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(COMMISSION DE VENISE)

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(Venise, vendredi 4 juin 2010)

SESSION REPORT
RAPPORT DE SESSION

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1. Adoption of the Agenda

The agenda (CDL-OJ(2010)002ann) was adopted with certain changes in the order of business.

2. Communication by the President

The President informed the Commission that Mr Stanko Nick, former member in respect of Croatia, had passed away two months ago. The Commission observed one minute of silence in his memory.

Mr Buquicchio subsequently presented his recent activities (see document [CDL\(2010\)051](#)).

3. Communication by the Secretariat

Mr Markert reminded member of the discussion on the open-ended Working Group on working methods and invited all members to send their suggestions to the Secretariat, and to declare their interest should they wish to take part in the 1st meeting of the Working Group scheduled for October 2010.

4. Address by the Secretary General of the Council of Europe¹

Mr Thorbjørn Jagland, Secretary General of the Council of Europe, informed the Commission that he had participated in a EU-Western Balkans meeting on 2 June in Sarajevo, Bosnia and Herzegovina; Mr Buquicchio also took part in this meeting.

He had subsequently participated in an urgent meeting in Chisinau, Moldova, on 3 June, in order to facilitate the reaching of a solution to end the constitutional crisis in that country. In this context, he praised the Venice Commission for its assistance to Moldova. The solution which had been reached involved both the holding of a referendum to amend Article 78 of the Constitution and early elections.

Mr Jagland explained that his aim by 2014 as Secretary General of the Council of Europe was to make the latter the reference organisation, in Europe and beyond, for human rights, democracy and the rule of law. The Venice Commission, a unique instrument of high-level constitutional advice that can be deployed quickly and effectively anywhere in the world and that links democracy and law, could be instrumental to this end.

Mr Jan Helgesen welcomed the Secretary General's support and thanked him for this important recognition of the Venice Commission. He also informed the Commission that Norway had requested the assistance of the Venice Commission and the OSCE/ODIHR in amending the electoral code, which showed that long-established democracies also relied on the Venice Commission's expertise.

A number of members raised the question of the place of the Venice Commission within the Council of Europe's structure, notably the possibility of it being attached directly to the Secretary General. Mr Jagland stated that he would reflect on possible options based on the fact that the Commission was part and parcel of the Council of Europe, and yet an independent body of experts.

¹ Due to the late arrival of the Secretary General from his mission to Moldova, this agenda item took place at the end of the session.

5. Co-operation with the Parliamentary Assembly

Mr Lluís Maria de Puig, former President of the Parliamentary Assembly, praised the continued good co-operation between the Parliamentary Assembly and the Venice Commission. In his view, the 20th anniversary of the Venice Commission was also an important event for the Parliamentary Assembly, which saw this anniversary as an historical success.

Mr Buquicchio also considered that the Venice Commission's co-operation with the Parliamentary Assembly was both excellent and exemplary. Two opinions to be discussed at this session had been requested by the Parliamentary Assembly.

6. Follow-up to previous Venice Commission opinions

Mr Markert informed the Venice Commission about the judgment of the European Court of Human Rights of 27 April 2010 in the case of *Tănase v. Moldova* (application no. 7/08). The case concerned the impossibility for those Moldovan citizens who also held other citizenships and had not started a procedure to renounce them, to take their seats as members of Parliament following their election. The Court had unanimously held that this ban was unjustified and infringed the European Convention on Human Rights (Article 3 of Protocol No.1 – right to free elections). The Court had referred to and agreed in substance with the Venice Commission's opinion on the amendments to the Moldovan electoral code. The Moldovan authorities had already implemented the previous Chamber decision and had already removed the impugned provisions from the electoral code.

7. Azerbaïdjan

M. Bartole présente l'avis sur le projet de loi sur les actes normatifs juridiques de l'Azerbaïdjan.

L'initiative d'un tel projet de loi doit être saluée et dans l'ensemble ce projet de loi est de bonne qualité, relativement bien structuré et très complet.

