

## Chapter 2. The Venice Commission

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### §1. INTRODUCTION

349. The European Commission for Democracy through Law – widely known as the Venice Commission – is probably one of the Council of Europe's most successful achievements. Created in 1990, it is an advisory body in the field of constitutional law providing opinions upon request by Member States and the organs of the Council of Europe. Since then, it has become a reference in constitutional matters and is widely respected for its independent advice.

350. In several respects, the Venice Commission has specific features within the Council of Europe. Composed of independent members rather than governmental experts<sup>1</sup> it is the only enlarged agreement<sup>2</sup> of the Council and consequently has a geographical scope which largely exceeds that of Europe. The Commission thus reaches out to its full members and observers overseas. Finally, it differs from other Council of Europe bodies in its seat, which is in Venice, Italy, rather than in Strasbourg, France.

1. There are, however, also other bodies within the Council of Europe with an independent membership, for example, the Committee for the Prevention of Torture, the Advisory Committee on the Framework Convention for the Protection of National Minorities or the Consultative Council on European Judges.
2. The Commission was created as a partial agreement, of which there are six established in the Council of Europe (in addition to seven enlarged partial agreements). See <<http://conventions.coe.int/Treaty/Commun/ListenTousAP.asp?CL=ENG>>.

351. Nevertheless, the Venice Commission is fully part and parcel of the Council of Europe as is witnessed by the high number of requests for opinion or studies from the organs of the Council. As a legal expert body, the Commission is well embedded in the context of the political organs of the Council of Europe, notably the Parliamentary Assembly and the Committee of Ministers, which regularly use it as a tool to obtain a firm legal basis on which they can build their political activity.

352. According to its Statute, the Member States and the organs of the Council of Europe can ask the Venice Commission for opinions. As to states, usually parliaments, governments or individual government ministries request opinions but the Commission also accepts requests for opinion from state institutions like constitutional courts or ombudsmen. As regards the organs of the Council of Europe, the Parliamentary Assembly and in particular its Monitoring and Legal Committees frequently ask for opinions.<sup>1</sup>

1. The Parliamentary Assembly and the Venice Commission concluded a cooperation agreement to facilitate requests for opinions by the Assembly (CDL(2004)102).

353. We can distinguish two major forms of activity of the Commission:

- (a) Constitutional cooperation with individual countries, that is giving advice to individual countries on draft constitutions, constitutional amendments as well as para-constitutional legislation, e.g., laws on the ombudsman, laws on the government, minority legislation, etc. (see paragraphs 375–379 below).
- (b) Transnational opinions or studies, which often gave the Commission the opportunity to identify standards of the Common Constitutional Heritage (see paragraphs 380–382 below).

354. Two fields of the activity of the Commission stand out from the general constitutional cooperation, both because of the quantity of work done in these domains and because of the way in which the Commission cooperates with partner institutions:

- (a) Constitutional justice, that is cooperation with constitutional courts and equivalent bodies in the framework of the Joint Council of Constitutional Justice (see paragraphs 383–386 below).
- (b) Electoral law, including legislation on political parties, usually dealt with in the Council for Democratic Elections (see paragraph 387 below).

355. Over time, the Commission has consolidated its activity and has thus contributed to the Common Constitutional Heritage, which is based on the basic principles of the Council of Europe: democracy, the protection of human rights and the rule of law.

## §2. FOUNDING AND STATUTE

356. The idea to create a Commission for Democracy through Law in the form of a group of experts in the field of constitutional law was conceived by the then Minister of [European] Community Policy of Italy, Mr La Pergola, a professor of constitutional law of outstanding international renown who *inter alia* had been Judge and later President of the Constitutional Court of Italy.<sup>1</sup> His choice of the name for the Commission was to express his conviction that sustainable democracy can only be built in a sound constitutional framework based on the rule of law.

1. The late Mr La Pergola was Member of the European Parliament from 1989 to 1994. Between 1994 and 2006 he was Advocate General and Judge at the Court of Justice of the European Communities.

357. The establishment of cooperation in the field of constitutional law was however by no means obvious within the framework of an intergovernmental organization such as the Council of Europe. Constitutional law is necessarily close to issues touching upon state sovereignty as it also deals with sensitive questions like the distribution of competencies between the executive and legislative branches of power.



