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

**97<sup>th</sup> PLENARY SESSION**  
**Venice, Scuola Grande di San Giovanni Evangelista**  
**Friday, 6 December 2013 -**  
**Saturday, 7 December 2013**

**SESSION REPORT**

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

The Commission paid tribute to Mr Nelson Mandela following his death on 5 December 2014.

The agenda was adopted as it appears in document CDL-OJ(2013)005ann.

## **2. Communication by the President**

Mr Buquicchio briefly informed the Commission about his recent activities, which are listed in document [CDL\(2013\)058](#).

## **3. Communication by the Secretariat**

Mr Markert provided information concerning the use of badges for all members and guests of the Plenary Session as from this session.

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

At the beginning of the Plenary Session, Ms Suchocka informed the Commission that in respect of the procedure for the election of the President, the Vice-Presidents, the members of the Bureau and the Chairs of the Sub-Commissions, the Bureau proposed that the Committee of wise persons who would advise on the candidates be composed of the three vice-presidents: Mr Helgesen, Ms Suchocka and Mr Tuori. The Bureau further proposed to elect vice-Chairs of the Sub-commissions, who however would not be part of the Enlarged Bureau. The Commission agreed with both proposals.

On Saturday 7 December, Ms Suchocka submitted to the Commission the proposal for the candidates for election, as made by the committee of wise persons. The Commission approved this proposal and elected (for a term of two years):

- Mr Gianni Buquicchio (Italy), as President of the Commission;
- Mr Jan Helgesen (Norway), as First Vice-President and Chair of the Scientific Council;
- Mr E. Tanchev (Bulgaria) and Ms H. Thorgeirsdottir (Iceland), as Vice-Presidents; Ms F. Flanagan (Ireland), Ms T. Khabrieva (Russian Federation), Mr G. Harutyunian (Armenia) and Mr G. Papuashvili (Georgia), as members of the Bureau;

As Chairs of the Sub Commissions:

- Mr B. Vermeulen (Netherlands): Fundamental Rights;
  - Mr W. Hoffmann-Riem (Germany): Federal State and Regional State;
  - Ms V. Bilkova (Czech Republic): International Law;
  - Mr J. Velaers (Belgium): Protection of Minorities;
  - Mr N. Esanu (Moldova): Judiciary;
  - Ms H. Suchocka (Poland): Democratic Institutions;
  - Mr J.S. Sørensen (Denmark): Working methods;
  - Ms M. C. Alanis Figueroa (Mexico): Latin America;
  - Mr A. Menouni (Morocco): Mediterranean Basin; and
  - Mr K. Tuori (Finland): Rule of law.
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- The Co-Chair of the Joint Council on Constitutional Justice: Mr C. Grabenwarter (Austria);
  - The Vice-President of the Council for Democratic Elections: Mr J.-C. Colliard (France);

As Vice-Chairs of the Sub Commissions (without representation on the Enlarged Bureau):

- Ms L. Err (Luxembourg) (Fundamental Rights);
- Ms R. Kiener (Switzerland) (Federal State and Regional State);
- Mr I. Cameron (Sweden) (International Law);
- Ms G. Siljanovska (“the former Yugoslav Republic of Macedonia”): Protection of Minorities;
- Mr H. Gstöhl (Liechtenstein) (Judiciary);
- Mr L. Mihai (Romania) (Democratic Institutions);
- Mr R. Clayton (United Kingdom) (Working methods);
- Mr J. B. Gomes Barbosa (Brazil) (Latin America);
- Mr D. Chagnollaud (Monaco) (Mediterranean Basin); and
- Ms S. Cleveland (United States) (Rule of law).

Mr Buquicchio thanked the Commission for his re-election. He underscored the excellent co-operation with the other institutions of the Council of Europe as well as the OSCE/ODIHR.

The representatives of the Committee of Ministers and the Parliamentary Assembly of the Council of Europe congratulated the newly elected members.

### **5. Coopération avec le Comité des Ministres**

L’Ambassadeur Robák, Représentant Permanent de la Hongrie auprès du Conseil de l’Europe, souligne la place prééminente que la Commission de Venise occupe parmi les instances de l’Organisation et l’excellente réputation dont elle bénéficie grâce à la qualité de son travail. Il exprime par ailleurs sa gratitude pour l’assistance fournie par la Commission à son pays d’origine, la Hongrie.

L’Ambassadeur Castro Mendes, Représentant Permanent du Portugal auprès du Conseil de l’Europe, souligne également la haute estime de ses autorités pour les activités de la Commission de Venise, sa contribution à l’amélioration constante des dispositions juridiques et constitutionnelles des institutions nationales et son soutien aux pays démocratiques émergents ainsi qu’à d’autres pays souhaitant améliorer leurs processus démocratiques.