Cependant, certains points mériteraient d'être revus, notamment à la lumière de la nature constitutionnelle de ce projet de loi. Ainsi les auteurs devraient veiller à ce que le champ d'application de ce projet corresponde aux dispositions constitutionnelles et à préciser que les règles prévues s'appliquent à tous les actes normatifs indépendamment de leur auteur ou de l'institution chargée de les adopter, à régler le mécanisme de consultation publique, à réviser le chapitre sur le processus normatif en vue de clarifier les procédures internes en apportant davantage de clarté sur le rôle du gouvernement en la matière, à revoir le chapitre sur l'expertise juridique, à revoir les termes et conditions de l'abrogation ou de la perte de la force juridique de dispositions ou d'actes normatifs et à interdire explicitement l'abrogation tacite et enfin à veiller à ce que la lutte contre la corruption ne soit pas limitée à la procédure normative car celle là devrait être traitée de manière plus globale.

La Commission adopte l'avis sur le projet de loi sur les actes normatifs de l'Azerbaïdjan (CDL-AD (2010)017).

8. Bélarus

Avis sur la compatibilité d'un avertissement du Ministère de la Justice de Bélarus en date du 13 janvier 2010 adressé à l'Association bélarussienne des journalistes avec « les normes universelles des droits de l'homme »

Suite à la demande adressée à la Commission par l'Assemblée parlementaire, MM. van Dijk, Grabenwarter, et Mme Thorgeirsdottir (voir les documents CDL(2010) 055, 054 et 053) ont analysé cet avertissement en vue d'établir sa conformité avec les standards européens

et universels en matière de liberté d'expression. Par la suite, lors d'une visite au Belarus, les 13-14 mai 2010, M. Paczolay a pu s'entretenir avec le Ministre adjoint de la Justice ainsi qu'avec l'Association biélorusse de journalistes au sujet de cet avertissement.

Un projet d'avis sur la base des commentaires et des éléments recueillis lors de cette visite sera présenté à la Commission lors de la 84^e session plénière.

Avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur les amendements récents au Code électoral du Bélarus

M. Kask présente le projet d'avis, adopté par le Conseil des élections démocratiques le 3 juin, et indique que les modifications du Code électoral apportent une réponse mitigée aux préoccupations de l'OSCE/BIDDH et de la Commission de Venise. Les modifications constituent un pas en avant pour remédier à certains manquements de la législation électorale, mais il est peu probable qu'elles résolvent le problème sous-jacent lié au fait que le cadre législatif électoral du pays ne permet toujours pas de garantir des élections véritablement démocratiques. Le projet d'avis rappelle que les problèmes majeurs subsistants concernent en particulier l'indépendance des commissions électorales et les droits des observateurs électoraux.

La Commission adopte l'avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur les amendements récents au Code électoral du Bélarus ([CDL-AD\(2010\)012](#)).

9. Bosnia and Herzegovina

Opinion on the draft Law on the prevention of Conflict of Interests in the Institutions of Bosnia and Herzegovina

Mr Buquicchio informed the Commission that while he was in Sarajevo, together with Mr Thorbjorn Jagland, for the High-Level Meeting on EU and Western Balkans, he met with Mr Milorad Živković, Speaker of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, who informed him about a recent request for the adoption – through an urgent procedure – of a new set of amendments, different from the draft Law on changes and amendments to the existing Law on the Conflict of Interest in governmental institutions of Bosnia and Herzegovina which the Venice Commission had been asked to examine.

The new draft Law recently submitted to parliament consisted of one single article amending Article 20 (on sanctions) of the Law on the Conflict of Interest currently in force. On 25 May, the House of Representatives of BiH had decided to deal with the proposed draft Law on changes and amendments to the Law on Conflict of Interest currently in force in a shortened - and not urgent – procedure, which left open the possibility for further amendments.

The Commission expressed its regret about the fact that the Bosnian authorities had not waited for its opinion on the new draft Law on the prevention of conflict of interest in governmental institutions in Bosnia and Herzegovina, before re-starting the process of changes and amendments.

As concerned the opinion under consideration, Mr Tuori stated that in 2008 the Commission had examined the Law on conflict of interest in force, and had found that it raised several issues including a constitutional issue of State legislative competence in this matter (CDL-AD(2008)014). The new draft Law under consideration had kept provisions on both general incompatibilities and specific situations of conflict of interest, and had not introduced provisions aimed at prohibiting the improper movement of elected officials, executive officeholders and

advisors to the private sector (“*pantouflage*”). Also, adequate mechanisms allowing financial declarations to be effectively reviewed for both repressive and preventive purposes were still lacking in the text.

