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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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

93rd PLENARY SESSION

**Venice, Scuola Grande di San Giovanni Evangelista,
Friday, 14 December 2012 (9.00 a.m.) -
Saturday, 15 December 2012 (10.45 a.m.-1.00 p.m.)**

93^e SESSION PLÉNIÈRE

**Venise, Scuola Grande di San Giovanni Evangelista
vendredi 14 décembre 2012 (9h00) -
samedi 15 décembre 2012 (13h00)**

SESSION REPORT
RAPPORT DE SESSION

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1. Adoption of the Agenda

2. Communication by the President

Mr Buquicchio paid tribute to the late Mr Lluís Maria de Puig, former President of the Parliamentary Assembly of the Council of Europe.

He further conveyed the condolences of the Commission to the Representative of the United States following the tragedy which had occurred in a school of Newtown.

He then welcomed the distinguished guests attending the session.

Finally, he referred to document [CDL\(2012\)079](#), which provided information concerning his recent activities.

3. Communication by the Secretariat

Mr Markert provided practical information for this Plenary Session. He also highlighted the great number of requests for opinion which the Venice Commission had received, notably concerning Iceland, Monaco, Ukraine, Georgia and Serbia.

4. Co-operation with the Committee of Ministers

Ambassador Vukadinović, Permanent Representative of Montenegro to the Council of Europe, said that the Venice Commission is one of Montenegro's main partners and assists her country in implementing good practices in its legal framework. The pragmatic and specific criteria provided by the Venice Commission are very much appreciated in Montenegro, which intends to pursue its good co-operation with the Venice Commission.

Ambassador Ásgeirsdóttir, Permanent Representative of Iceland to the Council of Europe stressed that the work of the Venice Commission is very well-known in Iceland and the Parliament makes increasing reference to the Commission in its opinions and reports. Iceland will continue to co-operate with the Venice Commission in the light of the constitutional developments in the country and looks forward to participating in future debates and discussions.

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

Mr Molin underlined the excellent co-operation between the Venice Commission and the Congress of Local and Regional Authorities, which always takes into account and refers to Venice Commission opinions and recommendations. The Congress will have a very busy schedule for 2013, with activities in many countries, including Azerbaijan, Armenia, Cyprus, France, Sweden, Ukraine and Bosnia-Herzegovina.

6. Follow-up to earlier Venice Commission opinions

The Commission was informed on follow-up to:

- Opinion on the draft law on principles of the state language policy of Ukraine ([CDL-AD\(2011\)047](#));

In July 2012, the Ukrainian Parliament adopted a law on Ukraine's policy in the field of languages. In 2011, the Commission had assessed two draft laws dealing with the use and

protection of languages. The adopted Law (which entered into force on 10 August 2012) was, reportedly, almost identical to the second draft assessed by the Venice Commission, and this in spite of the fact that substantial improvements had been recommended. As a result, the position of the Russian language had been strengthened, as part of the protection of regional and minority languages, and Russian will be used as a quasi-official language in many of Ukraine's administrative regions. This has engendered heated debate and tension - including street protests - in Ukraine. In October 2012, 51 opposition MPs asked the Constitutional Court to rule on the compliance of the new Law with the Constitution; the case is still pending.

- Joint Opinion on the Draft Law on Election of People's Deputies of Ukraine ([CDL-AD\(2011\)037](#))

The parliamentary elections of 28 October 2012 showed that the mixed system used for the vote had many deficiencies. The main problems concerned the electoral campaign, the criteria for drawing constituencies, the composition of commissions and the vote count. The 2011 joint opinion by the Venice Commission and the OSCE/ODIHR had pointed out these potential risks in the text of the draft law. Unfortunately, the authorities did not follow a number of recommendations which could have helped avoid these problems.

- Opinion on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina ([CDL-AD\(2012\)014](#))

Ms Bilkova reported on the participation of Mr Hamilton and herself in the seminar on "European standards in the field of independence on the role and professionalism of the justice sector, best practices on the role and composition of supreme judicial councils" with the European Commission (Sarajevo, 3 December 2012). The Venice Commission delegation presented the opinion on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina. During the seminar an agreement between political forces was discussed, according to which prosecutor generals would be appointed by entity parliaments and no longer by the State High Judicial and Prosecutorial Council. Such a change would result in more political influence on prosecutors. There were signs that the Venice Commission would be requested to give an opinion on this topic.

7. Iceland

Ms Valgerður Bjarnadóttir, Member of Parliament, Chair of the Constitutional and Supervisory Committee informed the Commission on the process of the constitutional reform which had started in 2010.