### **6. Co-operation with the Congress of Local and Regional Authorities of the Council of Europe**

Mr Molin informed the members of the most recent activities of the Congress of Local and Regional Authorities of relevance for the Commission such as the adoption of Resolutions following monitoring and election observation missions at the last Congress Session in October. Furthermore, Mr Molin considered the high-level working meeting between the Venice Commission and the Congress scheduled for 12 December 2013 in Strasbourg as an excellent opportunity to discuss concrete ways of co-operating in the interests of both institutions.

Mr Buquicchio also welcomed the co-operation between both institutions.

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

*- Opinion on three Draft Constitutional Laws amending two Constitutional laws amending the Constitution of Georgia (CDL-AD(2013)029)*

In the above opinion the Commission had dealt in particular with the procedure for adopting constitutional amendments; after the Presidential elections of November 2013, the procedure required two votes, at three months’ interval, at a majority of three-fourths of the total number of MPs. It had been proposed to change this procedure and maintain the previous system of one single vote at two-thirds majority. The Commission had expressed the view that the latter proposal would represent a step backwards and had encouraged the

Georgian authorities to find the right balance between rigidity and flexibility of the constitution. The proposed amendments to the constitutional amendment procedure had not been adopted and therefore, as originally foreseen, the amendments making constitutional amendments more difficult, entered into force following the presidential elections.

*- Joint Interim Opinion on the Draft Law amending the Law on Non-commercial Organisations of the Kyrgyz Republic (CDL-AD(2013)030)*

Ms Alice Thomas, Head of the Legislative Support Unit at OSCE/ODIHR, informed the Commission that a public hearing on the above draft Law had taken place in Bishkek on 18 November, which had been attended by representatives of Parliament (primarily the MP Alymbekov, Chairman of the Parliamentary Committee of Human Rights and State Structure, who had requested the joint opinion, and one of the two MPs who had tabled the draft), civil society, and international organizations, including OSCE/ODIHR. The event had gathered some 80 participants, most of them representatives of NGOs from Kyrgyzstan. During the event, ODIHR presented the ODIHR-Venice Commission Opinion on the draft Law; this presentation was well received, especially by NGO representatives. The International Center for Not-for-Profit Law, OHCHR and local and other international experts all argued against the draft law. At the end of the event, MP Alymbekov had said that following the OSCE/ODIHR – Venice Commission joint opinion, the Parliamentary Committee headed by him would issue a negative resolution on the draft law. He also noted that the President of Kyrgyzstan himself had said that this draft should not be adopted, thereby hinting that he might veto it.

*- Amicus Curiae Brief on crimes against humanity, for the Constitutional Court of Peru (CDL-AD (2011)041)*

On 7 June 2011, the Constitutional Court of Peru requested that the Venice Commission submit an amicus curiae brief on the case Santiago Brysón de la Barra. The case related to the riots which had taken place in several prisons in Peru in June 1986 and made reference to the fact that the Inter-American Court of Human Rights had condemned Peru for disproportionate use of lethal force by the State in the Durand Ugarte case v. Peru.

The Constitutional Court had to decide in this case, among other issues, whether the facts could be qualified as crimes against humanity and therefore, no statutory limitations could possibly be applied in prosecuting this case. In order to decide on this case, the Constitutional Court had pronounced itself on the qualification of the facts as crimes against humanity, and to the Venice Commission amicus curiae opinion prepared in 2011, which gave feedback on the European practice in cases concerning past crimes against humanity as well as on the present definition of crimes against humanity in international law.

The Constitutional Court decided on 14 June 2013 to award partially the protection requested by Santiago Brysón de la Barra and others, because the ordinary judge had wrongly considered the facts of El Frontón as crimes against humanity. However, the Court rejected the rest of the complaint and asked for the continuation of the criminal proceedings opened as part of the requirements of the Peruvian State to fulfil its obligations under International Human Rights Law.

*- Joint Opinion on Draft Amendments to Legislation on the Election of People's Deputies of Ukraine (CDL-AD (2013)026 and CDL-AD (2013)016)*

The Secretariat informed the Commission about the follow-up given by the authorities of Ukraine to its opinions on the draft law on election of members of parliament. The Ukrainian authorities had launched a new electoral reform in April 2013, in the light of the conclusions on co-operation with Ukraine of the Council of the European Union, held in December 2012.

The authorities had submitted the amendments to the Venice Commission in April and July 2013, two Joint Opinions by the Commission and OSCE/ODIHR had been adopted in June and in October 2013. The Opinions recommended substantive constitutional and legislative changes in the electoral field. The Verkhovna Rada of Ukraine adopted the amendments on 19 November 2013.

The electoral reform had been launched in the context of the Vilnius summit. The June opinion had been followed by several Roundtables organised by the Ministry of Justice involving all electoral stakeholders, including representatives of the opposition. The possible amendments discussed by the participants included the constitutional changes and candidacy requirements, criminal convictions and political rights, the issue of codification, the prohibition on the formation of blocs and thresholds and financing of political parties.