As to the issue of legislative competence, the draft Law rightly enabled the entities to authorise the Central Electoral Commission to implement their laws. However, if the entities so did, they would have to harmonise their laws with the provisions of this Law. In view of the lack of legislative competence of BiH, such an obligation remained problematic, regardless of the desirability of substantive harmonisation.

The Commission adopted the Opinion on the draft Law on the prevention of Conflict of Interests in the Institutions of Bosnia and Herzegovina with certain amendments ([CDL-AD\(2010\)018](#)).

Joint opinion by the Venice Commission and OSCE/ODIHR on the law on public assemblies of the Sarajevo Canton of Bosnia and Herzegovina

Mr Tuori introduced the draft Opinion on the law on public assemblies of the Sarajevo Canton of Bosnia and Herzegovina, prepared at the request of the Minister of Internal Affairs of the Canton Sarajevo, Federation of Bosnia and Herzegovina.

The law enounced correct statements of principles governing freedom of assembly, which was to be welcomed. However, it did not sufficiently reflect the presumption in favour of holding assemblies. It was also excessively detailed as to the conditions for exercising the constitutionally guaranteed right of assembly. There were several definitions of some of the relevant terms, and they are different and partly complementary. Furthermore, the Act appeared to impose law enforcement responsibilities on organisers and stewards of public assemblies.

The Commission adopted the Opinion on the draft Law on public assemblies of the Sarajevo Canton of Bosnia and Herzegovina ([CDL-AD\(2010\)016](#)).

10. Bulgaria

Mr Neppi Modona presented the draft Opinion on the draft Act on Forfeiture in Favour of the State of Criminal Assets, which was the follow-up to the Commission’s interim opinion on the draft Law on Forfeiture in favour of the State of Illegally Acquired Assets (CDL-AD(2010)027).

The most substantial change in the revised draft Law was its more limited scope of application. It now applied only to assets acquired through criminal activity. At the same time, it allowed the State to recover criminally obtained assets from a person involved in a criminal procedure and not only, as was the case in the existing Law, from a person already convicted. The Venice Commission however, had previously made clear that extending the scope of application of the draft Law also to “illegal activities” was acceptable, provided that the civil forfeiture proceedings are devised and carried out in compliance with the Bulgarian Constitution and the European Convention on Human Rights.

The rapporteurs had held a fruitful meeting with the Bulgarian authorities and had obtained additional information and explanations as to the reasons for this change. The authorities agreed that the scope of application of the draft Law could also be extended to assets of presumably illegal origin acquired in relation to the most serious administrative violations such as those under the Customs Act or the Prevention and Disclosure of Conflict of Interest Act, or when the lack of correspondence between the value of the assets acquired

and the income of the examined person or his or her family members could constitute grounds for initiating criminal prosecution.

The Commission was therefore required to adopt a second interim opinion. The final one would be prepared in relation to further revised draft amendments and submitted for adoption during the next Plenary session.

Ms Janeta Petrova, Deputy Minister of Justice of Bulgaria, explained that the change of the scope of application of the revised draft Law had been made in response to the Venice Commission's concerns regarding the possible effects of a non-conviction based civil forfeiture on the effective protection of fundamental rights. The authorities were thankful to the Venice Commission for its assistance, and ready to follow all its recommendations. She reiterated the invitation to the rapporteurs to travel to Bulgaria to meet with the authorities and discuss the final version of the draft amendments, which would be prepared taking into account this Second Interim Opinion, and congratulated the Venice Commission on its 20th anniversary.

The Commission adopted the Second Interim Opinion on the draft Act on forfeiture in favour of the State of criminal assets of Bulgaria with agreed amendments ([CDL-AD\(2010\)019](#)).

11. Georgia

Constitutional reform

Mr Bartole explained that the State Constitutional Commission had not prepared, as expected, a whole new constitution, but only some amendments mostly relating to the distribution of state powers and local self-government.

