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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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

**SYNOPSIS OF COCOSEM SEMINARS
HELD IN CO-OPERATION WITH
CONSTITUTIONAL COURTS**

**RESUMES DES SEMINAIRES COCOSEM
TENUS EN COOPERATION AVEC LES COURS
CONSTITUTIONNELLES**

**Seminar on “The Effects of the Constitutional Court Decisions”
28-29 April 2003, Tirana, Albania**

The seminar’s aim was to raise awareness among politicians and legal professionals on the importance of the implementation of the Constitutional Court’s decisions and on the role of the Constitutional Court in a democratic society.

The event was organised upon the request of and in co-operation with the Constitutional Court of Albania.

The rapporteurs and the Albanian speakers and participants exchanged experiences and views on the binding effect of the Constitutional courts decisions and their effects in relation to other judiciary and political institutions. Reports were submitted by four Venice Commission experts:

- Mrs Eliska WAGNEROVA, Vice-President, Constitutional Court of Czech Republic;
- Ms Anke EILERS, Law Clerk at the Federal Constitutional Court of Germany;
- Mr Franc TESTEN, Judge, Supreme Court of Slovenia, former President of the Constitutional Court;
- Mr Pablo SANTOLAYA, Professor of Constitutional Law University of Cantabria, Spain;

The Albanian rapporteurs were:

- Mr. Kristofor PEÇI, Judge, Constitutional Court
- Mr. Spiro SPIRO, Judge, Supreme Court
- Mr. Njazi JAHU, Albanian Helsinki Committee

About 60 representatives of the following Albanian institutions participated in the event: the parliament, courts, High Council of Justice, General prosecutor (and his predecessor), Presidential and Prime Minister’s administrations, ministries of Justice and Foreign Affairs, the People’s Advocate, Tirana University, various NGOs.

The discussions were lively and the media coverage was quite substantial. The Council of Europe delegation and the judges of the Constitutional Court of Albania were received by the President of the Republic.

The seminar’s proceedings will be published in the CDL-JU series of the Commission’s documents and will be available on the restricted site of the Commission.

**Visit of a delegation of the Venice Commission to Belarus
Minsk, Belarus, 26-27 June 2003**

On 26-27 June 2003, a delegation of the Venice Commission visited Belarus. The delegation was composed of Mr. Lopez Guerra, Professor at the University Carlos III in Madrid and former Vice-President of the Constitutional Court of Spain, Mr. Russell, former member and President of the Sub-Commission on Constitutional Justice of the Venice Commission and Mr. Vogel, member of the Commission and Professor at the University of Lund, Sweden, the Secretary of the Commission, Mr Buquicchio, and Mr Dürr from the Secretariat. The visit had been organised following a request by the Conference of European Constitutional Courts inviting the Venice Commission to resume co-operation with the Constitutional Court of Belarus and to inform the Conference on this co-operation in view of an application by the Court for full membership with the Conference. The Conference of European Constitutional Courts is an independent body uniting practically all European constitutional courts (<http://www.confcoconsteu.org>). The co-operation between the Constitutional Court of Belarus and the Venice Commission had been suspended following the constitutional referendum in 1996.

During the first day of the visit, the delegation participated in the Conference on "Strengthening of the Principles of a Democratic State Ruled by Law in the Republic of Belarus by Way of Constitutional Control". At the Conference, the delegation presented *inter alia* a critical evaluation of the Constitution currently in force, which was hotly debated. The delegation also learned that even though the Constitution and the Law on the Constitutional Court provided only for appeals from state bodies like the President of the Republic, Parliament or the Government, the Constitutional Court had in fact extended its jurisdiction to allow appeals also from individuals. The Court had based this extension and the ensuing human rights case-law *inter alia* on articles of the Constitution, which provide that individuals can make petitions to any state body including courts.

During the second and third days of the visit, the delegation met with the Ministers of Foreign Affairs and Justice, the *Chargé d'affaires* of the Embassy of Moldova, holding the Presidency in the Committee of Ministers of the Council of Europe, the OSCE Mission in Belarus and the Belarus Helsinki Committee. During the meetings with the authorities, the delegation insisted that any co-operation could take place only on the basis of concrete issues. In this respect, the delegation took good note that shortly before the visit Belarus had submitted draft laws on the Parliament and on the ombudsman to the Commission for opinion. The delegation also reminded the authorities that the Council of Europe was still waiting for the promised submission of the Law on the Media for expertise.