However, on 19 November, notwithstanding joint Venice Commission and OSCE/ODIHR opinions, the adopted law on election of members of parliament, technical and limited in content, did not address any key issues, such as the harmonisation of electoral legislation, the choice of a mixed electoral system, the excessive candidacy requirements and the limitations on political rights, mainly concerning criminal convictions.

- *Joint Opinion on the draft Law on the Public Prosecutor's Office of Ukraine (CDL-AD(2013)025).*

The Commission was reminded that its Joint Opinion was rather positive overall, since the draft Law provided for the removal of the prosecutors' powers of general supervision. However, the Opinion had criticised the remaining powers to represent vulnerable persons (minors etc.), even without their request and the excessive powers to determine whether it is justified that prosecutors be able to take over such cases. Following the adoption of this Joint Opinion, instead of removing these powers, similar powers had been attributed to defence lawyers in order to maintain the equality of arms. Notable progress was made in other areas in the draft Law. These include the clarification of the Prosecutor General's power to give instructions to a specific prosecutor and the disciplinary procedure, both of which now include safeguards that were recommended in the Joint Opinion.

Mr Buquicchio added that Ukraine's suspension of the talks on the association agreement with the EU left doubt as to what would happen to the entire reform process. The draft Law was a part of the conditions for the EU's association agreement and it was important that Ukraine continue with its reform process.

Mr Esa Paasivirta, legal advisor at the European Commission, said that Ukraine's suspension of its preparation for the signing of the association agreement with the EU was considered to be a mere postponement rather than a definite decision to withdraw from the entire process.

## **8. Ukraine**

Mr Tuori informed the Commission that Mr Lyovochkin, Head of the Administration of the President of Ukraine, had made a request for an opinion on opposition proposals amending the presidential draft Law "On Amendments to the Constitution, strengthening the Independence of the Judges", which itself had been the subject of an opinion of the Commission (CDL-AD(2013)014). A number of recommendations made in that Opinion had been taken up by the draft Law, which the Proposals intended to further amend.

The Proposals contained welcome elements, such as the introduction of an explicit provision on the right to a fair trial within a reasonable amount of time. However, the draft Opinion added that a remedy against an excessive length of proceedings should be provided; that the role of the Supreme Court and that of the High Judicial Council (HJC), notably on judicial appointments, should be strengthened. The Proposals also contained negative elements that would weaken the independence of judges. These include the introduction of an impeachment procedure in front of Parliament on the initiative of citizens; the dismissal of judges on the basis of the vague term “breach of oath” and the introduction of a requalification examination for all judges.

Ms Suchocka added that the role of the President and that of Parliament in the appointment of judges in Ukraine could lead to political games being played; the Proposals suggested therefore that the HJC directly appoint the judges. In earlier opinions, the Venice Commission had accepted that it be done by the President on the basis of a proposal made by the HJC. The Opinion further recommended to clearly define the relationship between the HJC and the High Qualification Commission.

Mr Kivalov told the Commission that the amendments to the chapter on the judiciary of the Constitution were adopted at the first reading during the last parliamentary session. The reform process was continuing and the adoption of the amendments was foreseen for the next parliamentary session in February 2014. The final adoption of the amendments would depend on whether or not they would receive the agreement of the opposition.

**The Commission adopted the Opinion on Proposals amending the draft Law on the amendments to the Constitution to strengthen the independence of judges of Ukraine (CDL-AD(2013)034).**

## **9. Report on the lifting of Parliamentary Immunities**

Mr Sejersted and Ms Palma informed the Commission about the ongoing work on the lifting of parliamentary immunities, carried out by Mr Hamilton, Ms Palma, Messrs Sejersted, Sørensen and Doublet (GRECO expert) at the request of the Secretary General of the Council of Europe. At the meeting of the Sub-Commission on Democratic Institutions (5 December 2013), a consensus had been found on the following line: the Commission is favourable to non-liability (extra freedom of speech for parliamentarians, including a procedural protection), whereas it is much more critical of inviolability (immunity in the strict sense). Non-liability is intended at protecting the representativeness of parliamentarians; it goes further than Article 10 ECHR which is intended for all individuals. It does not exclude internal disciplinary procedures, which on their turn must be proportionate and not be abused. Inviolability, which includes protection against arrest, prosecution, search etc., is not as widespread as non-liability; in practice parliamentarians are not placed above the law, at least in established democracies. In order that they are not seen as being in such position, inviolability has to be clearly justified by a prevailing public interest. Any kind of absolute inviolability is therefore to be excluded; inviolability should only be temporary; there must always be procedures for its lifting. Lifting by parliament always includes a political aspect and, even if this is no common practice, it would be preferable to leave it to the courts. The procedure should be as clear, transparent and neutral as possible.