The amendments represented a move towards a parliamentary democracy. The powers of the President would be significantly reduced. In particular, most, but not all, of the president's acts would need to be countersigned by the government, who would be accountable before the parliament. The procedure of appointment of the government appeared rather complex, and some residual powers of the President were questionable. As for local self-government, a matter on which the Venice Commission had already given an opinion in March, the amendments were still rather minimalistic.

Mr Demetrashvili expressed the view that these amendments represented an essential step towards further democratisation in Georgia. The reforms were indeed only partial, which was due to lack of time. The State Constitutional Commission had chosen a mixed form of government, with a dominating parliamentary feature. The choice of leaving some substantial powers to the President responded to a psychological need of the Georgian people. Mr Demetrashvili provided several clarifications, notably when the problems came from inaccuracies in the translation.

Mr Demtrashvili thanked the Venice Commission for the assistance provided. The Commission delegation would meet with the Georgian experts to discuss the draft amendments and a conference was scheduled to take place mid-July in Berlin for this purpose. Extensive public consultations would take place during the summer in Georgia, and it was expected to submit the amendments to parliament in the autumn.

Avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur le Code électoral de la Géorgie

Le projet d'avis a été adopté par le Conseil des élections démocratiques avec trois amendements, qui sont présentés avec le projet d'avis par le représentant de l'OSCE/BIDDH.

Le Code électoral expertisé est une version amendée au 28 décembre 2009 et régit l'organisation et la tenue de tous les types d'élections en Géorgie. Le représentant de l'OSCE/BIDDH souligne que le Code tel que modifié permet, d'une manière générale, de mener des élections démocratiques et tient compte d'un certain nombre de recommandations précédentes de la Commission de Venise et de l'OSCE/BIDDH, prévoyant notamment des mesures pour garantir que les élections se déroulent de manière transparente et ouverte. Cependant, certaines dispositions ne sont pas conformes aux standards internationaux, en particulier concernant le processus de traitement des recours électoraux et les sanctions afférentes. Il est en outre rappelé qu'il est indispensable que la législation électorale soit mise en œuvre en toute bonne foi.

La Commission adopte l'avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur le Code électoral de la Géorgie, tel qu'amendé jusqu'au 28 décembre 2009, avec trois amendements ([CDL-AD\(2010\)013](#)).

12. Kyrgyzstan

Opinion on the draft Constitution of Kyrgyzstan

Mr. O. Tekebaev, Vice-Chair of the Provisional Government of the Kyrgyz Republic, informed the Commission about the work on the draft of the new Constitution of Kyrgyzstan. The new text aimed at making any usurpation of power impossible. The President would lose a number of important powers and become an arbiter between the powers. The parliament would gain a number of new responsibilities, notably that of appointing the Prime minister and the members of the Government. The Constitutional Court would be abolished and its powers transferred to the Constitutional Chamber of the Supreme Court.

The authors of the draft attached great importance to the protection of individual rights and freedoms. The principle of proportionality and priority of international treaties in the field of human rights over other treaties were clearly stated in the new text.

Mr Tekebaev thanked the rapporteurs for the exchanges of views with the members of the Constitutional Council (assembly) of Kyrgyzstan which had taken place between 12 and 14 May 2010 and for their opinion on the constitutional draft of 20 May.

Ms A. Nussberger presented the opinion on the draft Constitution of Kyrgyzstan. She informed the Commission that the rapporteurs had had to work under quite unusual circumstances. The opinion had been changed several times since the drafters of the new constitution had repeatedly amended the text.

Ms A. Nussberger pointed out that the opinion made a comparison between the proposed text and the 2007 Constitution of Kyrgyzstan. The President would lose a number of powers, but would keep the right to nominate the ministers responsible for security. The President could not be re-elected. In general, the proposed system went towards a parliamentary regime.

The proposed limitation of the number of seats for the party winning an election (no more than 2/3) was an unusual requirement. The chapter on the judiciary raised some concerns, notably

the 5 year probation period for judges. The rapporteurs also regretted the decision to abolish the Constitutional court.

Several members expressed their concern over the abolition of the Constitutional Court and considered that the Commission had to take a clear stance on this matter.

The Commission adopted the opinion on the on the draft Constitution of Kyrgyzstan with certain amendments ([CDL-AD \(2010\)015](#)).

