorities were open to co-operation with any international organisation wishing to bring humanitarian aid to the people living in the occupied territories. In emergency situations, they would only need to inform the authorities, and not seek authorisation, which was in full compliance with Geneva Convention IV.

Ms Taktashvili informed the Commission that these amendments would be adopted by Parliament shortly.

**The Commission adopted the Final Opinion on the amendments to the law on occupied territories (CDL-AD(2009)051)**

### 13. Kazakhstan

Mr Tanchev presented the draft *amicus curiae* brief, drawn up on the basis of comments by Ms Nussberger and himself, requested by the Constitutional Council of Kazakhstan, on the interpretation of the Kazakh Constitution concerning the participation in the Customs Union within the Euro-Asian Economic Community. He pointed out that the Constitutional Council had asked three questions, in general on the transfer of certain powers of sovereign states to international organisations, on the status and the legally binding force of the decisions of international executive bodies and on the relationship and possible hierarchy between their decisions and national legislation. The treaty on the Customs Union provided for a “step by step” transfer of national powers to the Union. Insofar as the Republic of Kazakhstan has a right to veto the Commission’s decisions and cannot be bound against its will, the decisions taken by the Commission can be considered as “other international obligations” in the sense of Article 4 of the Republic of Kazakhstan. If the binding force of decisions of the Customs Union Commission were similar to those of secondary EU legislation, constitutional provisions allowing such a “supranational” effect should be introduced into the Kazakh Constitution.

**The Commission adopted the *amicus curiae* brief, requested by the Constitutional Council of Kazakhstan, on the interpretation of the Kazakh Constitution concerning the participation in the Customs Union within the Euro-Asian Economic Community (CDL-AD(2009)058).**

Mr Talgat Donakov, Deputy Head of the Presidential Administration informed the Commission on the main elements of the programme of judicial reform for the period from 2010 to 2020. Building on past achievement, this programme should improve service delivery and the protection of human rights, especially in the field of administrative law. In civil law the rights of the parties should be improved. A main goal of the programme was also the humanization of criminal law with a special focus on vulnerable groups such as pregnant women or minors. Criminal liability of legal persons should be introduced. Courts should be further specialised with the introduction of juvenile courts. The Commissioner for Human Rights should be permitted to provide legal assistance where necessary.

Mr Markert informed Mr. Donakov about the Commission's programme of co-operation with Central Asia, funded by Germany and the European Union, which covered all five Central Asian states. This programme should enable the Commission to remain at the disposal of Kazakhstan in the future.

### 14. Luxembourg

La Commission examine, en vue de son adoption, le projet d'avis ([CDL\(2009\)162](#)) sur le projet de révision de la Constitution du Luxembourg ([CDL\(2009\)131](#)) établi sur la base des observations de MM. Chagnollaude, Colliard, van Dijk, Jowell, Trocsanyi et Velaers.

Le Président souligne l'importance de la demande du Parlement du Luxembourg à la Commission de Venise ; il faut apprécier qu'une ancienne démocratie saisisse la Commission et cela devrait servir d'exemple.

Après une brève introduction par M. Jowell, président de la sous-commission sur les institutions démocratiques et membre du groupe de travail sur la révision constitutionnelle au Luxembourg, M. Velaers présente le projet d'avis. C'est la deuxième fois qu'une ancienne constitution révisée est soumise à la Commission de Venise. La révision vise trois objectifs : une “modernisation de la terminologie désuète”, une “adaptation des textes à l'exercice réel des pouvoirs” et “l'inscription dans la Constitution des dispositions relevant d'une pratique coutumière et inscrites dans d'autres textes échappant à l'intervention du législateur”.

Parmi les principales observations, on peut relever ce qui suit. Le chapitre 2 relatif aux droits fondamentaux procède surtout à un réagencement. Ne faudrait-il pas une refonte plus importante ? En effet, un certain nombre de droits de l'homme importants ne sont pas repris (non-discrimination en général, droit à la vie, plusieurs garanties du procès équitable). De plus, les conditions des restrictions ne correspondent pas à celles des traités internationaux. Il y a un certain nombre d'adaptations (par exemple l'introduction du droit à vie privée) mais il faudrait être plus cohérent, par exemple en s'inspirant de la Constitution suisse ou de la Charte des droits fondamentaux de l'Union européenne, par l'ajout de clauses transversales.

En ce qui concerne le chapitre 3 sur le Grand-Duc, il serait souhaitable de clarifier les principes sous-jacents par rapport à trois fonctions : symbolique, de gardien des institutions et d'arbitre. Une discussion a eu lieu entre les rapporteurs sur les pouvoirs de promulgation, de nomination des juges et des fonctionnaires ; le projet les attribue au gouvernement. Hier, un nouveau texte a été adopté par la sous-commission sur les institutions démocratiques, qui relève que, dans la plupart des monarchies parlementaires en Europe, ces trois pouvoirs sont exercés par le monarque, mais il n'y a pas un seul modèle ; il s'agit d'un choix politique du constituant.

Dans les autres chapitres, il faudrait notamment clarifier la question de la primauté du droit international.

D'autres rapporteurs (MM. Chagnollaud, Trocsanyi, Colliard, Velaers) soutiennent le projet et apportent des précisions.

M. Maus indique que le Luxembourg est le troisième pays européen à réviser sa Constitution en l'absence de grand changement, après la Finlande et la Suisse.