The Commission agreed with the above main lines of the report. Several members made specific comments, in particular concerning their country. The President invited any interested members to send their comments in written form to the secretariat or the rapporteurs by the end of 2013.

The final version of the report would be adopted at the March 2014 session of the Commission.

### **10. Report on the misuse of administrative resources during electoral processes**

The Commission was invited to examine, with a view to adoption, the draft report on the misuse of administrative resources during electoral processes) drawn up on the basis of comments by Messrs González Oropeza, Hirschfeldt, Kask and Kalchenko (expert).

Mr Kask introduced the report, which had been drafted on the basis of a comparative analysis of the situation in Venice Commission member states. The report addressed one of the most crucial, structural and recurrent challenges raised on a regular basis in election observation missions' reports: the misuse of administrative resources, also called public resources, during electoral processes. This practice is an established and widespread phenomenon not only in Europe but also for example in the Americas and in Central Asia, including in countries with a long-standing tradition of democratic elections.

The core issue was the dividing line between legal use and misuse of administrative resources, regarding for example the financing of political parties or the use of public buildings. The main message of the report was that equal opportunity for all candidates should be firmly guaranteed. There are among the Venice Commission member states inherent weaknesses in legislation and in practice that may lead to the misuse of administrative resources, potentially giving an undue advantage to incumbent political parties and candidates compared to their challengers. Such undue advantage directly affects the equality of electoral processes and the freedom of voters to form an opinion. The fundamental principles of transparency – in electoral processes – and of freedom of information are also considered in the report as pre-conditions for preventing misuse of administrative resources.

**The Commission adopted the Report on the misuse of administrative resources during electoral processes (CDL-AD(2013)033).**

### **11. Italy**

Ms Thorgeirsdottir introduced the draft opinion on the Italian legislation on defamation, which had been prepared following a request by the Parliamentary Assembly. A number of amendments agreed by the Sub-commission on Fundamental Rights were presented.

It was argued in the opinion that the criminal provisions on defamation currently in force in Italy do not fully meet the European standards on freedom of expression, in particular as concerns the imposition of prison sentences, which, except for the exceptional circumstances indicated by the European Court of Human Rights, raises concern in the light of the principle of proportionality.



It was noted at the same time that the defamation Bill adopted by the Chamber of Deputies and tabled before the Italian Senate represents a welcome development. Substantial improvements are introduced concerning the system of sanctions. In particular, the abolishment of the prison sanction for defamation is a significant step forward, which demonstrates a clear commitment of the Italian legislator to bring the defamation provisions in line with the ECHR standards. The limitation of the use of criminal provisions by strengthening the right to reply and rectification is also commended.

The Opinion recommended in addition that the introduction of a temporary ban on exercising journalism in case of repeated defamation be reconsidered, and that the defences of truth, public interest and responsible journalism, as well as the principle of proportionality of sanctions, which are already recognised by the Italian case law, be made explicit. Also, political debate as well as fair and responsible criticism against public figures should enjoy the highest protection.

The speedy adoption of the above improvements by the Italian Parliament was strongly recommended.

There ensued a discussion, which led to further amendments.

**The Commission adopted the Opinion on the Italian legislation on defamation (CDL-AD(2013)038).**

## **12. Armenia**

In his introduction, Mr van Dijk (expert) recalled that the European Court of Human Rights had recently found twice Armenia in breach of its obligations under Article 5.5 ECHR and Article 3 Protocol 7 to the Convention and Article 13 ECHR, respectively.

The draft law under examination constituted an important step in the country's efforts to fill the gaps found by the Court. Nevertheless, the proposed changes and additions were not sufficiently clear in all aspects, including on the key issue of the definition of non-pecuniary damage. It was further recommended to enlarge the number of persons entitled to compensation. It was also noted that the draft law did not address other situations, similar to the ones examined by the Court in its rulings on Armenia, where comparable violations may result in non-pecuniary damage.

During the ensuing discussion, it was stressed that the preparation of this opinion was another example of coordination and synergy between Council of Europe bodies, in this particular case with the Committee of Ministers in the framework of its tasks of supervision of the execution of the judgments of the European Court of Human Rights.

**The Commission adopted the opinion on the draft law on making changes and additions to the Civil Code of Armenia (introducing compensation for non-pecuniary damage) (CDL-AD(2013)037).**

Mr Harutunyan informed the Commission of the most recent developments linked to the ongoing work on the revision of the Armenian Constitution, initiated by the President of Armenia. In this context, Mr Harutunyan formally submitted a proposal to involve the Venice Commission in the work of an expert panel recently established in Armenia to develop specific proposals for constitutional revision, in areas of relevance for the Commission. The readiness of the Commission to provide assistance in this process was reiterated. It was agreed that concrete modalities for assistance would be subsequently agreed.