13. Moldova

Up-date on the constitutional situation

Mr Markert informed the Commission about the latest developments in the crisis in Moldova. He reminded that in March the Commission had adopted an amicus curiae opinion in which it provided for a possible way out of the crisis which respected the constitution: Article 78 of the Constitution should be amended by the current parliament prior to its dissolution within a reasonable time after 16 June. The deadline for proceedings, however, was about to expire, and no agreement had yet been reached. The Secretary General of the Council of Europe was in Moldova at the moment, trying to broker a deal between the Alliance and the opposition.²

In the meantime, the acting President of Moldova had asked the Venice Commission to provide an opinion on a draft text of the Constitution. Mr Markert invited interested members to contact the Secretariat.

Avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur le code électoral de Moldova

Le projet d'avis a été adopté par le Conseil des élections démocratiques le 3 juin, avec quatre amendements, qui sont présentés avec le projet d'avis.

Le représentant de l'OSCE/BIDDH indique que le Code tel que révisé en juin 2009 représente une base solide pour l'organisation d'élections véritablement démocratiques ; il convient dès lors de saluer les efforts des autorités pour régler les problèmes soulevés dans les précédents avis. Toutefois, les projets d'amendements ne tiennent pas compte de certaines recommandations antérieures, pourtant essentielles, et portant notamment sur : les restrictions imposées au droit de faire campagne ; les procédures de collecte et de vérification des signatures ; ou encore la possibilité pour les appelés de voter aux élections locales.

Les autorités moldaves sont donc invitées à prendre en considération les recommandations dont elles n'ont pas encore tenu compte et que préconisent le présent et le précédent avis conjoints, avant de déposer la version définitive des projets d'amendements devant le parlement pour adoption.

La Commission adopte l'avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur le code électoral de Moldova, avec quatre amendements ([CDL-AD\(2010\)014](#)).

²

The Secretary General reported on his mission at a later stage of the session: see item 4 of the agenda.

14. Monténégro

Avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur le projet de loi du Monténégro amendant la loi sur l'élection des conseillers et membres du Parlement

Le projet d'avis a été adopté le 3 juin par le Conseil des élections démocratiques avec plusieurs amendements proposés par l'OSCE/BIDDH, qui sont présentés avec le projet d'avis.

Le projet de loi en question contient en premier lieu des dispositions sur la « représentation authentique » des minorités, et introduit des mesures visant la participation de toutes les minorités nationales ou les groupes nationaux minoritaires, sans pour autant introduire de sièges réservés. Le projet de loi contient en outre des modifications de nature technique portant sur plusieurs aspects concrets du processus électoral. Il vise également à harmoniser la loi avec la Constitution sur la question du droit de vote et la notion de citoyenneté. Les principaux autres points abordés dans le projet d'avis sont : des garde-fous pour empêcher les candidats aux élections d'avoir des responsabilités au sein d'organes électoraux ; une disposition sur la formation des membres de commissions électorales ; et l'amélioration de la transparence du système d'attribution des sièges.

M. Paczolay souligne que les modifications apportées par le projet de loi sont globalement positives. Elles constituent des améliorations techniques du scrutin et renforcent la protection de droits fondamentaux comme la non-discrimination. Toutefois, le projet de loi ne profite pas pleinement de l'occasion pour traiter certaines autres questions subsistantes.

Concernant les dispositions du projet de loi sur la représentation authentique des minorités nationales, le projet d'avis rappelle que des règles spéciales garantissant aux minorités nationales des sièges réservés ou prévoyant des dérogations aux critères normaux d'attribution de sièges pour les partis représentant les minorités nationales ne sont en principe pas contraires à l'égalité du suffrage. Cependant, l'attribution de sièges réservés aux représentants des minorités n'est pas un mode d'action positive indispensable. Le projet d'avis considère les dispositions proposées conformes à la Constitution, aux normes européennes et aux recommandations antérieures de la Commission de Venise et du BIDDH/OSCE. Il souligne toutefois qu'il serait utile d'en détailler les dispositions pour les rendre plus claires, car les rapports entre le projet de loi et d'autres textes législatifs sont extrêmement complexes.