Mme Err précise que le texte fait suite à une initiative de la commission des institutions du Parlement. L'avis à adopter a un caractère intérimaire, puisqu'il y aura consultation, notamment du Conseil d'Etat. Un certain nombre de points ont été clarifiés en commission après la visite de la délégation de la Commission de Venise. Il y aura bien une nouvelle Constitution. En outre, il y a accord dans la commission pour adapter le chapitre sur les droits et libertés fondamentales. Le principe des clauses transversales est accepté non seulement en ce qui concerne les limitations (cf. la Constitution suisse), mais aussi pour l'obligation pour les autorités de respecter les droits de l'homme, l'interdiction des abus, la suprématie du droit international. En ce qui concerne les fonctions du Grand-Duc, seule la fonction symbolique est maintenue.

Un certain nombre de clarifications sont apportés suite à l'intervention de plusieurs membres.

**La Commission adopte l'avis intérimaire (CDL-AD(2009)057) sur le projet de révision de la Constitution du Luxembourg.**

## **15. Moldova**

The Commission examined, with a view to adoption, the draft Opinion (CDL(2009)172) on the draft Law on the Status of Euroregions of the Republic of Moldova (CDL(2009)169), drawn up on the basis of comments by Mr Bartole and Mr Haenel.

Mr Haenel presented the Opinion on the draft Law noting that the overall assessment of the text by the rapporteurs of the Commission was positive. He pointed out however, that there were some shortcomings in the draft Law that should be addressed. In particular, the provisions relating to the Law applicable to the establishment agreement and actions of Euroregions having their headquarters outside the Republic of Moldova should be modified; and the conditions and procedures regarding the participation of Moldovan local authorities to the Euroregions abroad clarified.

**The Commission adopted Opinion (CDL-AD(2009)050) on the draft Law on the Status of Euroregions of the Republic of Moldova, drawn up on the basis of comments by Mr Bartole and Mr Haenel.**

## **16. Turkey**

Mr Sejersted introduced the draft report on the fact-finding visit of a delegation to Turkey ([CDL\(2009\)183](#)). The visit took place following the request by the Parliamentary Assembly of the Council of Europe to assess the compatibility with European standards of the lack of recognition of legal personality for the religious communities in Turkey and to examine, in this context, in particular the question of the right of the Greek Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical". The report covered a broad range of issues, not all of which would be the subject of the legal opinion to be adopted at the next session. A lot of progress had already been made in Turkey on religious freedom but some problems remained. It was now possible to obtain legal personality for associations or foundations supporting a religious community but not for the community as such. The rapporteurs would have to determine whether this was a violation of European standards. The Turkish State did not recognise the title of the Orthodox Patriarch as Ecumenical Patriarch. Otherwise this title was generally recognised but did this create an obligation for Turkey to recognise the title as well?

Mr Özbudun expressed doubts whether a religious community did correspond to an association or foundation. It may not be possible to find a legal structure adequately reflecting the sociological reality of religious communities. It was not up to the Turkish government to decide on the ecumenical character of the Patriarchate.

With respect to Mr Holovaty's request to authorise the rapporteurs to make the draft opinion accessible to the Parliamentary Assembly as a draft under their responsibility (see item 5 above), Mr Helgesen noted that the draft Opinion raised many difficult issues. The rapporteurs should do so only if they felt sufficiently comfortable with the text.

## **17. Ukraine**

M. Haenel rappelle qu'en 2006 la Commission avait analysé un projet de loi antérieur sur les événements pacifiques qui a, par la suite, été modifié et est actuellement devant le parlement qui l'a adopté en première lecture. Ce texte laisse un sentiment mitigé, car, s'il est clair que les autorités s'efforcent d'établir un cadre normatif légitime pour l'exercice de la liberté de réunion, plusieurs recommandations de la Commission n'ont pas été suivies, notamment s'agissant de la responsabilité des organisateurs. De plus, sous l'ancien texte, les organisateurs devaient effectuer une simple notification, alors que dans le nouveau texte ils sont tenus de demander une autorisation.

La représentante du BIDDH souligne que tant le BIDDH que la Commission de Venise souhaitent et se tiennent prêts à coopérer avec les autorités ukrainiennes afin d'améliorer le projet de loi.

M Hoffmann-Riem précise, s'agissant du recours au tribunal contre le refus d'autoriser une démonstration, qu'il est primordial que le tribunal puisse émettre une décision en référé, et il suggère de modifier l'avis en conséquence.

**La Commission adopte l'avis conjoint avec l'OSCE-BIDDH sur le projet de loi sur l'organisation et le déroulement des événements pacifiques en Ukraine (CDL-AD(2009)052).**

## 18. Autres développements constitutionnels

### - Roumanie

M. Dan Hazaparu, président de la Fondation roumaine pour la démocratie par le droit, présente le bilan des travaux de la Fondation et évoque l'évolution constitutionnelle en Roumanie.

M. Hazaparu indique que le calendrier électoral chargé de 2009 a entraîné un usage immodéré des mécanismes constitutionnels et a politisé à l'excès la révision constitutionnelle.

Selon M. Hazaparu, la révision constitutionnelle laissait craindre un texte trop développé d'un point de vue procédural et plus seulement attaché aux grands principes constitutionnels. La loi doit disposer en détails des droits et devoirs des différentes institutions nationales et autres acteurs impliqués dans la politique nationale. En outre, M. Hazaparu souligne qu'il est important que la Constitution soit lue et interprétée de bonne foi par les acteurs politiques.