### **13. Bosnia and Herzegovina**

Mr Tuori informed the Commission on the visit of a Commission delegation to Sarajevo in order to discuss the reform of the Constitution of the Federation of Bosnia and Herzegovina, one of the two Entities in the country. It was welcome that, for the first time, a reform proposal taking into account political realities had been prepared by local experts. It was not yet clear whether the Commission was requested to provide its opinion on this proposal or on a revised proposal resulting from debates in the Federation parliament.

The Commission was informed that it had been asked to provide an opinion on amendments to the law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

### **14. Georgia**

Mr Aurescu recalled that the Venice Commission had previously assessed the law on the occupied territories of Georgia, and had recommended several amendments, not all of which had been followed by the Georgian authorities. Draft amendments had now been prepared and had been adopted at the first reading. These amendments were limited in scope, as they only addressed the sanctioning regime; they relaxed this regime, providing for mostly administrative fines, except in case of repeat offences. Even in such cases only fines would be applicable unless the breach was committed collectively and with threat or use of violence. This change was to be welcomed, even though it would have appeared preferable to move to a complete decriminalisation of the breaches of the law on occupied territories. In relation to the special permission, which it was possible to obtain, the law required further clarifications. The rapporteurs also underlined that certain issues identified in the Commission's previous opinions had remained unaddressed.

Mr Nodar Tangiashvili, Head of the International organisations and Legal provision department at the Ministry for Reintegration welcomed the opinion of the Venice Commission. He upheld the view of the Georgian authorities that the Law on Occupied Territories should fall within the scope of criminal law, although the intention was to apply it in a humane manner. He provided the Commission with updated information on the past cases of breach of the Law on Occupied Territories and explanations as to the regime of force majeure and the grounds for making an act non punishable under Georgian law. He further provided explanations as to the correct interpretation to be given to the provisions on the special permission.

Mr Christopher Chope, Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, asked for clarification about the interaction between these amendments and the possibility for PACE members to enter the territory of Georgia when travelling for official purposes. He referred to the recent decision by the PACE Bureau to suspend the right of Georgia to host events with the participation of PACE members for a period of two years, unless the amendments to the Law on the Occupied Territories solve this problem.

Ms Tinatin Khidasheli, member of the Georgian delegation to PACE, intervened in the discussion and explained that the new regime of special permissions would enable the Georgian government to consider specific individual situations and make exceptions, which was not possible previously. A mechanism would be put in place to provide for quick decisions in individual cases. The whole government would be responsible for these decisions.

There ensued a discussion, and some amendments to the text of the opinion were agreed.

**The Commission adopted the Opinion on the 2013 draft amendments to the Law on the Occupied Territories of Georgia (CDL-AD(2013)036).**

### **15. Russian Federation**

The Commission was informed that, according to the Registry of the Constitutional Court of the Russian Federation, the decision on the admissibility of the application lodged by the Ombudsman in relation to the Amendments to the Law on NGOs was to be expected before the end of December.

The question of whether or not the Venice Commission should, as a rule, await decisions of Constitutional or equivalent Courts before preparing its opinions was raised, and Mr Helgesen referred it to the sub-commission on working methods.

### **16. Tajikistan**

Mr Vardzelashvili informed the Commission that a request had been made by Mr Zafar Azizov, President of the Judicial Council of Tajikistan, for an opinion on the draft Code on Judicial Ethics of the Republic of Tajikistan. It was the first request for an opinion by Tajikistan and was to be welcomed. The visit of a delegation of the Commission had shown that the general perception in Tajikistan seemed to be that the draft Code was a law rather than guidelines, whereas it should be regarded as soft law and not be used as a ground for disciplinary sanctions. Concerns had also been voiced that judges had not taken part in the preparation of this draft Code and that such a Code could be upheld more easily if those affected were included in its drafting.

The Commission was further informed that the draft Code had been adopted by the Conference of Judges of Tajikistan a week after the delegation's visit to Dushanbe, at the end of November. Members of the Commission pointed out that it was regrettable that such draft texts were adopted before the Venice Commission's opinion was issued. They underlined that such situations should be avoided in the future.

Discussions ensued on the compatibility of judgeships and political activities and how in some countries there is a complete prohibition on judges engaging in political activities (e.g. Ireland, United Kingdom) and in others, judges are allowed to engage, with some caution, in political activities and can be members of political parties (e.g. Germany). It was therefore important to respect the differences that exist in different countries, as long as the system followed did not jeopardise the independence of judges.

Ms Beata Martin-Rozumilowicz, Head of the Elections Department at ODIHR, added that states had made a clear commitment to support the separation of powers and that if this was not respected, it would have a negative impact on the independence of the judiciary.