Guiding principles were given by seven wise persons, which were complemented by further proposals of almost 1000 people who were reunited at a specific meeting. Then, 25 everyday people were selected to prepare a draft, which is currently before the Parliament. Network consultations also took place during the whole process. The Bill for a new constitution is to be adopted by mid –March, which is the term of the current Parliament.

The draft constitution is not only characterised by its drafting process but also by fairly new provisions. The Chapter on Human rights has been completely revised and expanded so as to include third-generation human rights. The draft contains new provisions which increase the role of the Parliament both in terms of control of the executive and in terms of control of legislation. The draft foresees a constitutional committee to review the constitutionality of laws before their adoption and which can be referred to by 20% of the parliamentarians. There will be a new electoral system as well as a new provision according to which 10% of the population can request a referendum on a draft law. The President sees his functions reviewed and limited in time (three mandates maximum). Likewise, the mandate of Ministers is limited to eight years.

The Constitutional and Supervisory Committee will offer all assistance to the members of the Venice Commission involved in the analysis of this draft constitution. The explanatory report of the draft constitution will be made available in English to the rapporteurs.

Mr Buquicchio thanked the Icelandic authorities for their request to assess the draft Constitution. A visit to Iceland would take place in January, in order to meet with the authorities, the main political parties and the civil society and get a better understanding of the national background.

Mr Helgesen underlined that it was an honour for the Venice Commission to be requested to give an opinion on this draft Constitution. Mr Bartole stressed the importance of taking into account the specific Icelandic constitutional tradition.

Mr Buquicchio stressed that the draft opinion would have to be delivered quite quickly to meet the time-schedule of the Icelandic authorities.

The Commission authorised the rapporteurs to send the draft opinion to the Icelandic authorities in February 2013, prior to its submission to the March 2013 Plenary Session.

8. Montenegro

In June 2012, the Speaker of the Parliament of Montenegro had requested an opinion from the Venice Commission on two sets of draft amendments to the constitutional provisions on the judiciary, prepared by the competent parliamentary committee and by an opposition party respectively. In the meantime (October 2012), parliamentary elections were held in Montenegro and the issue would now be debated in the new parliament.

In the rapporteurs' view, the two sets of amendments contained positive proposals and attempted to improve the existing situation. They limited the role of Parliament and sought to establish a balanced composition between judges and lay members within the Judicial Council. As concerned the Supreme State Prosecutor, there was a positive proposal to appoint and dismiss him or her by Parliament by a two-thirds majority, which took up previous Venice Commission recommendations. However, it was necessary to establish an anti-deadlock mechanism. The Supreme State prosecutor should chair the Prosecutorial Council, except in disciplinary proceedings.

Mr Krivokapic, Speaker of the Parliament of Montenegro, praised the good co-operation with the Venice Commission and underlined the importance of the independence of the judiciary and the beginning of a new era of activities in Montenegro. However, he also stressed the importance of avoiding that these constitutional amendments have a negative impact on the fight against corruption and crime, which must remain a priority. In his view, the proposals submitted to the Venice Commission may represent a sustainable model, provided that appropriate anti-deadlock mechanisms be added. The constitutional reform should lead to increasing the importance of the rule of law and further the integration process of Montenegro in the European Union.

Mr Esanu pointed out that the anti-deadlock mechanism should not have a disincentive effect in reaching an agreement on the basis of a qualified majority. He also pointed out that the issue of the election of Constitutional Court judges is an open question.

In the ensuing discussion it was stressed that the Venice Commission accepts that there are different systems and options concerning the composition of the Constitutional Court and that every system has possible drawbacks.

The Commission adopted the Opinion on two sets of draft amendments to the constitutional provisions relating to the judiciary of Montenegro ([CDL-AD\(2012\)024](#)).

9. Tunisie

M Mustapha Ben Jaafar, Président de l'Assemblée Nationale Constituante de Tunisie, exprime sa grande satisfaction pour l'intensité et la qualité des échanges intervenus entre l'ANC, notamment les six commissions constitutionnelles, et la Commission de Venise sur le projet de constitution.

Comme l'ANC a décidé d'écrire la nouvelle constitution à partir d'une « feuille blanche », il a fallu un certain temps pour parvenir à une ébauche de texte qui serve de base de discussion avec la société civile, en vue de la discussion en séance plénière. Par ailleurs, l'ANC n'a pas pour seule tâche la préparation de la constitution : elle a également des fonctions législatives et la mission de contrôler l'action du gouvernement.

Concernant le travail législatif, l'ANC s'est occupée de plusieurs lois très importantes : celle sur l'Instance indépendante pour les élections (ISIE), qui a été adoptée le 12 décembre ; la loi sur la justice transitionnelle et la nouvelle loi électorale, en préparation.