Le travail de la Fondation, accompagnée d'autres acteurs de la société civile, a permis un dialogue apaisé concernant cette révision constitutionnelle. M. Hazaparu rappelle enfin que la révision constitutionnelle n'était pas isolée puisque diverses lois organiques ont également été révisées, en particulier le code électoral.

### - Suisse

Mme Haller informe la Commission du récent référendum en Suisse ayant conduit à l'adoption d'un amendement constitutionnel interdisant la construction de minarets sur le sol suisse.

Mme Haller considère que le résultat d'une telle votation pourrait être invalidé s'il s'avère contraire à une norme internationale. En l'espèce, une telle interdiction ne semble pas contraire au *jus cogens* selon le législateur suisse, si bien que le parlement a rejeté l'initiative et a recommandé aux citoyens suisses de rejeter également cette initiative, mais ne l'a pas invalidée. On ne peut en revanche pas exclure la reconnaissance d'une éventuelle violation d'une disposition de la Convention européenne des droits de l'homme par la Cour européenne dans l'hypothèse d'un recours devant celle-ci.

Le résultat de cette votation a lancé un débat sur une éventuelle révision de la Constitution en matière de validité des initiatives populaires. Mme Haller rappelle toutefois que le résultat de cette votation ne doit pas remettre en cause le principe de l'initiative populaire, principe très ancré en Suisse, la démocratie directe n'étant pas un outil dangereux, en dépit du résultat de cette votation.

Parmi les propositions de révision constitutionnelle, il a été évoqué la possibilité d'interdire des initiatives populaires qui auraient pour but de mettre à mal des fondements de l'Etat ; il a également été évoqué la possibilité d'une nouvelle disposition qui rappellerait le principe de la tolérance entre les religions.

Selon Mme Haller, la Suisse est devant un grand travail de réflexion avec deux buts : 1. conserver la tradition de démocratie directe ; 2. rapprocher la Constitution et la législation en général des normes du droit international public.

## 19. Développements constitutionnels dans les Etats observateurs

M. Didier Maus, premier vice-président de l'Association internationale de droit constitutionnel (AIDC), remercie la Commission de son invitation et rappelle que le VIIIème congrès mondial de l'AIDC qui se déroulera à Mexico du 6 au 10 décembre 2010 portera sur « La question des principes en droit constitutionnel ».

**20. Rapport de la réunion du Conseil des élections démocratiques (10 décembre 2009)**

Le Président du Conseil informe la Commission des résultats et des conclusions de la réunion du 10 décembre 2009.

Le président indique ainsi que les lignes directrices sur un statut internationalement reconnu des observateurs d'élections, préparées sur la base des contributions de MM. Masters, Musin, Pohler et Sanchez Navarro ([CDL-EL\(2009\)022rev](#)) ont été adoptées par le Conseil avec quelques amendements. Une discussion s'engage au sein de la Commission et les lignes directrices sont finalement adoptées par la Commission avec un amendement linguistique complémentaire.

**La Commission adopte les lignes directrices sur un statut internationalement reconnu des observateurs d'élections (CDL-AD(2009)059).**

Le président informe par ailleurs la Commission de l'adoption par le Conseil du rapport sur l'annulation des résultats des élections, préparé par M. Kask ([CDL-EL\(2009\)020rev2](#)).

**La Commission adopte le rapport sur l'annulation des résultats des élections (CDL-AD(2009)054).**

Le président indique enfin que le Conseil étudiera le deuxième rapport sur les seuils qui sera soumis au Conseil puis à la Commission lors de la prochaine session de mars 2010 ; dans l'intervalle, le rapport sera transmis à l'Assemblée parlementaire sous forme de projet.

**21. Report of the meeting of the Sub-Commission on Democratic Institutions (10 December 2009)**

Mr Jowell informed the Commission about the discussion on the draft Report on constitutional amendments (CDL(2009) 168). He underlined the fact that the topic dealt with by the Report is a rather under investigated area of research, which adds to its relevance. While thanking Mr Sejersted and Ms Haller for their significant contributions to the draft Report, Mr Jowell pointed out that the final text is the result of the collective effort, given that not only the rapporteurs, but also a number of other members had actively participated in its preparation.

Mr Sejersted presented the final draft Report recalling that it was on the agenda of the Sub-Commission for the fifth time, and briefly explained the amendments to the Report suggested by the Sub-Commission, which were distributed to the Plenary on Friday, 11 December (CDL(2009)168prov). He underlined the fact that the text, as it currently stands, particularly with regard to the question of amending human rights provisions, and those provisions that cannot be amended, reflects the compromise that it was possible to reach considering the diversity of constitutional amendment mechanisms in the countries covered by the Report. Mr Sejersted also pointed out that the Report does not aim to propose a "best model" for constitutional amendment, nor to formulate any Guidelines. It aims at identifying factors that may be relevant for the assessment of a given constitutional system, and which may be useful in searching for a proper balance between its rigidity and flexibility.

He drew the attention of the Plenary to Section III of the Report, giving the overview of existing constitutional provisions for amending constitutions, and invited all members to check whether the constitutional rules of their respective countries have been correctly classified in the Report, and to send corrections, if any, by 10 January 2010.

Mr Helgesen praised the close collaboration between the rapporteurs and other members involved in the preparation of the Report, which had contributed to the excellent quality of the final text.

Mrs Haller joined others in acknowledging the usefulness of the working method. However, she recalled that some of the paragraphs from Section VII D, 2 on amending human rights that have been left out in the final text reflected the debates during the Venice Commission's UNIDEM seminar on "*Definition and development of human rights and popular sovereignty in Europe*" (Frankfurt, 15-16 May 2009), organised by the Venice Commission. In this regard, she regretted the lack of time left for discussion on the amendments suggested during the meeting of the Sub-Commission.