Mr Azizov told the Commission that Tajikistan was building an increasingly democratic state governed by the rule of law and a judiciary capable of implementing human rights. In this respect, one of the first steps made was to reform the judiciary and in this context, a Code of Ethics had been drafted. A number of international organisations were supporting the reform process, notably the Swiss Co-operation, GIZ and the Venice Commission. The first version of the draft Code had been forwarded to the Venice Commission for an opinion, and although the Code had already been adopted, the Venice Commission's opinion would be of invaluable assistance in the development of the judiciary's professionalism in Tajikistan.

**The Venice Commission adopted the Opinion on the draft Code on Judicial Ethics of Tajikistan (CDL-AD(2013)035).**

### **17. Report of the Sub-Commission on Latin America and its activities**

Ms Alanis Figueroa, Chair of the Sub-Commission on Latin America informed the Commission on the results of the International Congress on "The implementation of international human rights treaties in national legislation" which took place from 23 to 25 October in Mexico. She reminded the Commission that on December 2011, the Sub-Commission on Latin America launched a study on the implementation of international human rights treaties in national legislation. The study was advancing well and the reports presented in Mexico would be a valuable input for the drafters of the study.

During the last day of the Conference, the President of the Electoral Court, Justice Luna Ramos and the President of the Commission had signed the Memorandum of Understanding on the administration of the Venice Commission's VOTA database by the Mexican Electoral Court.

Ms Carmen Alanis also informed the Commission about the meeting of the Sub-Commission on Latin America in Mexico City on 25 October 2013 (see document [CDL-LA-PV \(2013\)001](#)).

It was the first time that the Sub-Commission met outside Venice. Taking profit from the fact that different Latin American countries attended the Conference on Human Rights Treaties, it had been decided to invite their representatives to the meeting of the Sub-Commission. Bolivia, Costa Rica, Colombia, Uruguay and Venezuela, as well as representatives of the Organisation of American States (OAS) had therefore attended the event.

At the meeting the possibilities for co-operation with Latin American countries which were not members of the Commission were discussed. The Courts present were invited to join the World Conference on Constitutional Justice. OAS made a presentation on the working group created in 2010 by electoral courts of Argentina, Brazil, Chile, Costa Rica, Ecuador, Mexico, Panama, Peru and the Dominican Republic. OAS proposed to have regular exchanges of views with the Sub-Commission on Latin America in 2014.

Finally, the working agenda for 2014 was discussed. It had been suggested to prepare a new comparative study on the effectiveness of human rights treaties. Ms Rocha Antunes, President of the Electoral Court of Brazil, offered to host a conference on this topic in 2014, in Ouro Preto, Brazil. The next Sub-Commission's meeting could take place immediately after the conference.

## **18. Constitutional Developments in Observer States**

Mr Takaaki Shintaku, Consul at the Consulate General of Japan in Strasbourg, informed the Commission about two recent judgments by the Supreme Court of Japan. The first was a Grand Chamber judgment rendered in September 2013 on the provisions of the Civil Code regarding inheritance shares for a child born out of wedlock. The Supreme Court found that these provisions were unconstitutional as they breached the constitutional requirement of equality resulting in a child born out of wedlock only inheriting half of the shares that a child born in wedlock would inherit. The judgment pointed out that there were several factors that needed to be taken into consideration, notably that family structures had changed, that legislation on this issue had changed abroad and that Japan had ratified the International Covenant on Civil and Political Rights and the UN Convention on the Rights of the Child. Although the Supreme Court declared the provisions unconstitutional, it clarified that it was not to apply retroactively (*ex nunc*). The other judgment concerned the potential invalidation of the general election of the members of the House of Representatives (in 2009) due to the disparity in the results, where the Supreme Court found that the determination as to the constitutionality of an election system was to be achieved by examining whether the system was justifiable as a reasonable exercise of the discretion vested in the *Diet*, which is required to strike a balance between the proper reflection of the will of the people and the requirement of securing equality in the value of votes.

## **19. Co-operation with other countries**

### *Albania*

Mr Bartole informed the Commission that the Albanian authorities had requested its assistance in the reform of the judiciary. His participation in a conference in Tirana on 22 November 2013, celebrating the 15<sup>th</sup> anniversary of the Constitution of Albania, had been the occasion to discuss this reform with the authorities. However, as there was no draft legislation at the time, a request for an opinion from the Commission was premature.

Mr Buquicchio added that the Albanian authorities were planning a comprehensive reform and that they would send the Venice Commission a list of issues they would need assistance with, by the end of December 2013. The Commission would propose a co-operation programme with Albania on the basis of this list.

### *Bulgaria*

The Commission was informed of the on-going work on the draft new Election Code of Bulgaria following the expert visit of a delegation of the Venice Commission to Sofia on 13-14 November 2013. During this expert visit, meetings had been held with representatives of different political parties, government and opposition, representatives of the Committee set up to draft the new election code, representatives of the Central Election Commission, some NGOs as well as media.