La Commission tient un échange de vues avec M. Ranko Krivokapic, Président du parlement du Monténégro, qui souligne que le projet de loi en question est le résultat de longues discussions entre groupes politiques et consultations publiques. De son avis, il s'agit d'un texte original et innovateur, qui tient compte, dans toute la mesure du possible, des exigences des groupes minoritaires. M Krivokapic rappelle l'excellente coopération avec la Commission de Venise et souligne le caractère équilibré de cet avis, en indiquant que les recommandations seront prises en considération dans la loi.

La Commission adopte l'avis conjoint sur le projet de loi du Monténégro amendant la loi sur l'élection des conseillers et membres du Parlement, avec un certain nombre d'amendements ([CDL-AD\(2010\)023](#)).

15. Russian Federation

Opinion on the amendments to the law on defence of the Russian Federation

Ms Granata-Menghini informed the Commission that on 17 March 2010 the Monitoring Committee of the Parliamentary Assembly had decided to request the Commission's opinion on

the amendments of October 2009 to the law on defence of the Russian Federation, providing for four grounds for sending armed forces abroad as well as for the power of the President to take the decision on the operative use of these troops. The amendments would be assessed in respect of their compliance with international law as well as with the principle of democratic oversight of the armed forces. Three rapporteurs had already started to work on this matter, and interested Commission members were invited to contact the secretariat. A working meeting with the Russian authorities was foreseen for the summer. The opinion would be submitted to the Commission in October 2010.

16. Other constitutional developments

Kazakhstan

Mr. I. Rogov, Chairman of the Constitutional council of Kazakhstan congratulated the Venice Commission on its 20th anniversary and praised the co-operation between the Commission and Kazakhstan. He reminded the participants that in 2009 his country had continued its exchanges of views with the Commission and, as a result, the latter had prepared an opinion about the accession of Kazakhstan to the customs union with Russia and Belarus.

2010 was an important year for Kazakhstan since it took over the OSCE presidency. The country was carrying out an important programme of reforms in the framework of the development plan established for 2009 – 2011. It was also the 30th anniversary of the Constitution of Kazakhstan. In this lapse of time, more than 1700 laws had been adopted. In August 2010 the Constitutional council would organise a conference dedicated to this anniversary and the Venice Commission was invited to participate in this important event.

Turkey

Mr. Özbudun informed the Commission about the constitutional reform in his country. Since his report at the last session, the reform package had been brought to Parliament which had voted for it in the Constitutional Committee and in the Plenary. There, amendments were passed with the necessary 2/3 majority. Very regrettably, the procedure making it more complicated to prohibit political parties was three votes short of that majority (according to Parliament's Rules of Procedure, an amendment cannot be re-introduced within one year). All other amendments (including the introduction of an independent ombudsman, the reduction of the jurisdiction of military courts, positive discrimination, the introduction of an individual complaint to the Constitutional Court) were passed with a 3/5 but remained below a 2/3 majority and had to be submitted to a referendum. Without referring this case to the Constitutional Court, the High Electoral Commission had itself found current legislation establishing 60 days as the campaign period as unconstitutional and had set the date of the referendum for 12 September, 120 days after adoption of the amendments. 111 opposition deputies (110 were required) had requested the Constitutional Court to declare the reforms concerning the parts concerning the composition of the Constitutional Court and the High Judicial Council as contrary to the rule of law principle contained in the un-amendable Article 2 of the Constitution. According to Article 148 the Constitutional Court only has power to review the procedure of the adoption of constitutional amendments but already in 2008 it found an amendment to be in contradiction with the un-amendable provisions. It remained to be seen whether the Court would also examine the amendments in substance.

Ukraine

Mr. S. Kivalov informed the Commission about the reform of the judiciary planned by the Ukrainian authorities. In March 2010, the Venice Commission prepared an opinion on the first draft of the Law reforming the judiciary. In May a new draft law had been introduced in parliament and was adopted in first reading on 3 June. Mr. Kivalov assured the Commission

that this text integrated most of the recommendations of the rapporteurs of the Venice Commission.

The new draft contained a number of changes, notably: it reduced the number of judges on the Supreme Court from 100 to 20 and withdrew the right to form the qualification commission from the President; there were new rules for funding the judiciary which would considerably improve the situation and could help to fight against corruption.