Mr Jowell and Mr Tuori acknowledged the quality of the paragraphs in question mentioned by Mrs Haller, but underlined the fact that these paragraphs have been left out because they are not directly related to the topic of the Report.

Mr Tuori informed the Plenary about his doubts concerning the necessity to expressly state, in the Report, that there should not be special rules for states "in transition". In his view, the fact that the Report does not make the difference between the so-called "old" and "new" democracies was sufficient. However, he accepted to keep the relevant section in the final text, subject to a number of modifications.

Several members commented on the issue of judicial review of constitutional amendments. Mrs Palma pointed out that, according to the Portuguese Constitution, any constitutional change must respect certain principles, and that it is up to the Constitutional Court to ensure this respect. She felt that this possibility is not sufficiently acknowledged in the Report. Mr Colliard was of the opinion that, although this is not the case in France, a Constitutional Court may very well be given the power to review the compliance with procedural requirements, but not the substance of the constitutional amendment. Mr Torfason considered that judicial review of legislative and constitutional provisions could have been dealt with in more detail. He was of the opinion that when a Constitutional Court is given the power to review a constitutional amendment before its adoption, it may be put in a position to compromise its future views on the constitutionality.

**The Commission:**

- 1. adopted the Report on constitutional amendment (CDL-AD(2010)001);**
- 2. asked all members to check whether the references to their respective country in the report are correct and up-to-date and to send any corrections by 10 January to the Secretariat.**

**22. Report of the meeting of the Sub-Commission on the Judiciary (10 December 2009)**

Ms Flanagan reported that within the Sub-Commission a compromise had been found as concerns various issues (CDL(2009)055rev5) including the diversity of the Judiciary, the composition of judicial councils, internal independence, party membership and the right to a judge pre-established by law.

Ms Suchocka insisted that also judges who are not elected by their peers but by Parliament count as part of the judges' quota. Mr Meridor was of the opinion that 'diversity' must not be interpreted as giving any group a right to be represented in the Judiciary. The report should also deal with pressure of the media against judges. The composition of constitutional courts was different from that of ordinary courts. Mr Vermeulen was of the opinion that the report did not sufficiently allow for a smooth organisation of the courts and a specialisation of judges. 'Political'



cases needed special treatment. Reference should be made to 'principles' rather than 'rules' for case allocation. Some discretion by the court presidents was necessary.

**The Commission decided to pursue its work on the report on report on European standards as regards the independence of the judicial system – Part I Judges.**

### **23. Other business**

Ms Bojić informed the Commission on the conference on “60 years of the Geneva Conventions and the Decades Ahead”, organised by the Swiss government in cooperation with the International Committee of the Red Cross (from 9 to 10 November 2009). The Venice Commission was represented by Professor Vojin Dimitrijević (member for Serbia).

The conference confirmed the position taken by the Venice Commission in its opinion on the need for further development of the Geneva Conventions (CDL-AD (2003)018) i.e. that the existing rules of international humanitarian law (IHL) constitute a generally appropriate legal framework for international armed conflict. The main challenge is not a lack of rules but achieving greater compliance with and respect for existing norms by all parties to a conflict - the belligerents, States and non-State armed groups. On the other hand, it was pointed out that IHL needs to be further developed with respect to the rules applicable to non-international armed conflicts.

Ms Haller recalled the draft report on the notion of good governance, which was discussed within the Sub-commission on Democratic Institutions in October, and asked the Commission to decide whether to continue its work on this matter. She therefore suggested putting this issue on the agenda for the next plenary session of the Commission in March.

Mr. Helgesen was of the opinion that this matter could be more appropriately discussed within one of the bodies of the Commission, outside the Plenary.

### **24. Dates of the next sessions**

The schedule of sessions for 2010 is confirmed as follows:

82 <sup>nd</sup> Plenary Session	12-13 March
83 <sup>rd</sup> Plenary Session	4-5 June
84 <sup>th</sup> Plenary Session	15-16 October
85 <sup>th</sup> Plenary Session	17-18 December