It was noted that the Committee set up to draft the new Election Code had given the opposition parties and the civil society the opportunity to participate in this consultation process. The crucial changes suggested in the draft Code seemed to have been agreed by most of the stakeholders.

The National Assembly of Bulgaria intended to adopt the draft new Election Code in February 2014 and had therefore requested the Venice Commission's opinion as a matter of urgency. The opinion would be jointly prepared with the OSCE/ODIHR.

**In view of the urgency, the Commission authorised the rapporteurs to transmit the draft joint Opinion to the Bulgarian Parliament, prior to the March 2014 Plenary Session.**

### *Egypt*

Mr Tuori informed the Plenary on meetings with the Constitutional Committee of Egypt which had taken place in Cairo on 21-22 October 2013.

After the suspension of the Constitution of Egypt adopted in 2012, a Committee of 50 had been established for the purpose of preparing a new constitution. Its members were appointed by the interim President Adly Mansour. This committee was composed of representatives of different NGOs and political parties, including the Islamic Nour Party. Representatives of the Muslim Brotherhood were not included in this body.

The Venice Commission delegation including Messrs Tuori, Mihai and Holovaty accompanied by Mr Markert visited Cairo upon invitation from the Free Egyptians Party. It had meetings with the President of the Committee of 50, Mr Amr Moussa, and lawyers from several secular parties. Unfortunately, the delegation was not able to meet with Chairpersons of different Sub-Committees.

During the visit, representatives of the Commission were informed about the on-going work on the new constitutional text. The main discussions at the time of the visit were focussed on the position of Islam in the new Constitution (references to Sharia law), the structure of the future government and the role and the jurisdiction of military courts.

The Committee of 50 had finalised its work on the Constitution and the new text would be submitted to a referendum. After the adoption of the Constitution the next important steps would be the general and presidential elections. At the moment of the visit the sequence of these elections was not clear.

The Secretariat informed the Commission that the Egyptian interlocutors of the delegation of the Commission had expressed their wish to continue co-operation with the Venice Commission after the adoption of the new constitution.

Following the presentations of Mr Tuori and the Secretariat, the Commission had a general exchange of views on the constitutional situation in Egypt.

### *Libya*

Mr Omar Abu Lifa, President of the Legal Committee of the General National Congress of Libya (GNC) informed the Commission that the GNC, composed of 200 members, had as one of its main tasks to ensure the establishment of the Constitutional Commission in charge of the preparation of the new Constitution. This Commission had not yet been established since the GNC had also to deal with a number of pressing problems in the country, including the disarmament of militias and restoring of law and order.

The mandate of the GNC would expire on 7 February 2014. In order to fulfil its tasks the Congress would need the support of the international community, including the Venice Commission. The President of the Venice Commission was invited to come to Libya at the beginning of next year.

Ms N. Apostolova, Head of the EU Delegation to Libya informed the Commission that the European Union had already deployed an important assistance programme to Libya, including, among others, two essential components on the improvement of internal security and on the reform of the judiciary. This assistance was carried out with the support of some of the EU member states. She was satisfied with the contacts established between the GNC and the Venice Commission and expressed her hope that the Commission would assist Libya in the constitutional drafting process.

#### *Romania*

Mr Augustin Zegrean, President of the Constitutional Court of Romania, informed the Commission on the most recent decision of the Constitutional Court regarding the Romanian Law on Referendums, a law which since its adoption in 2000 has been subject of several successive amendments.

The most recent amendment, submitted to the Court in the framework of the *a priori* constitutional review, involves the lowering of the participation quorum required for the validation of a referendum from 50% to 30% of the electors registered on the electoral lists. According to the decision of the Constitutional Court, the amended law is constitutional, subject to the condition that it is only applied one year after it goes into force.

#### *Tunisia*

Mr Ben Achour informed the Commission about the latest developments in Tunisia. The agreement between different political forces on the roadmap aimed at overcoming the political crisis had not produced any results. Since the opening of a new round of national dialogue on 23 October, the process of the adoption of the new constitution had been blocked because of the failure to appoint a new "Government of competence". Political parties had failed to agree on a suitable candidate for the post of the Head of Government. After yet another unproductive meeting of different political forces on 3 December, a new deadline for the appointment of the Head of Government had been fixed for 14 December 2013.

Preparation for the general elections was another matter of concern. The process of nomination of the members of the electoral authority (ISIE) had been blocked by several decisions by the judiciary based of the unclear provisions of the electoral legislation in force. The on-going political crisis prevented the National Constituent Assembly from working on the new electoral law. The date of the general elections had not been fixed either.

## **20. Information on constitutional developments in other countries**

#### *Kyrgyzstan*

Mr Mukambet Kasymaliev, President of the Constitutional Chamber of the Kyrgyz Republic informed the Commission that the Constitutional Chamber, formally established in July 2011, started functioning only in July 2013 after reaching the necessary quorum (9 judges out of 11).