Le travail des commissions constituantes s'étant conclu, s'ouvre la phase de la discussion publique du projet de constitution, dont les buts sont l'intériorisation de la constitution par le peuple tunisien et la récolte de suggestions et remarques de la part de celui-ci. La discussion en séance plénière suivra.

Par ailleurs, l'adoption de la loi sur l'ISIE permet de commencer à préparer les élections parlementaires et présidentielles, qui sont actuellement prévues pour le 23 juin 2013, même si cette date pourrait être reportée de quelques mois, sans toutefois dépasser la fin de l'année 2013.

M Ben Jaafar exprime sa conviction que la réussite du processus constitutionnel en Tunisie démontrera que l'islam et la démocratie peuvent être conciliés.

M Ben Jaafar conclue en indiquant que l'ANC sollicitera l'avis de la Commission de Venise sur le projet final de constitution, et qu'elle souhaite travailler avec la Commission dans la préparation de la loi électorale et sur la justice transitionnelle.

M Buquicchio salue et remercie M Ben Jaafar pour son rôle actif dans la bonne coopération entre l'ANC et la Commission de Venise.

M Buquicchio partage la conviction de M Ben Jaafar que la qualité de la constitution devait primer sur la célérité de son adoption. A cet égard, si la date des élections pourrait être reportée, il est important qu'elles soient tenues en 2013.

M Buquicchio se réjouit des perspectives de collaboration avec l'ANC et souligne tout particulièrement l'importance de la justice transitoire et de la réconciliation.

10. Ouzbékistan

The Commission examined the draft joint opinion by the Venice Commission and the OSCE/ODIHR on amendments to the electoral law of the Republic of Uzbekistan ([CDL-REF\(2012\)043](#) and [044](#)) drawn up on the basis of comments by Mr Endzins and Ms Christina Binder, OSCE/ODIHR Expert.

Mr Endzins underlined that a number of provisions of the draft may bring more democracy, but that progress is still needed, in particular concerning: the ex officio representation of the ecological movement in the lower chamber, whereby the upper chamber is indirectly elected or appointed; denial of voting rights to prisoners; election campaign regulations; early voting; the exclusion of non-partisan observers; the prohibition of election polls less than three days before election day.

Ms Schmidt, Deputy Head for Operations, Election Department, OSCE/ODIHR said that, even though the draft was an improvement, a number of recommendations of OSCE/ODIHR had still to be addressed.

The Commission adopted the joint opinion with the OSCE/ODIHR on the draft amendments and addenda to the law “on elections to the Oliy Majlis of the Republic of Uzbekistan” and “on elections to the regional, district and city councils (Kengesh) of people’s deputies of Uzbekistan” ([CDL-AD\(2012\)025](#)).

11. “The former Yugoslav Republic of Macedonia”

M Hoffmann-Riem presented the opinion on the so-called “Lustration law”. This request had come from the Constitutional Court, which had already struck down two previous versions of this law. As it was an *amicus curiae* brief, no visit was carried out by the rapporteurs; the aim of this brief was to provide the Constitutional Court with information on the applicable standards and on elements of European comparative law and experience; it was the task of the Constitutional Court, and not of the Venice Commission, to rule on the constitutionality of the Lustration law.

As regarded the temporal scope of application of the law, introducing lustration measures to acts which dates from a long time ago (even 31 to 78 years) could only be justified in extreme cases. The application of lustration measures to acts committed after the end of the totalitarian regime (the Lustration law would cover acts committed up to 2006) could only be justified in exceptional historic and political conditions, and not in a country with a long-established framework of democratic institutions. Finally, the duration of the lustration measures should depend on the progress in establishing a democratic state governed by the rule of law and on the capacity for a positive change of the person subject to the lustration; a fixed duration should be provided. Lustration measures may not be applied to positions in private or semi-private organisations as this goes beyond the aim of lustration which is to exclude certain persons from exercising governmental power. As for the procedure before the Commission on Verification of the Facts, the person subject to the lustration procedure should benefit from the equality of arms and thus be present in the procedure from the very beginning; the procedure should be regulated in greater detail. Finally and importantly, the names of the persons subject to lustration measures could only be made public after a final decision of a court.

Ms Siljanovska-Davkova informed the Commission that the draft *amicus curiae* brief had been leaked to the press and was the subject of broad discussions in the country. Mr Helgesen expressed his regret for this unfortunate situation.

The Commission adopted the *Amicus curiae* brief on the Law on Determining a Criterion for Limiting the Exercise of Public Office, Access to Documents and Publishing the co-operation with the Bodies of the State Security (“Lustration Law”) of “the former Yugoslav Republic of Macedonia” ([CDL-AD\(2012\)028](#)).