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

**LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS**

<b>ALBANIA/ALBANIE</b>	Mr Viktor GUMI (Apologised/Excusé)
<b>ALGERIA/ALGERIE</b>	Mr Boualem BESSAÏH
	Mr Mohamed HABCHI
<b>ANDORRA/ANDORRE</b>	Mr Joan MONEGAL BLASI
<b>ARMENIA/ARMENIE</b>	Mr Gaguik HARUTUNYAN
<b>AUSTRIA/AUTRICHE</b>	M. Christoph GRABENWARTER (Apologised/Excusé)
	Ms Gabriele KUCSKO-STADLMAYER
<b>AZERBAIJAN/AZERBAIDJAN</b>	Mr Lätif HUSEYNOV
<b>BELGIUM/BELGIQUE</b>	Mr Jan VELAERS
	M. Jean-Claude SCHOLSEM
<b>BOSNIA AND HERZEGOVINA/ BOSNIE-HERZEGOVINE</b>	M. Cazim SADIKOVIC (Apologised/Excusé)
<b>BRAZIL/BRESIL</b>	Mr Gilmar MENDES
<b>BULGARIA/BULGARIE</b>	Mr Eugeni TANCHEV
<b>CHILE</b>	Mr Mario FERNANDEZ BAEZA (Apologised/Excusé)
	Mme Marisol PENA TORRES
<b>CROATIA/CROATIE</b>	Mr Ivan SIMONOVIC (Apologised/Excusé)
	Ms Jasna OMEJEC
<b>CYPRUS/CHYPRE</b>	Mr Frixos NICOLAIDES
<b>CZECH REPUBLIC/ REPUBLIQUE TCHEQUE</b>	Mr Cyril SVOBODA (Apologised/Excusé)
<b>DENMARK/DANEMARK</b>	Ms Eliska WAGNEROVA
<b>ESTONIA/ESTONIE</b>	Mr Jorgen Steen SORENSEN
<b>FINLAND/FINLANDE</b>	Mr Oliver KASK
<b>FRANCE</b>	Mr Kaarlo TUORI
	M. Jean-Claude COLLIARD
	M. Hubert HAENEL
<b>GEORGIA/GEORGIE</b>	Mr George PAPUASHVILI (Apologised/Excusé)
	Mr Konstantin VARDZELASHVILI
<b>GERMANY/ALLEMAGNE</b>	Mr Wolfgang HOFFMANN-RIEM
	Ms Angelika NUSSBERGER
<b>GREECE/GRECE</b>	Ms Kalliopi KOUFA
<b>HUNGARY/HONGRIE</b>	Mr Peter PACZOLAY
	Mr Laszlo TROCSANYI
<b>ICELAND/ISLANDE</b>	Mr Hjörtur TORFASON
<b>IRELAND/IRLANDE</b>	Ms Finola FLANAGAN
	Mr James HAMILTON
<b>ISRAEL/ISRAËL</b>	Mr Dan MERIDOR
<b>ITALY/ITALIE</b>	Mr Gianni BUQUICCHIO
	Mr Sergio BARTOLE
	Mr Guido NEPPI MODONA
<b>REPUBLIC OF KOREA/ REPUBLIQUE DE COREE</b>	Mr Kong-hyun LEE
<b>KYRGYZSTAN/KYRGHYZSTAN</b>	Ms Svetlana SYDYKOVA
<b>LATVIA/LETTONIE</b>	Mr Aivars ENDZINŠ
<b>LIECHTENSTEIN</b>	Mr Harry GSTÖHL
<b>LITHUANIA/LITUANIE</b>	Mr Egidijus JARASIUNAS (Apologised/Excusé)
<b>LUXEMBOURG</b>	Mme Lydie ERR
<b>MALTA/MALTE</b>	Mr Ugo MIFSUD BONNICI
<b>MOLDOVA</b>	Mr Nicolae ESANU
<b>MONACO</b>	M. Dominique CHAGNOLLAUD
	Mr Christophe SOSSO
<b>MONTENEGRO</b>	Mr Srdjan DARMANOVIC

<b>MOROCCO/MAROC</b>	M. Abdellatif MENOUNI
<b>NETHERLANDS/PAYS-BAS</b>	M. Abdelaziz LAMGHARI Mr Peter van DIJK (Apologised/Excusé) Mr Ben VERMEULEN
<b>NORWAY/NORVEGE</b>	Mr Jan HELGESEN ( <b>President/Président</b> ) Mr Frederik SEJERSTED
<b>PERU/PEROU</b>	Mr Carlos MESIA RAMIREZ
<b>POLAND/POLOGNE</b>	Ms Hanna SUCHOCKA
<b>PORTUGAL</b>	Mme Maria Fernanda PALMA
<b>ROMANIA/ROUMANIE</b>	Mr Lucian MIHAI (Apologised/Excusé) Mr Bogdan AURESCU
<b>RUSSIAN FEDERATION/ FEDERATION DE RUSSIE</b>	Mr Valeriy ZORKIN (Apologised/Excusé) Mr Valeriy MUSIN
<b>SAN MARINO/SAINT-MARIN</b>	Mme Barbara REFFI (Apologised/Excusée)
<b>SERBIA / SERBIE</b>	Mr Vojin DIMITRIJEVIC (Apologised/Excusé)
<b>SLOVAKIA/SLOVAQUIE</b>	Ms Ivetta MACEJKOVA
<b>SLOVENIA/SLOVENIE</b>	Mr Klemen JAKLIC
<b>SPAIN/ESPAGNE</b>	Ms Maria Angeles AHUMADA RUIZ (Apologised/Excusée)
<b>SWEDEN/SUEDE</b>	Mr Iain CAMERON
<b>SWITZERLAND/SUISSE</b>	Mme Gret HALLER
<b>"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"/ "L'EX REPUBLIQUE YOUGOSLAVE DE MACEDOINE"</b>	Ms Gordana SILJANOVSKA-DAVKOVA
<b>TUNISIA/TUNISIE</b>	
<b>TURKEY/TURQUIE</b>	Mr Ergun ÖZBUDUN
<b>UKRAINE</b>	Ms Marina STAVNIYCHUK
<b>UNITED KINGDOM/ ROYAUME-UNI</b>	Mr Jeffrey JOWELL

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**SECRETARIAT GENERAL OF THE COUNCIL OF EUROPE/SECRETARIAT GENERAL DU CONSEIL DE L'EUROPE**

M. Philippe BOILLAT, Directeur Général des droits de l'homme et des affaires juridiques

**COMMITTEE OF MINISTERS/COMITE DES MINISTRES**

Ambassador Athanassios DENDOULIS, Permanent Representative of Greece to the Council of Europe

Ambassador Euripides L. EVRIVIADES, Permanent Representative of Cyprus to the Council of Europe

Ambassador Hans-Dieter HEUMANN, Permanent Representative of Germany to the Council of Europe

**PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE/ASSEMBLEE PARLEMENTAIRE DU CONSEIL DE L'EUROPE**

Mr René van der LINDEN, Former President of the Parliamentary Assembly of the Council of Europe (Apologised/Excusé)

Mr Christos POURGOURIDES, Member of the Committee on legal affairs and human rights (Apologised/Excusé)

Mr Serhiy HOLOVATY, Member of the Monitoring Committee

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

Mr Keith WHITMORE, Président de la Commission Institutionnelle (Apologised/Excusé)

**COUNCIL OF EUROPE DEVELOPMENT BANK/BANQUE DE DEVELOPPEMENT DU  
CONSEIL DE L'EUROPE**

M. Raphaël ALOMAR, Gouverneur (Apologised/Excusé)

**EUROPEAN UNION/UNION EUROPEENNE**

European Commission/Commission européenne

M. Patrick HETSCH, Conseiller juridique principal (Apologised/Excusé)

M. Esa PAASIVIRTA, Conseiller juridique

**COMMITTEE OF THE REGIONS EU/COMITE DES REGIONS UE**

Mr Luc Van den BRANDE, Président

**OBSERVERS/OBSERVATEURS**

**ARGENTINA/ARGENTINE**

(Apologised/Excusé)

**CANADA**

(Apologised/Excusé)

**HOLY SEE/SAINT-SIEGE**

Prof. Vincenzo BUONOMO, Professeur de Droit international, Université pontificale du Latran

**JAPAN/JAPON**

Mr Hiroyuki MINAMI, Consul, Consulat Général du Japon à Strasbourg (Apologised/Excusé)

**KAZAKSTAN/KAZAKHSTAN**

Mr Almaz N. KHAMZAYEV, Ambassador of Kazakhstan in Rome (Apologised/Excusé)

**MEXICO/MEXIQUE**

Ms Maria AMPARO CASAR, Professor (Apologised/Excusée)

**U.S.A.**

Mr Jed RUBENFELD, Yale Law School (Apologised /Excusé)

**URUGUAY :**

M. Jorge TALICE, Ambassadeur de l'Uruguay à Paris (Apologised /Excusé)

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**INVITED GUESTS/INVITES D'HONNEUR**

**AZERBAIJAN/AZERBAÏDJAN**

Mr Shahin ALIYEV, Head of Department of Legislation and Legal Expertise, Office of the President of the Republic of Azerbaijan

**DG-DAP EXPERT/EXPERT DE LA DG-DAP**

M. Robert HERTZOG, Professeur à l'IEP de Strasbourg

**EGYPT/EGYPTE**

Mr Farouk SULTAN, President, Supreme Constitutional Court of Egypt

**GEORGIA/GEORGIE**

Mr Avtandil DEMETRASHVILI, President, State Constitutional Commission  
Mr Levan BODZASHVILI, Chief Adviser, State Constitutional Commission  
Mr. Akaki MINASHVILI, Chairman of Foreign Relations Committee of the Parliament of Georgia  
Ms Chiora TAKTAKISHVILI, Deputy Chairman of the Legal Committee, Parliament of Georgia

**INTERNATIONAL ASSOCIATION OF CONSTITUTIONAL LAW/ASSOCIATION INTERNATIONALE DE DROIT CONSTITUTIONNEL**

M. Didier MAUS, Président, Association internationale de droit international

**KAZAKHSTAN**

Mr Talgat DONAKOV, Deputy Head, Presidential Administration  
Ms Anar ZHAILGANOVA, Member, Constitutional Council

**OSCE**

Office for Democratic Institutions and Human Rights/Bureau des Institutions Démocratiques et des Droits de l'Homme

Ms Marta ACHLER, Head of the Legislative Support Unit

**PALESTINIAN NATIONAL AUTHORITY/AUTORITE NATIONALE PALESTINIENNE**

Mr Ali KHASHAN, Minister of Justice (Apologised/Excusé)

**ROMANIA/ROUMANIE**

Mr Dan HAZAPARU, President, Romanian Foundation for Democracy through law  
Mr Constantin SIMA, Prosecutor

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**REGIONAL AND LINGUISTIC GROUPS FOR THE WORLD CONFERENCE ON CONSTITUTIONAL JUSTICE/ GROUPES REGIONAUX ET LINGUISTIQUES POUR LA CONFERENCE MONDIALE SUR LA JUSTICE CONSTITUTIONNELLE**

**Asian Constitutional Courts / Cours constitutionnelles de l'Asie**

Mr Kong-Hyun LEE, Justice, Constitutional Court of Korea

**Association of Constitutional Courts using the French Language (ACCPUF) /**

**Association des cours constitutionnelles ayant en partage l'usage du français (ACCPUF)**

Mr Robert DOSSOU, Président de l'ACCPUF, Président, Cour constitutionnelle du Bénin  
Mme M-C MEININGER, Secrétaire général de l'ACCPUF, Chef du Service des Relations extérieures, Conseil constitutionnel de la France

Monsieur Sylvain M. NOUWATIN, Secrétaire général de la Cour constitutionnelle du Bénin

**Commonwealth Courts / Cours du Commonwealth**

Lord CLARKE OF STONE-CUM-EBONY, Justice, Supreme Court, United Kingdom

**Conference of Constitutional Control Organs of Countries of Young Democracy /**

**Conference des organes de contrôle de constitutionnalité des pays de jeune démocratie**

Mr Gaguk HARUTYUNYAN, President, Constitutional Court of Armenia

**Conference of European Constitutional Courts / Conférence des cours constitutionnelles européennes**

Mr Ioan VIDA, Judge, Constitutional Court of Romania (Apologised/Excusé)