Mr Kasymaliev thanked the Commission for the support in preparing the legal opinions on the new Constitution of 2010 and the draft constitutional law on the Constitutional Chamber of 2011.

The Commission was informed that the Constitutional Chamber had already received a great number of complaints from individuals, legal persons and state bodies of the Kyrgyz Republic and that the number of applications was constantly increasing. The Chamber was examining several important cases on taxation, social conflicts and human rights. The Chamber had established its own website which informed the public about the work of the Chamber, its schedule and its case law.

The Chamber would like to intensify its co-operation with the Venice Commission. Mr Kasymaliev informed the members on the intention of the Kyrgyz authorities to become members of the World Conference on Constitutional Justice.

In conclusion, Mr Kasymaliev expressed his gratitude to the Venice Commission and the European Union for the support and assistance provided to the Constitutional Chamber of Kyrgyzstan.

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

Mr Buquicchio informed the Commission that the meeting of the Enlarged Bureau with the Presidential Committee of the Parliamentary Assembly had been held that morning and that the discussions were very fruitful.

Mr Mevlüt Çavuşoğlu, Former President of the Parliamentary Assembly, expressed his full satisfaction with the co-operation between the Venice Commission and the Parliamentary Assembly.

He informed the Commission about the latest developments in Turkey and said that there was no consensus at the moment for a new Constitution. However, he considered that the Turkish Parliament needed to be encouraged by the Venice Commission to ask for assistance.

Mr Christopher Chope, Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly underlined the efforts made by his Committee to encourage parliamentarians to promote the execution of judgments of the European Court of Human Rights by encouraging governments to meet their commitments. He further informed the Commission about the upcoming reports to be debated, notably a report on the extent of eavesdropping and identifying the dividing lines between absolute priority to issues of privacy and the state looking into its own security and that of its citizens.

### **22. International Conference on “Political Parties – key factors in the political development of democratic societies” (Bucharest, 18-19 October 2013)**

Mr Aurescu informed the Commission on the 3<sup>rd</sup> Intercultural Workshop on Democracy entitled “Political Parties – key factors in the political development of democratic societies” which took place in Bucharest on 18-19 October 2013. This activity brought together over 30 representatives of national parliaments and academics from Algeria, Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Palestine, Tunisia and Yemen who exchanged their experiences with a delegation of the Venice Commission, composed of its President and seven members, on international standards and national legislation and practice in the field of political parties.

The workshop was co-organised with the Ministry of Foreign Affairs of Romania, the Venice Commission and OSCE/ODIHR. Mr Titus Corlatean, Minister of Foreign Affairs of Romania had opened the conference.



### **23. Report of the meeting of the Council for Democratic Elections (5 December 2013)**

Mr Gross, President of the Council, informed the Commission on the results and conclusions of the meeting of the Council for Democratic Elections held on 5 December 2013. He underlined that a discussion had taken place on the issue of electoral lists and voters residing *de facto* abroad and in particular on the question of people remaining on electoral lists as if they were still living in the country while their habitual place of residence is located abroad.

### **24. Report of the meeting of the Scientific Council (5 December 2013)**

Mr Jan Helgesen informed the members that following the elections within the Commission, discussions would start to renew the composition of the Scientific Council, with the understanding that membership will be more open, in order to allow all those interested to participate in its work.

The Scientific Council had considered two new proposals for activities, of particular relevance and interest for the Commission: a proposal by the Supreme Court of Brazil for a conference on the role of courts in periods of social and economic tensions, involving supreme and constitutional courts from Latin America and Europe, to be held in May 2014; and a project on “judges after transitions” proposed by the Bingham Centre for the Rule of Law, to be developed in co-operation with the Venice Commission and the Centre for Constitutional Transitions at New York University School of Law. Both proposals had received the support of the Scientific Council.

### **25. Report of the meeting of the Sub-Commission on Fundamental Rights (5 December 2013)**

Ms Herdis Thorgeirsdottir, Chair of the Sub-Commission, informed the Commission of the exchanges of views related to the study on children’s rights in constitutions, under preparation at the request of the Parliamentary Assembly. In particular, the Sub-commission had discussed draft recommendations to be proposed to Council of Europe member States in the concluding part of the study. As agreed by the Sub-Commission, the draft study, taking into account the comments received from the Commission’s members, would be finalised and presented to the Venice Commission in March 2014 for adoption.

### **26. Other business**

There was no other business to be discussed.

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

The Commission confirmed the schedule of sessions for 2014 as follows:

- 98th Plenary Session 21-22 March 2014
- 99th Plenary Session 20-21 June 2014
- 100th Plenary Session 17-18 October 2014
- 101st Plenary Session 12-13 December 2014

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](#)