Mr. V; Kolesnichenko, Head of the High Judicial Council, informed the Commission about the work of the High Judicial Council.

The Commission was further informed about the meeting between Mr. Yanukovich, President of Ukraine and the President of the Commission and its Secretary. The President of Ukraine had invited the Commission to continue its fruitful co-operation with his country, notably in the field of the judicial reform.

Ms M. Stavnychiuk welcomed the co-operation between the Commission and Ukraine in the field of the judiciary. She hoped that the authorities would officially submit as soon as possible the new draft to the Venice Commission. She also proposed to organise a round table on the judicial reform.

During the exchange of views that followed the presentations, a number of Commission members stated that they hoped to receive a request to prepare an opinion on the new draft.

The Commission took note of the information provided by Mr. Kivalov and invited the authorities of Ukraine to pursue co-operation on the issue of the reform of the judiciary.

17. Revised OSCE/ODIHR Guidelines on Freedom of Assembly

Ms Marta Achler, representative of the OSCE/ODIHR, stated that the first version of the Guidelines had been prepared by the ODIHR Panel of Experts in 2007 and had been subsequently endorsed by the Venice Commission. They were meant to be a living document, and had now been updated in the light of recent developments. In particular, the principle of one's right to review and appeal the substance of any restrictions or prohibitions on an assembly had been introduced. New definitions had been added, notably that of counter-demonstrations. Two Commission members and the secretariat had actively participated in the updating work, through written comments and participation in several meetings of the ODIHR panel of experts. Several Commission members had suggested amendments to the text.

The Commission adopted the Guidelines on freedom of peaceful assembly – 2nd edition ([CDL-AD\(2010\)020](#)).

18. Report of the Meeting of the Joint Council on Constitutional Justice (1-2 June 2010)

Mr Christoph Grabenwarter, Chairperson of the Joint Council on Constitutional Justice, informed the Commission about the results and conclusions reached during the meeting held in Venice on 1-2 June 2010. The liaison officers had elected Ms Juliane Alberini-Boillat from the Federal Court of Switzerland as their Co-President and three liaison officers, who had served for more than 10 years in this function, were awarded the Commission's *pro-merito* medal.

The Joint Council had discussed the possible creation of a Venice-Monnet web-forum, with Professor Rainer Arnold (Jean-Monnet Professor in Regensburg, Germany), the purpose of

which would be to enable academic discussion on case-law. This web-forum would be open to members of the Commission, researchers, in particular those of the International Association of Constitutional Law and the liaison officers. Subject to a disclaimer that liaison officers would not represent their Courts in the Forum, the Joint Council mandated the Secretariat to pursue the establishment of this Forum.

The participants had been informed about the very positive co-operation with the various regional and linguistic groups uniting the constitutional courts (European, French speaking, Southern African, Young Democracies, Asian, Ibero-American, Arabic, Portuguese speaking). The participants learned that most of these groups had a positive attitude towards the establishment of the World Conference on Constitutional Justice as a permanent body. At its meeting in October 2009, the Conference of European Constitutional Courts had been hesitant and wished to pursue the discussions at the next meeting of their Circle of Presidents in May 2011.

Mr Grabenwarter also informed the Commission that the Federal Supreme Court of Brazil will be hosting the 2nd Congress of the World Conference on Constitutional Justice in Rio de Janeiro on 16-18 January 2011 on "Separation of Powers and Independence of Constitutional Courts and Equivalent Bodies". Members were invited to this event.

An important part of the meeting had been devoted to the discussion of the preliminary draft Study on Individual Access to Constitutional Justice (CDL-JU(2010)004). The two rapporteurs present, Ms Nussberger and Mr Paczolay, had presented the draft and pointed out which areas needed further development.

Mr Grabenwarter informed the Commission that the next meeting of the Joint Council would take place in Ankara next year.

19. Rapport de la réunion du Conseil des élections démocratiques (3 juin 2010)

En l'absence du président du Conseil, M. Mifsud Bonnici informe la Commission des résultats et des conclusions de la réunion du 3 juin 2010.

Les projets d'avis conjoint de la Commission de Venise et de l'OSCE/BIDDH sur le code électoral du Bélarus, de la Géorgie, de la Moldova et du Monténégro ont été traités sous les points 8, 11, 13 et 14 respectivement.