12. Romania

Mr Bartole informed the Commission that the opinion on the constitutional situation in Romania had been prepared on the basis of two requests, one from the Secretary General of the Council of Europe, on the compatibility with constitutional principles and the rule of law of actions taken by the Government and the Parliament of Romania in respect of other state institutions and a second request from the Prime Minister of Romania on two government emergency ordinances on the jurisdiction of the Constitutional Court and on the organisation of referenda. These two ordinances had been adopted while the Constitutional Court was already examining two laws with the same content. This resulted in by-passing the control of the Constitutional Court. The ordinances were not in conformity with the Constitution because they affected the "Status of state fundamental institutions" and their urgency could not be demonstrated. Furthermore, within a few days, the presidents of both chambers of Parliament and the ombudsman had been revoked and Parliament had initiated the suspension of the President. The Constitutional Court had been given only 24 hours to prepare an advisory opinion on the suspension of the President. These actions showed disrespect for the Constitutional Court and were an indication of a lack of loyal co-operation between state institutions.

The rapporteurs added that there was a problem of constitutional culture. Politicians had a "the winner takes it all" attitude and seemed to think that they were entitled to change the composition of all state institutions, once they had a majority. Some of the problems also stemmed from the Constitution, which should be revised according to the proposals made in the draft opinion, especially as concerns the division of powers between the President and the Prime Minister.

Ms Pivniceru, Minister of Justice of Romania, pointed out that the opinion was useful because it gave recommendations on how to avoid similar situations in the future. All decisions of the Constitutional Court had been respected and all acts had remained within the constitutional framework. Therefore it was not possible to conclude that the rule of law had been violated. The wording of the opinion ought to have been more nuanced. As concerns the representation of Romania in the European Council, the decision of the Constitutional Court had not yet been issued at the time of the participation of the Prime Minister. It was true that individual politicians had criticised the Constitutional Court but State institutions had called for the respect of its decisions. Individual decisions of Parliament could be challenged in administrative proceedings; therefore there was no lack of judicial control. The frequent recourse to government emergency ordinances was a practice of previous governments. Co-operation between state institutions needed indeed to be improved but constitutional values were respected in Romania. Constitutional amendments would be elaborated in co-operation with the Venice Commission.

Mr Gâlea, Director General for Legal Affairs, Ministry of Foreign Affairs of Romania, made some comments on the text of the opinion, especially on the statements calling for the respect of the decisions of the Constitutional Court. Some amendments were proposed by the rapporteurs.

Mr Paasivirta, representative of the European Commission welcomed the fact that the Venice Commission had examined the situation in Romania and stated that the European Commission will analyse the Opinion. Concerning the events of last Summer in Romania, the European Commission had always made clear that judicial independence and respect for the rule of law are fundamental values for the European Union. Strong and independent judicial systems are essential for the effective application of EU law and for the development of judicial co-operation within the European Union. The European Commission looks forward to the implementation by Romania of all the recommendations in the July 2012 Co-operation and Verification Monitoring Report. As regards the plans on constitutional amendments, whilst it was for the member States to decide on the pertinence of constitutional reform, any plans to amend the Constitution must be made in full respect of the values upon which the EU was founded, including in

particular the respect for the rule of law and the separation of powers. Constitutional change should be expected to come through a procedure that reflects a wide consensus in the society, without the use of any emergency or exceptional proceedings. Mr Paasivirta concluded that the European Commission would issue a further report under the co-operation and verification mechanism in the coming weeks to assess progress on implementation of its recommendations, notably in the areas of the rule of law, judicial independence and respect for democratic checks and balances.

Mr Buquicchio and Mr Aurescu underlined the excellent co-operation between the Venice Commission and Romania since the establishment of the Commission.

The Commission adopted the Opinion on the compatibility with constitutional principles and the rule of law of actions taken by the Government and the Parliament of Romania in respect of other state institutions and on the Government Emergency Ordinance on amendment to the Law no. 47/1992 regarding the Organisation and Functioning of the Constitutional Court and on the Government Emergency Ordinance on amending and completing the Law no. 3/2000 regarding the Organisation of a referendum ([CDL-AD\(2012\)026](#)).