Taking note of an open attitude towards European integration of several of its interlocutors, the delegation concluded that bodies like the Constitutional Court willing to make progress towards democratisation should be encouraged and assisted given the delicate political context of their endeavour.

**“Role of the Constitutional Court in the protection of democratic values”
Conference on the occasion of the 5th anniversary of
the Constitutional Court of Azerbaijan
Baku, Azerbaijan, 14-15 July 2003**

The seminar's aim was to analyse the position of the constitutional courts in the state structure and their role in the protection of democratic values.

The event was organised upon the request of and in co-operation with the Constitutional Court of Azerbaijan. Other co-organisers were the German Agency for Technical Cooperation (GTZ) and ABA-CEELI.

For the Venice Commission Mr Egidigius KURIS, President of the Constitutional Court of Lithuania, Mr Peter PACZOLAY, Hungarian Substitute member of the Venice Commission, Deputy Head, Office of the President of Hungary, Mr G. Buquicchio, Secretary of the Venice Commission and Ms T. Mychelova, External relations officer of the Venice Commission participated in the seminar.

Representatives of the constitutional courts of Georgia, Latvia, Kyrgyzstan, the Russian Federation, Ukraine and of the European Court of Human Rights took part in the seminar. The following Azeri institutions participated in the event: Milli Majlis, the Supreme and Appeal Courts and other courts, the Presidential administration, the Prosecutor's Office, the Ministries of Justice, Internal Affairs and National Security, the Ombudsperson and the Baku State University.

Apart from obvious functions of constitutional courts in the protection of democratic values like deciding on the admissibility of referenda or the suppression of political parties in some countries, the discussions focused on the position of the constitutional court in the system of democratic institutions as the guarantor of the constitution and, in particular, its role in the protection of human rights. The importance of the case-law of the European Court of Human Rights was stressed as well as the necessity to raise awareness on the Convention among the domestic legal professionals. The constitutional courts have taken the lead in the implementation of the Convention. Individual complaints to the constitutional courts have proved crucial for guaranteeing a proper level of human rights protection in some countries.

The Commission's delegation and other participants were received by the Speaker of the Parliament Mr Murtuz Aleskerov. The media coverage was substantial.

The seminar's proceedings will be published by the Constitutional Court of Azerbaijan with the assistance of GTZ, ABA-CEELI and the Venice Commission.

**“Sustaining the independence of the judiciary - co-operation
of the judiciary of the region”
Zanzibar, Tanzania, 21-22 July 2003**

Within its project to strengthen the co-operation between constitutional and supreme courts in Southern Africa, the Venice Commission organised with the Court of Appeal of Tanzania and in consultation with the Constitutional Court of South Africa funded by the Norwegian government, a conference on “Sustaining the Independence of the Judiciary - Co-operation of the Judiciary in the Region” in Zanzibar on 21-22 July 2003.

The highest courts of 11 countries - i.e. Botswana, Lesotho, Malawi, Mauritius, Namibia, South Africa, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe - were represented by 7 Chief Justices and 4 other senior judges. The Chief Justice of Zanzibar and Deputy Chief Justice of South Africa also actively participated in the Conference.

One of the main topics of the conference was **the independence of the judiciary in the region**. The situation in the region strongly varied from judiciaries being in distress to those functioning normally with some minor problems. In the course of a *tour de table* the participants shared their concerns such as strong pressure from the executive, incomplete financial autonomy, confrontations with legislature, insufficient independence of civil servants, weak infrastructure, inadequate budget, corruption, low salaries for courts’ staff, and sometimes a hostile attitude of media towards judiciary. On the other hand, current positive developments were adequate salaries for judges and courts’ staff, only isolated cases of corruption, good relations with media and NGOs, growing respect for rule of law in general and for the judiciary in particular.

The second main issue discussed by the participants was **co-operation between the judiciary in the region in general and the establishment of a forum of judges in particular**. The necessity to create a forum was expressed for some time now, notably at earlier meetings in South Africa (1999, 2001) and Zambia (2000). Lack of financial means had so far prevented the establishment of such a forum. At the same time, no funds, from international donors, could be made available without a formal structure/organisation. However, earlier this year, the Open Society Institute (Soros Foundation) had provided some limited funds to the Trust of the Constitutional Court of South Africa in order to establish a small secretariat of such a forum.

This conference made a significant progress towards establishing a forum of judges in the region and as a result the participants agreed on the following points:

Legal nature: common law association.