M. Mifsud Bonnici présente pour adoption le projet de réponse au Comité des Ministres concernant la Recommandation 273(2009) du Congrès des pouvoirs locaux et régionaux du Conseil de l'Europe sur « L'égalité d'accès aux élections locales et régionales ». Ce projet de réponse vise à attirer l'attention du Comité des Ministres sur les documents que la Commission a élaborés sur la participation des femmes et des étrangers aux élections, sur le financement des partis politiques, sur l'accès aux médias et la neutralité de l'Etat en la matière. La Commission devrait également préparer courant 2010 un projet de déclaration interprétative sur la participation des personnes handicapées aux élections, conjointement avec le Forum européen de coordination pour le Plan d'action du Conseil de l'Europe pour les personnes handicapées 2006-2015 (CAHPAH).

La Commission adopte la réponse au Comité des Ministres concernant la Recommandation 273(2009) du Congrès des pouvoirs locaux et régionaux du Conseil de l'Europe ([CDL-AD\(2010\)021](#)).

20. Report of the meeting of the Sub-Commission on the Judiciary (3 June 2010)

Ms Suchocka informed the Commission that the Sub-Commission had worked on a preliminary draft of Part II of the Report on the Independence of the Judicial System - Prosecutors. The draft underlined the existing wide range of systems and that no single model would apply to all countries. The independence of the prosecutors was less categorical and different in nature from that of judges. The Sub-Commission had decided to rearrange the report, starting with the powers of the prosecutors and making certain distinctions, especially between the opportunity and legality models. From this basis, conclusions would be drawn as to a need for independence for prosecutors. These changes would not require a complete redrafting of the report.

Mr. Jowell expressed his concern as to a possibly too wide acceptance of various models. The rule of law should be the starting point for both the opportunity and the legality models. This part of the report should be drafted carefully so as to avoid any relativism.

21. Report of the meeting of the Sub-Commission on Fundamental Rights (3 June 2010)

Mr Tuori informed the Commission about the discussion on the draft Report on counter-terrorism measures and human rights. He said that the draft report outlined only the most recurring issues which had arisen at the national level and the range of their possible incompatibilities under the European Convention on Human Rights and Fundamental Freedoms (ECHR).

Mr van Dijk briefly summarised the discussion within the Sub-Commission and the amendments suggested by several members.

It was agreed that the draft report should specifically mention the role of the House of Lords (now Supreme Court) in the withdrawal of the proposed law on forty-two-day pre-charge detention in the UK. There would be the reference to the UK because it was the proposed law on forty-two-day pre-charge detention which triggered the Parliamentary Assembly's request for the Venice Commission's report on this issue.

Mr Sejersted congratulated the rapporteurs on their work, and underlined the need to ensure a wide distribution of the final report.

The Commission adopted the Report on counter-terrorism measures and human rights with changes as agreed by the Sub-commission and the Plenary ([CDL-AD\(2010\)023](#)).

22. Other business

Mr Sejersted informed the Commission about the progress in the work on the study on the role of the opposition. He invited any members interested in this topic to contact the Secretariat and possibly to join the working group composed of Mme Nussberger, Mr Ozbudun and himself. The Secretariat will transmit the draft report under preparation to all interested members for comments and suggestions for improvement.

23. Dates of the next sessions and proposals for dates of sessions in 2011

The schedule of the remaining sessions for 2010 is confirmed as follows:

84th Plenary Session 15-16 October

85th Plenary Session 17-18 December

In addition, the Commission approved the schedule of sessions for 2011 as follows:

86 th Plenary Session	25-26 March 2011
87 th Plenary Session	17-18 June 2011
88 th Plenary Session	14-15 October 2011
89 th Plenary Session	16-17 December 2011

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

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ALGERIA/ALGERIE	Mr Boualem BESSAÏH Mr Mohamed HABCHI
ANDORRA/ANDORRE	Mr Miquel Angel CANTURRI MONTANYA
ARMENIA/ARMENIE	Mr Gagouik HARUTUNYAN Mr Armen HARUTYUNYAN
AUSTRIA/AUTRICHE	M. Christoph GRABENWARTER Mr Kurt HELLER
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