**Conference of Constitutional Courts using the Portuguese Language / Conférence des juridictions constitutionnelles des pays de langue portugaise**

Mr Riu MOURA RAMOS, Président, Tribunal constitutionnel du Portugal (Apologised/Excusé)

**Ibero-American Conference on Constitutional Justice/  
Conférence ibéro-américaine de la justice constitutionnelle**

Mr Francisco ROSALES ARGUELLO, Pro-Tempore Secretary of the Ibero-American Conference on Constitutional Justice, President of the Supreme Court of Justice, Nicaragua (Apologised/Excusé)

Mr Pablo PEREZ TREMPES, Permanent Secretary of the Ibero-American Conference on Constitutional Justice, Justice of the Constitutional Court of Spain (Apologised/Excusé)

Mr León de la TORRE KRAIS, Adviser to the President, Constitutional Court of Spain

**Joint Council on Constitutional Justice / Conseil mixte sur la justice constitutionnelle**

M. Jean JENTGEN, Co-président du Conseil mixte sur la justice constitutionnelle, Conseiller honoraire à la Cour Supérieure de Justice, Luxembourg

Mr Christoph GRABENWARTER, Co-President of the Joint Council on Constitutional Justice, Justice, Constitutional Court of Austria (Apologised/Excusé)

**Southern African Chief Justices Forum / Forum des juges en chef d'Afrique australe**

Mr J.M. NGANUNU, President of the Southern African Chief Justices Forum, Chief Justice, Botswana (Apologised/Excusé)

**Union of Arab Constitutional Courts And Councils / Union des cours et conseils constitutionnels arabes**

Mr Abd Al Rahman Mohammed ALY ABU TUTA, President of the Union of Arab Constitutional Courts and Councils, President of the Supreme Court of Libya (Apologised/Excusé)

Mr Farouk SULTAN, President, Supreme Constitutional Court of Egypt

Mr Mohamed Abdel Kader ABDALLAH, Secretary General, Union of Arab Constitutional Courts and Councils, Vice-President, Supreme Constitutional Court of Egypt

Mr Emad EL-BESHRY, Member of the Commissionary, Supreme Constitutional Court of Egypt

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M. Boualem BESSAÏH, Président, Conseil constitutionnel de l'Algérie

M. Mohamed HABCHI, Membre, Conseil constitutionnel de l'Algérie

Mr Gilmar MENDES, President, Federal Supreme Court of Brazil

Mr Luciano FUCK, Secretary General, Federal Supreme Court of Brazil

Mr Kestutis LAPINSKAS, President, Constitutional Court of Lithuania

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**ITALY/ITALIE**

Mr Renato CIANFARANI, Ministry of Foreign Affairs

**REGIONE VENETO**

Mr Diego VECCHIATO, Département des affaires internationales

Ms Alessandra VALERIO, Bureau de la coopération transfrontalière

Ms Donatella CAMPANELLA

**SECRETARIAT**

Mr Thomas MARKERT

Ms Simona GRANATA-MENGHINI

M. Pierre GARRONE

Mr Schnutz DURR

Ms Tanja GERWIEN

Ms Dubravka BOJIC BULTRINI

M. Gäel MARTIN-MICALLEF  
Ms Helen MONKS  
Mme Caroline GODARD

**PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE/ASSEMBLEE  
PARLEMENTAIRE DU CONSEIL DE L'EUROPE**

Ms Despina CHATZIVASSILIOU

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

(Apologised/Excusé)

**INTERPRETERS/INTERPRETES**

Mr Derrick WORSDALE  
Ms Maria FITZGIBBON  
Mr Artem AVDEEV  
Mr Vladislav GLASUNOV

**APPENDIX I/ANNEXE I****DISCOURS PRONONCE PAR M. BUQUICCHIO/SPEECH BY Mr BUQUICCHIO****1. Activités**

Les domaines traditionnels d'activité suivants de la Commission de Venise gardent toute leur actualité et ne devraient pas être modifiés pour le moment :

a. Constitutions, lois para-constitutionnelles et législations rentrant dans les compétences statutaires de la Commission

b. Justice constitutionnelle

La Commission peut se targuer d'avoir contribué d'une manière significative au développement de la justice constitutionnelle en Europe et dans d'autres régions du monde. Elle devrait encourager la création de réseaux régionaux de Cours constitutionnelles et soutenir la Conférence mondiale des Cours constitutionnelles. Par ailleurs, elle devrait développer son rôle d'*amicus curiae* des cours et favoriser l'élargissement de leurs compétences, notamment en matière de protection des droits de l'homme.

c. Droit électoral

La Commission s'est imposée comme l'un des acteurs principaux au niveau mondial dans ce domaine. Elle devrait continuer à prêter son assistance pour l'amélioration des législations électorales et à organiser les Conférences européennes des administrations électorales.

d. Règlement des conflits ethno-politiques

La Commission n'est pas un organe politique. Cependant, elle a joué et peut continuer à jouer un rôle technique important d'assistance juridique aux négociateurs politiques dans la solution de ces conflits.