Title: Southern African Judges Commission (SAJC);

Aims:

- promoting contacts between courts in the Southern African region in the field of the rule of law, democracy and the independence of judiciary;
- disseminating the case law of the highest courts of the region through publication and a website;
- promoting co-operation and assistance to the Courts in the region in connection with judicial training;
- organising colloquia in the fields of common interest to strengthen links between courts;

- maintaining contacts with other institutions with similar competences in Africa and elsewhere;
- addressing the issues of administration of justice in the countries of the region

Membership: English and Portuguese speaking common law countries of the Southern African region, i.e. Angola, Botswana, Lesotho, Kenya, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe.

Presidency: rotating; the first President would serve for 2 years, the following ones – for 1 year.

Executive Board would include a previous, present and future Presidents. They would take up the governing of the Commission between yearly Conferences of Chief Justices.

Secretariat – permanent, one person, a legal professional, based at the Constitutional Court of South Africa until further decision.

Given the difficult situation of the judiciary in Swaziland, a fact-finding mission will be organised this year to Swaziland; the group representing the Commission will consist of the Chief Justices of Lesotho, Tanzania and Uganda. The delegation should try to meet with the King.

Further meetings: the official inauguration of the Commission has planned in South Africa at the end of October 2003. The next meeting of the Southern African judges – yearly Conference of Chief Justices - co-organised by the Venice Commission, will be held at the end of June 2004 in Mauritius. The participants also agreed to discuss the future Commission in the framework of other meetings of the judiciary, organised by other institutions: in August, December 2003 and March 2004.

The participants also expressed their views **on the dissemination of the case-law**. The majority of the courts faced delays in the publishing of their decisions. Several solutions were discussed by the participants. Firstly, the inclusion of the case-law into the Venice Commission database of constitutional case-law CODICES: the database has a global reach and already comprises about 4500 full decisions, 3800 summaries of decisions of 65 courts. An additional solution could be a creation of a specific website on the judicial developments in the region. Finally, courts could benefit from an e-mail forum, which could be set up and managed by the Venice Commission Secretariat, where the courts would, in confidentiality, exchange ideas and solutions to problems related to judicial practice.

Finally, the participants stated that there was a clear **need for training of judges** in order to raise ethical, professional standards of the judiciary and thus to raise the public confidence in the judiciary.

**“Constitutional Justice and Rule of Law”
Conference on the occasion of the 10th anniversary
of the Constitutional Court of Lithuania
Vilnius, Lithuania, 4-5 September 2003**

On the occasion of the 10th anniversary of the Constitutional Court of Lithuania, Court and the Venice Commission co-organised the Conference on “Constitutional Justice and Rule of Law” (4-5 September 2003, Vilnius).

The objective of the Conference was to analyse current trends in constitutional justice and their influence on the doctrine of the rule of law.

The delegation of the Council of Europe was composed of Mr L. Wildhaber, President of the ECHR, Mr L. Solyom, Hungarian member of the Venice Commission and Former President of the Constitutional Court of Hungary, Mr G. Buquicchio, Secretary of the Venice Commission, Ms T. Mychelova, External Relations Officer of the Venice Commission.

The level of participation was high: presidents and judges of 25 constitutional courts and equivalent bodies as well as the Presidents of the European Court of Human and the Court of Justice of the European Communities were present.

The reports by Mr. Solyom, the President of the Court of Justice, Mr. Iglesias and of the German Federal Constitutional Court, Mr. Papier gave a good impetus for a substantial comparative discussion on the development of constitutional justice on the national and European level.

The discussions developed around the interaction of three spheres of courts: ordinary courts, constitutional courts and European courts. In striving to protect human rights and ensuring the respect for the treaties the European courts have contributed to furthering the rule of law in Europe. As regards the projection of human rights, the case-law of the ECJ and the ECHR show that - the European “judiciary” and national constitutional courts have been mostly functioning without contradictions so far. Constitutional justice is going through a globalisation process and the CDL opinions illustrate this tendency/development.

Apart from the analyses of the current trends in constitutional justice in Europe, the Conference equally gave an opportunity to the participating courts to exchange the information on recent case-law and constitutional developments in their countries and on the international level.

Finally, the presence of the representatives of the Lithuanian executive power (President of the Republic, Prime Minister, Minister of Foreign Affairs), legislative power (Speaker of the Parliament) and the judicial power contributed to the reinforcement of the - already quite strong - position of the Constitutional Court of Lithuania vis-à-vis the state powers. The conference and received large press coverage.