13. Other constitutional developments

Ireland

Ms Flanagan informed the Commission on the constitutional referendum concerning children's rights in Ireland which had taken place on 10 November 2012. This referendum was approved by a majority of 58%, on a turnout of 33.5%. The constitutional amendment concerned Article 42.5 of the Constitution and contained a number of elements in a single article. The first element recognised the natural and imprescriptible rights of children. The second was similar to the current Article 42.5 (which the amendment proposed to delete), relating to the State supplying the role of the family in exceptional cases, making it clear that this intervention could take place irrespective of the parents' marital status. The third element provided for the adoption of children whose parents, again irrespective of marital status, had failed, for a period of time prescribed by law, in their responsibility. It would also enable voluntary placement for adoption, meaning that married parents could consent for the first time to having their children placed for adoption. The fourth part stated that the best interests of the child must be of "paramount" consideration in judicial and custody proceedings. The fifth element stated that in such proceedings the children's views must be heard and taken into account, having regard to age and maturity.

Two days prior to the referendum, in the case of *McCrystal v Minister for Children*, the Supreme Court had ruled that the government had breached the neutrality principle by using public funds when publishing and distributing an information booklet in favour of a "yes" vote. The conclusions of the court had partly been reached by reference to the Venice Commission's Code of Good Practice on Referendums.

Two other current cases might have a constitutional impact. The first case before the High Court concerned the right to die and more precisely the possibility to get medical assistance for a voluntary termination of life. Another case was related to the right to life of the unborn child following the dramatic death of a woman who faced a refusal of abortion.

Libya

Mr Mihai informed the Commission that on 12-14 November 2012, a delegation composed of Mr Esanu, Mr Holovaty, Mr Markert, Mr Dürr and himself had participated in workshops on the

constitution drafting process in Libya, organised by the International Management Group on behalf of the EU. In addition to the workshops with Parliament, the delegation had held discussions with the interim President of Libya, the Italian Ambassador, NGOs and the press and it was invited to participate in the oath taking ceremony of the new Government under Prime Minister Ali Zeidan.

The members of Parliament were grateful for the discussions about various options for the preparation of a constitution. Their questions showed keen interest and commitment to their task and a need for further information on constitutional processes. The main issue before Parliament was how to establish a constitutional commission - either by direct election or through appointment by Parliament - and the strict time-frame for the adoption of the Constitution, imposed by the interim Constitution.

The President of the Tunisian National Constituent Assembly Mr Ben Jaafar stressed that the security situation in Libya needed to be improved in order to adopt a Constitution. He and Mr Khashan, former Minister of Justice of the Palestinian National Authority, proposed that the activities of the Venice Commission in Libya should include experts from other Arab countries. Contrary to other Arab countries, Libya could not build on legal traditions but had to build democracy from scratch.

Monaco

Mme Granata-Menghini rappelle qu'en octobre, la Commission de suivi de l'APCE, dans le cadre du dialogue post-suivi avec Monaco, a demandé à la Commission de Venise un avis sur la Constitution de Monaco, notamment sur les dispositions sur le Conseil National et compte tenu des spécificités de ce pays.

Cette demande a provoqué beaucoup d'inquiétudes à Monaco, en particulier en vue de la campagne pour les élections législatives du 10 février 2013. Les rapporteurs, afin justement d'éviter toute ingérence, ont décidé que la préparation de l'avis ne commencera qu'après les élections. Une visite pourrait avoir lieu en mars/avril 2013 et l'avis devrait être présenté à la Plénière en juin 2013.

M Chagnollaud souligne les risques d'ingérence de la demande de l'APCE avec la campagne électorale. Il précise que personne à Monaco ne souhaite un renforcement des pouvoirs du Conseil National, dont le fonctionnement est régi non pas par la Constitution mais par une loi.

M Holovaty exprime sa conviction que si Monaco présente indéniablement des spécificités historiques et nationales, tous les états membres du Conseil de l'Europe ont accepté d'adhérer à des principes et des valeurs communs.

Maroc

M. Markert informe la Commission d'une demande d'assistance de Madame la Ministre Hakkaoui, Ministre de la Solidarité, de la femme, de la famille et du développement social, en vue de la mise en place de l'Autorité chargée de la parité et de la lutte contre toutes les formes de discrimination et du Conseil consultatif de la Famille et de l'Enfance. Cette assistance se concrétisera, dans un premier temps, par une visite, à Strasbourg, des membres concernés par ces projets législatifs au sein du Ministère, afin de les familiariser avec les standards du Conseil de l'Europe comme les meilleures pratiques européennes en la matière.