**2. Instruments / outils d'intervention**

a. Avis

Les membres et le Secrétariat devraient veiller à préserver la haute qualité des avis de la Commission, ainsi qu'à assurer la cohérence avec sa « jurisprudence ». Ce dernier élément devrait faire partie des compétences du nouveau Conseil scientifique qui devrait veiller à la codification des principes et standards contenus dans les avis par l'élaboration de « vademecums » sur des matières sélectionnées (minorités, justice constitutionnelle, ombudsman, etc.) ;

b. Etudes

Promouvoir l'élaboration sous l'autorité du Conseil scientifique d'études à l'initiative de la Commission. Ces études devraient être orientées vers l'identification de standards communs.

c. Evènements scientifiques

La Commission devrait continuer la série des colloques « Université pour la démocratie » (UniDem), mais concentrer ses ressources sur l'organisation d'un seul évènement d'importance scientifique par an.



### 3. Partenaires

#### a. Nouvelles et vieilles démocraties

Jusqu'à présent, à quelques exceptions près (Luxembourg et Finlande), la Commission a coopéré essentiellement avec les « nouvelles démocraties ». L'esprit de la Commission qui a toujours été le partage de la sagesse commune européenne devrait être promu aussi à l'égard des « vieilles démocraties ». Les membres devraient être plus actifs en signalant à leurs autorités nationales la disponibilité de la Commission à coopérer notamment dans le domaine des réformes constitutionnelles.

#### b. Russie et Turquie

La coopération avec ces deux états européens devrait s'intensifier compte tenu de l'importance des réformes démocratiques en cours.

#### c. Etats membres non-européens

Ces états devraient également faire appel à la Commission dans le cadre de leurs réformes démocratiques. Par ailleurs, la Commission devrait organiser des « ateliers interculturels sur la démocratie », en vue d'un échange enrichissant entre les différentes cultures.

#### c. Organes du Conseil de l'Europe

Aux termes du Statut de la Commission, celle-ci peut être saisie par tous les organes du Conseil de l'Europe. Mise à part l'Assemblée parlementaire, avec laquelle la Commission a une excellente coopération, les autres organes ne font pas usage de cette possibilité que très rarement. La Commission devrait rappeler sa disponibilité au Comité des Ministres, au Congrès et au Secrétaire Général.

#### d. Union européenne

La coopération avec l'Union européenne (Conseil et Commission) est excellente. La Commission doit s'investir dans la préparation des candidats à l'adhésion à l'UE, répondre positivement, dans la mesure de ses capacités, aux demandes de l'UE de coopération avec des Etats non-européens dans le domaine des droits de l'homme et de l'état de droit et prêter son assistance technique aux négociateurs de l'UE dans la solution de conflits ethno-politiques.

Compte tenu de la coopération et des synergies existantes, la priorité pour les prochains mois devra être de reprendre la réflexion sur l'adhésion de l'UE à la Commission de Venise. Cette initiative, entamée sous la présidence Prodi, devient maintenant réalisable grâce à l'entrée en vigueur du Traité de Lisbonne.

#### e. OSCE / ODIHR

La coopération avec l'ODIHR remonte à la création de ce dernier et elle est devenue exemplaire au fil des ans dans le domaine électoral. Elle doit être poursuivie avec le même esprit et étendue à d'autres secteurs, comme la liberté d'association, de religion, etc.

#### f. AIDC (Association Internationale de Droit Constitutionnel)

La Commission a un siège dans le Comité exécutif de l'AIDC et son président participe régulièrement aux travaux de la Commission. L'association constitue un important réservoir de constitutionnalistes qui mérite d'être davantage impliqué dans les activités de la Commission.

g. Etats-Unis d'Amérique

Actifs pendant les années '90, les observateurs des Etats-Unis ont depuis cessé leur participation aux travaux de la Commission. Grâce aux contacts que le premier Vice-président a avec la nouvelle administration américaine, il est à espérer que le dialogue puisse être renoué.

### **3. Dimension géopolitique**

L'Europe doit demeurer la priorité de la Commission. Cependant, une attention particulière doit être portée à la périphérie immédiate du Conseil de l'Europe : rive sud de la Méditerranée et Asie centrale. Plusieurs Etats de ces deux régions sont membres de la Commission et l'UE attache une importance particulière à la coopération avec ces pays.

Après l'adhésion prévue du Mexique et éventuellement de l'Egypte qui a déclaré son intérêt à adhérer à la Commission, l'élargissement futur de celle-ci devrait être reconsidéré. Il faudrait envisager une nouvelle formule (partenariat pour la démocratie) qui offre à des états intéressés la possibilité de coopérer avec la Commission pendant une durée limitée (par ex. 2 ans) avant qu'une décision soit prise sur une éventuelle adhésion, fondée sur l'évaluation de la volonté de ces états de partager les valeurs de la Commission. Une autre piste serait de favoriser la création dans d'autres régions du monde d'organismes analogues à la Commission, avec lesquels celle-ci pourrait établir des liens de coopération.

### **4. Méthodes de travail**

La Présidence de la Commission sera exercée dans un esprit de collégialité. Les responsabilités seront partagées avec le premier Vice-président et les deux Vice-présidents.

La Commission doit continuer à agir avec flexibilité et réactivité.

Il faudra développer dans les membres un plus grand sens d'appartenance (*ownership*) et de responsabilité.

Les sessions plénières doivent se dérouler d'une façon plus efficace et intéressante : par ex., il faudrait songer à l'adoption d'avis non-controversés sans débat et à choisir certains avis pour une discussion approfondie.

Le suivi des avis devrait être développé et rendu plus systématique.

Il faudra organiser, comme dans le passé, des réunions de réflexion sur le futur de la Commission, afin d'identifier les défis à venir et envisager les adaptations nécessaires.