The proceedings of the Conference will be published by the Constitutional Court of Lithuania with the support of the Venice Commission.

VIII^e Conférence internationale
«Les critères de base des restrictions aux droits de l'homme dans la pratique de la
justice constitutionnelle»
Erevan, Arménie, 3-4 octobre 2003

La Commission de Venise a organisé avec la Cour constitutionnelle d'Arménie la VIII^e Conférence internationale de Erevan sur « Les critères de base des restrictions aux droits de l'homme dans la pratique de la justice constitutionnelle », les 3-4 octobre 2003.

La conférence a rassemblé des représentants de 19 Cours constitutionnelles, d'anciennes et de nouvelles démocraties.

Les orateurs ont présenté les traits majeurs de la jurisprudence de leur Cour en matière de restrictions aux droits de l'homme. La Conférence a permis aux juges et aux présidents des Cours représentées d'échanger et de confronter leurs expériences et jurisprudence en la matière mais également de prendre connaissance de la variété des questions auxquelles les cours constitutionnelles ont été confrontées.

Si toutes les cours constitutionnelles ont eu à traiter des droits relatifs à la liberté d'expression ou de conscience, droits qui ont fait l'objet d'exposés spécifiques, il a été particulièrement intéressant de noter la part importante des questions liées au droit de propriété et à ses restrictions dans les nouvelles démocraties.

Une grande similarité par contre a été relevée quant aux principales techniques de garantie utilisées par les ordres constitutionnels respectifs et les Cours constitutionnelles de la grande Europe.

La qualité des présentations et des discussions consécutives ont pleinement contribué à un des objectifs majeurs de la Commission de Venise qui est d'identifier les composantes du patrimoine constitutionnel européen afin de mieux le consolider.

La délégation de la Commission de Venise était composée de :

- M. Garlicki, Cour européenne des Droits de l'Homme, Strasbourg
- Mme Gyulumyan, Cour européenne des Droits de l'Homme, Strasbourg
- M. Moerman, Cour d'arbitrage, Belgique,
- M. Cardoso da Costa, Membre de la Commission de Venise, Portugal,
- M. Riese, Cour constitutionnelle fédérale, Allemagne.

Les rapports de la Conférence feront l'objet d'une publication par la Cour constitutionnelle d'Arménie avec le soutien de la Commission de Venise.

Par ailleurs, un accord de coopération a été signé entre la Commission de Venise et la Conférence des organes de contrôle constitutionnel des nouvelles démocraties présidée par la Cour constitutionnelle d'Arménie. Cet accord a essentiellement pour objet de prévoir un échange d'informations entre les parties et l'organisation de séminaires tels que celui-ci.

La délégation de la Commission de Venise a été reçue par le Président de la République d'Arménie, M. Kotcharian ainsi que par le Président de l'Assemblée nationale, M. Baghdassaryan.

La conférence a bénéficié d'une excellente couverture médiatique, une conférence de presse a été organisée le premier jour et diffusée sur les chaînes de télévision nationales.

Le programme, la liste des participants et les rapports de la délégation de la Commission de Venise sont disponibles sur le site de la Commission de Venise, <http://www.venice.coe.int/>.

Mlle Caroline Martin était chargée de l'organisation de cette Conférence, elle peut être contactée par téléphone au +33 388 41 338 23 ou par fax au +33 388 41 37 38, ou par e-mail : caroline.martin@coe.int pour toute information complémentaire.

**Conférence internationale à l'occasion du «Cinquième anniversaire de l'adoption de la constitution albanaise – bilan et perspectives»
Tirana, Albanie, 26-27 novembre 2003**

La Commission de Venise a organisé avec la Cour constitutionnelle d'Albanie une Conférence à l'occasion du « Cinquième anniversaire de l'adoption de la Constitution albanaise – Bilan et perspectives » les 26-27 novembre 2003, à Tirana, Albanie.

La Conférence a été inaugurée par M. Alfred Moisiu, Président de la République ; M. Servet Pëllumbi, Président de l'Assemblée ; M. Fatos Nano, Premier ministre ainsi que M. Sabri Godo, co-président de la Commission constitutionnelle.

La Conférence a réuni environ 110 participants le premier jour, représentants du pouvoir exécutif, législatif, judiciaire et académique.

L'objectif de cette Conférence était principalement de tirer le bilan de cinq années de pratique de la Constitution, en présence de la plupart des membres de la Commission de Venise qui avaient accompagné le processus de rédaction constitutionnelle depuis 1991, pour, dans un deuxième temps lors d'une table ronde restreinte, identifier et évaluer les amendements constitutionnels qui pourraient être envisagés afin d'adapter le texte aux nécessités que la pratique aura relevé.