Depuis la dernière session plénière, la Commission de Venise a participé, le 11 juillet 2012, à une table ronde, organisée par le Parlement marocain et le Congrès des Pouvoirs Locaux et Régionaux du Conseil de l'Europe, sur le projet de loi organique sur la régionalisation avancée. La Commission a également contribué, le 7 novembre 2012, à un séminaire, organisé par le

Parlement, sur le contrôle exercé par les parlements sur l'action du gouvernement, ainsi qu'à une journée d'études, organisée par la Chambre des Conseillers du Maroc, dans le contexte de la préparation d'une future loi organique sur la protection de la langue amazighe, le 21 novembre 2012. Une délégation de la Commission a pu également rencontrer les autorités marocaines, le 6 novembre 2012, afin de discuter de la mise en place d'un programme de coopération. Enfin, en coopération avec le Conseil constitutionnel du Royaume du Maroc, la Commission a organisé un séminaire sur l'exception d'inconstitutionnalité, les 29 et 30 novembre 2012.

M. Menouni se félicite qu'une coopération déjà ancienne ait pu prendre une dimension nouvelle et aussi riche depuis la modification de la constitution en 2011. Il propose la tenue, au Maroc, d'une Conférence de rédacteurs de constitutions du printemps arabe afin de pouvoir analyser et contribuer aux processus en cours par un échange d'expériences communes, fin février. La présence de membres de la Commission serait la bienvenue afin d'apporter également un témoignage de l'expérience européenne récente en matière de réforme constitutionnelle.

M. Menouni tient à souligner combien la coopération avec la Commission de Venise est appréciée. Il rend hommage à M. Buquicchio et au secrétariat pour avoir déployé tant d'efforts en ce sens.

Ukraine

Ms Suchocka informed the Commission on the visit to Ukraine on 6-7 December 2012. At the invitation of the Ukrainian Constitutional Assembly (hereinafter: the UCA), Ms Suchocka, Messrs Tuori, Tanchev and Hamilton, accompanied by Mr Markert and Ms Mychelova, attended a plenary session of the UCA, participated in a round table on the constitutional reform and met with the opposition leaders and representatives of the international community in Kyiv.

The delegation shared the concern of the opposition and the international community regarding the unclear role of the UCA in drafting the actual text of the new Constitution and, at the same time, its limited representativeness – the opposition had boycotted it. The delegation stressed that the Venice Commission had always underlined the need for a new Constitution for Ukraine drawn up by the Rada and not put forward by a popular initiative/referendum as provided by a recently adopted law on referendums. The latter is in contradiction to Chapter XIII of the Constitution.

A draft of the Chapter on the judiciary prepared by the Presidential Administration was welcomed by the members of the delegation as it took into account a number of the Commission's recommendations; however several issues raised concern, including the role of the President in the appointment of all judges.

The delegation also met the opposition parties. They proposed to have a Constitutional Commission within the Verkhovna Rada and to concentrate on the changing of the system to the parliamentary one, on the reform of local self-government and of the prosecutor's office and on the guarantees of independence of the judiciary.

Ms Stavniychuk informed the Commission that the UCA, created by the President of Ukraine, had a consultative status and based its work on the Decree establishing the UCA which stated that Constitutional amendments were to be introduced only according to Chapter XIII of the present Constitution (i.e. by the parliament). A considerable number of concrete texts had already been produced by the UCA. Drafts by the Presidential administration did not take priority over texts by the UCA. The UCA planned to present concrete texts to the Commission for evaluation. The UCA also shared concerns on the law on the referendum; the President of Ukraine had asked the UCA to improve it.

14. Constitutional Developments in Observer States

Canada

L'honorable Marie Deschamps, juge à la Cour suprême du Canada, est intervenue devant la Commission sur la question de l'intérêt public pour agir en matière constitutionnelle et sur les mesures visant à favoriser le caractère public des débats. Elle a rappelé l'étude réalisée par la Commission en 2010 relative à l'accès à la justice constitutionnelle et a souligné à cet égard l'approche moderniste du Canada. La Cour suprême du Canada permet en effet à toute personne un accès direct à la justice constitutionnelle ainsi que la possibilité de recours à la justice constitutionnelle par tous les tribunaux, administratifs ou judiciaires. Elle a en outre souligné le caractère ouvert de la procédure, par l'accès de la presse aux débats et moyens documentaires, jusqu'à la possibilité de commenter en direct les débats de la Cour suprême via Internet et en particulier les réseaux sociaux. A l'issue de cette présentation, le président s'est félicité que le Canada soit à nouveau représenté au sein de la Commission.

United States

Ms Cleveland informed the Commission on various cases recently delivered by the U.S. Supreme Court, inter alia on the following issues: detained people; human rights' violations abroad; the Voting Act; gay marriages; relations between the States and the Federal State; and the extraterritorial aspect of the Statutory law. She also informed the Commission about recent unsuccessful treaties' ratifications, in particular regarding the Convention on the Law of the Sea and the Convention on the Rights of Persons with Disabilities.