La délégation de la Commission de Venise était composée de :

- M. Bartole, membre suppléant de la Commission de Venise, Italie
- M. Batliner, ancien membre de la Commission de Venise, Liechtenstein;
- M. Russell, ancien membre de la Commission de Venise, Irlande;
- M. Polizzi, expert en droit électoral, Italie ;
- M. Locatelli, ancien directeur exécutif du Congrès des pouvoirs locaux et régionaux du Conseil de l'Europe;
- M. Traja, Juge, Cour européenne des Droits de l'Homme;
- M. Buquicchio, Secrétaire de la Commission de Venise.

La Conférence s'est articulée sur l'étude de thèmes majeurs de la vie constitutionnelle de l'Albanie : Constitution et institutions politiques, constitution et pouvoirs locaux, le rôle de la cour constitutionnelle en tant que garante de la constitution, aspects de certains droits fondamentaux, constitution et droit international, constitution et processus électoral.

La délégation avait obtenu en avance les rapports qui allaient être présentés sur chacun des thèmes cités ci-dessus et avait été en mesure de prendre ainsi connaissance des changements les plus importants que la constitution aura apporté dans la société et les institutions albanaises.

En outre, les nombreuses interventions, de représentants du pouvoir exécutif, parlementaire, de la société civile au cours de la Conférence, ont permis d'affiner encore davantage les éléments d'appréciation du texte constitutionnel.

La Conférence a révélé un consensus général pour tirer un bilan extrêmement positif de la constitution.

Des amendements constitutionnels pourraient néanmoins être prévus, sur certains points spécifiques et lors de la table ronde les participants sont convenus d'approfondir davantage la réflexion sur les quelques éléments identifiés lors de la Conférence. Sur la base de ces conclusions, des recommandations pourront être proposées et présentées aux autorités albanaises à qui il appartiendra d'évaluer l'opportunité de lancer un processus d'amendements constitutionnels.

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**Second Seminar for liaison officers of Highest Courts of the Southern African Region
Windhoek, Namibia, 28-29 November 2003**

On 28-29 November 2003, the Venice Commission organised the second seminar for liaison officers of highest courts of the Southern African region in Windhoek. Liaison officers from constitutional, supreme or appeal courts from the following countries participated in the seminar: Angola, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda und Zambia. The seminar was funded by the Norwegian and Swiss governments.

The seminar is part of the co-operation programme of the Venice Commission with constitutional courts and equivalent bodies in the Southern African region. The overall goal of this programme is to foster closer ties between these courts in view of enabling them to assist each other in case of undue interference from the executive or legislative powers. The establishment of the Southern African Judges' Commission (SAJC) uniting the presidents of these courts on 6-7 December 2003 is a major achievement in this respect. Already before the formal creation of the SAJC, the presidents of the courts undertook action in favour of their peers in Swaziland and in Zimbabwe. Ms Makhambeni represented the newly established SAJC secretariat at the Windhoek seminar.

In parallel, the programme is to enable an exchange of information between the courts in the region but also with European courts and the public at large about their case-law in constitutional matters. Again, this knowledge should strengthen the ability of the Southern African courts to hand down judgments, which may displease other state powers by being able of making reference to similar decisions taken by peer courts in other countries. The tool for this exchange is the CODICES database of the Venice Commission, which already contains more than 3900 summaries from constitutional courts and equivalent bodies in 60 countries in Europe and abroad (CD-ROM and <http://codices.coe.int>).

In this framework, the specific goal of the Windhoek seminar was to familiarise the liaison officers with the technique of preparing précis (summaries) of constitutional judgements for their inclusion in the CODICES database of the Venice Commission.

Following the opening of the seminar by the Chief Justice of Namibia, Mr. Strydom, who kindly hosted the event, the liaison officers first presented their respective court and the way it exercises constitutional - including human rights - jurisdiction. The liaison officers were invited to submit descriptions of their courts for their inclusion into CODICES.

Mr. Dürr from the Venice Commission's secretariat presented CODICES and set out the guidelines on drafting précis for inclusion into the database. On the basis of these guidelines the participants worked on summaries of important constitutional decisions submitted prior to the seminar transforming them into précis ready for inclusion into CODICES.

The liaison officers expressed their satisfaction with the practical use of the seminar and pledged to contribute further précis for the CODICES database.