Republic of Korea

Mr Park, new Member for Korea, informed about the recently established Association of Asian constitutional courts as well as the first inaugural congress of the Association which had taken place in Korea in May 2012. He also informed the Commission about the forthcoming third Congress of the World Conference on Constitutional Justice, which will take place in Korea in September 2014.

15. Report of the meeting of the Sub-Commission on Democratic Institutions (13 December 2012)

Mr Paczolay informed the Commission that a preliminary draft report on the role of extra-institutional actors was presented and discussed at the meeting of the Sub-Commission. This report analysed the phenomenon of extra-institutional actors in national democratic systems in the light of democratic standards. After delimitating the notion of lobbying as commonly accepted, its modalities and the scale of involvement of lobbying actors in the political process, the report assessed lobbying activities against democratic standards. The report further proposed a reflection on the opportunities and the risks of lobbying for the functioning of democratic institutions. By examining and evaluating the existing legal system of lobbying regulations, the report finally provided an overview of possible strategies to strengthen the democracy-supportive role of extra-institutional actors in a democratic society. The report had been completed but might need further input by the members.

Mrs Err suggested that the report focus more on the issue of corruption, namely in the conclusions.

Mrs Haller, co-rapporteur, clarified the working process of the working group. On the basis of an insightful contribution by an expert on lobbying issues, Mr Raj Chari, the group of rapporteurs had also felt the need to dwell *inter alia* on the relationship between democracy and expertise.

Mr Paczolay invited the members to send their comments to the Secretariat by the end of January, so that the draft report can be finalised and presented for adoption at the next plenary session.

16. Study on “keeping political and criminal responsibility separate” ([CDL-DEM\(2012\)001](#))

The Study was drawn up at the request of the Parliamentary Assembly

The Study was very relevant for many member States of the Venice Commission; recent examples included Ukraine or Iceland. It tackled a complex and sensitive issue, as it addressed the relationship between political and criminal responsibility and there were no European standards on the issue. The preliminary report therefore contained a definition of criminal and political responsibility and included a comparative overview of the rules on criminal ministerial responsibility, although the material was in no way comprehensive. The Study provisionally concluded by pointing out the double danger of adopting special rules concerning the responsibility of politicians and ministries, as they could be misused to harass political opponents and, in the long run, it was virtually impossible to hold ministers legally responsible.

The rapporteurs asked for input from the members on this topic with a view to its submission for adoption during the March 2013 Plenary Session.

17. Report of the meeting of the Sub-Commission on Latin America (13 December 2012)

Ms Alanis Figueroa, chair of the Sub-Commission, informed the Commission about the visit of a delegation of the Venice Commission to Mexico in November 2012 within the framework of the opinion on the Mexican electoral legislation. The conference on the implementation of Human Rights treaties in domestic law, initially scheduled for November 2012 in Mexico, had been postponed to October 2013. The next meeting of the Sub-Commission would take place on this occasion.

As regards the VOTA database, a meeting had taken place in Mexico in November and the database would become fully operational during the course of 2013. This would also be discussed at the above-mentioned meeting to take place in October 2013 in Mexico

A conference on individual access to constitutional justice open to all Supreme and Constitutional Courts of Latin America would be organised with the Constitutional Court of Peru in Arequipa, Peru, on 30-31 May 2013.

Finally, the Chair of the Sub-Commission informed the Commission about the initial contacts with the Organisation of American States on possible co-ordination in creating a sister Venice Commission in Latin America.

18. Compilation of Venice Commission opinions concerning Freedom of Association

Mr Helgesen presented for endorsement the draft compilation of Venice Commission opinions and studies concerning Freedom of Association ([CDL\(2012\)080](#)). He informed the Commission that Chapter 8 relating to political parties would be further developed and would appear as a separate compilation.

The Commission endorsed the compilation of Venice Commission opinions concerning Freedom of Association, without Chapter 8 ([CDL\(2012\)080](#)).

19. Co-operation with the Parliamentary Assembly

M Buquicchio remercie M Mignon, Président de l'Assemblée parlementaire du Conseil de l'Europe (l'APCE), et les membres du Comité Présidentiel pour leur participation à la réunion conjointe du Bureau élargi de la Commission de Venise avec le Comité des Présidents de l'APCE, qui s'est tenue le 15 décembre 2012, ainsi qu'à la session plénière.

M. Mignon informe la Commission des conclusions de la réunion. La politique de voisinage de l'APCE est en train d'être mise en place et il faut à ce titre s'appuyer sur les travaux de la Commission de Venise dans les pays voisins. A cet égard, il souligne que le déplacement effectué conjointement en Tunisie en octobre 2012 est un excellent exemple de coopération entre les deux institutions.

M Buquicchio ajoute à ce sujet que la coopération avec le monde arabe en particulier fait en effet partie des préoccupations communes de l'APCE et de la Commission de Venise.

Mr Holovaty, Member of the Committee on Legal Affairs and Human Rights and of the Monitoring Committee of the Parliamentary Assembly, presented the relevant activities of the two committees. He stressed in particular that the Legal Affairs Committee had decided to ask the Venice Commission's opinion on the following issues: an up-date of its 2007 opinion on the democratic oversight of secret services as regards in particular the issue of access to information and national security; the compatibility with Council of Europe principles of two Russian laws concerning the registration as "foreign agents" and widening the scope of criminal liability for "treason". In addition, the Monitoring Committee had decided to request the Commission's opinion on the newly adopted Law on referendum of Ukraine.

20. Azerbaijan

The Commission was informed on the progress of the work on the opinion on the draft Law on defamation. Azerbaijan had an obligation to amend its legal provisions on defamation in order to comply with rulings by the European Court of Human Rights. In this context, the Commission had been requested, in co-operation with the Department of Execution of ECtHR judgments and the Media Division of the Council of Europe, to assist Azerbaijan in the preparation of the draft law (and not simply to assess the draft law once ready). In November 2012, a timetable had been agreed with the authorities: first, all legislative provisions related to the topic would be sent to the Commission; a visit to Baku would then be organised to discuss the draft legislation. The final draft Law would be sent to the Commission by mid-March 2013. According to this timetable, the Venice Commission would be in the position to adopt its opinion in June 2013.

21. Limitation of mandates and incompatibility of political functions

Ms Siljanovska-Davkova presented the draft report on "Limitation of mandates and incompatibility of political functions". A previous version of the draft report had been discussed at the October meeting of the Council for Democratic Elections.

The report first examined the theoretical references to the limitation of the mandates and the right to re-election of the holders of political mandates, and then dealt with the legal practice in Europe from a comparative point of view. For example, there was a general trend in Europe to allow presidents to be re-elected only once, whereas limitations in time for other public (political) functions were quite rare.

The report underlined that a democratic political system could only function with or through the limitations that it had set for itself as being legitimate and reasonable. The democratic character of the political system could not be threatened by limitations in time of the mandates of the highest officials of the executive branch; such measures reinforced on the contrary the democratic system against authoritarian trends. The report conveyed a critical approach towards constitutional provisions allowing for more than one re-election of the head of state in presidential or semi-presidential systems. The situation was different for members of the legislature: prohibiting re-election of parliamentarians involved the risk of the legislative branch of power being dominated by inexperienced politicians. This may lead to increase the imbalance in favour of the executive.

Incompatibilities – and possibly ineligibility for holders of an elected mandate to be elected to another function - did not go either against democratic principles because they were based on the principle of separation of powers. Incompatibility between ministerial and parliamentary duties was applied in a number of states, but no so much in parliamentary regimes, which were based on close collaboration between the legislature and the executive. On the contrary, in bicameral systems, no-one should be simultaneously member of both houses. A member of the legislative or executive branch of government could not belong to a judicial body. Private occupations were in principle compatible with parliamentary mandates, but specific provisions often dealt with the issue of conflict of interest.

The Commission adopted the Report on “Limitation of mandates and incompatibility of political functions” ([CDL-AD\(2012\)027](#)).

22. Other business

Mr Sorensen, Chair of the Sub-Commission on working methods, reminded that the Commission’s working methods had been revised in 2010. While their implementation had been carried out successfully, it was time to reflect on possible further improvements, for example in respect of the power to put items on the Commission’s agenda. Mr Sorensen thus invited all members to provide the Secretariat of the Commission with any ideas, comments and suggestions for improvement of the working methods or the rules of procedure before the end of January 2013. The Sub-commission would then collect and reflect on such input and make proposals to the Plenary Session in June 2013.

Mr Markert informed the Commission that on 6-7 December 2012, a delegation of the Venice Commission had participated in a Conference of Ministers of Justice of the EU and Central Asia in Brussels. Mr Paczolay and Mr Endzins had delivered key note speeches on the rule of law and judicial independence and Mr Dürr had presented the programme of activities of the Venice Commission in Central Asia. Both the Central Asian Ministers and the EU had welcomed the work of the Venice Commission and referred to the Commission in their final declaration.

23. Dates of the next sessions

The schedule of sessions for 2013 was confirmed as follows:

94 th Plenary Session	8-9 March 2013
95 th Plenary Session	14-15 June 2013
96 th Plenary Session	11-12 October 2013
97 th Plenary Session	6-7 December 2013

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

[Link to the list of participants](#)