358. Initially, not all Member States of the Council of Europe were in favour of creating this body. Some may have feared that foreign governments might interfere in questions like the checks and balances between President and Parliament, which then were deemed to be internal affairs *par excellence*. Given Mr La Pergola's background as a constitutional court judge, others may have feared that the Commission would turn into a tool for the 'proliferation' of specialized constitutional courts (as opposed to Supreme Courts exercising constitutional review).<sup>1</sup> Out of the then twenty-three Member States of the Council of Europe only 18 were ready to participate in the Commission when it was established in 1990.<sup>2</sup>

1. Indeed all Central and Eastern European transition countries opted for various models of such a court (only Estonia established a Constitutional Review Chamber within its Supreme Court). While the Venice Commission certainly provided encouragement and advice to a number of states on how to set up a constitutional court, the decision to establish such a body was probably driven by the states' desire to move from their previous declaratory constitutions, which listed principles which were not observed in practice, to normative constitutions, which shape the functioning of society and be observed in real life. Constitutional courts are a key instrument in guaranteeing the implementation of a constitution in real life. For doctrinal reasons, however, some reject the idea of constitutional review by courts because this would contradict the sovereignty of parliament as the representative of the people (see for example, Art. 120 of the Dutch Constitution, which excludes constitutional review of laws adopted by Parliament). The reply to this argument is that the constituent power (parliament itself with a qualified majority or the people by way of referendum) enjoys an even higher legitimacy than the ordinary legislator and constitutional review – exercised by constitutional courts or Supreme Courts – is a mere tool to ensure that the ordinary legislator respects the limits established by the constituent power.
2. Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Ireland, Italy, Luxembourg, Malta, Norway, Portugal, San Marino, Spain, Sweden, Switzerland and Turkey.

359. Therefore, the Venice Commission was first created in the form of a partial agreement,<sup>1</sup> an instrument which allows for a 'variable geometry' within the Council of Europe by permitting a group of Member States to pursue an activity only between them but nevertheless in the framework of the Council of Europe thus benefiting from its institutional structure. In order to create such a partial agreement, these countries have to seek the agreement of the Committee of Ministers as a whole.

1. For the legal basis for the creation of partial, enlarged partial and enlarged agreements see Statutory Resolution (93) 28 on Partial and Enlarged Agreements adopted by the Committee of Ministers on 14 May 1993 at its 92nd Session.

360. The formal proposal to create the Commission was made by Mr La Pergola's colleague, the Minister of Foreign Affairs of Italy, Mr Gianni de Michelis, who invited the Ministers of Foreign Affairs of the Council of Europe's Member States to a Conference for the Constitution of the Commission for Democracy through Law, which was held in his hometown, Venice, on 31 March–1 April 1989.<sup>1</sup> In the light of the pressing need to assist Central and Eastern European countries in adopting new democratic constitutions after the fall of the Berlin wall, the Committee of Ministers agreed to the creation of such a Commission in the form of a partial agreement at a further Conference in Venice on 19–20 January 1990. On 23 April 1990, the Ministers' Deputies unanimously authorized the establishment of a partial

agreement for this purpose. Finally, on 10 May 1990, the Committee of Ministers adopted the Statute of the Commission.<sup>2</sup>

1. See Document CM(89)82 on the Final Declaration of the Conference.
2. Resolution (90) 6 on a Partial Agreement Establishing the European Commission for Democracy through Law, adopted by the Committee of Ministers on 10 May 1990 at its 86th Session.

### §3. REVISION OF THE STATUTE: GEOGRAPHICAL SCOPE

361. The Statute provided for its re-examination before 31 December 1992 with a view to an integration of the Commission into the intergovernmental programme of activities of the Council of Europe. By then, all Member States had still not joined the Commission and a full integration of the Commission into the intergovernmental programme of the Council was thus excluded.<sup>1</sup>

1. By the end of 1992, Bulgaria, Germany, Hungary and Liechtenstein had joined the Commission and brought its membership to twenty-two states out of the then twenty-six Member States of the Council of Europe. Iceland, the Netherlands, Poland, which had become a member of the Council of Europe only shortly before, and the UK were not yet members of the Commission.

362. Following the accession of the originally hesitating states and once the Russian Federation had joined the Commission on 1 January 2002, the membership of the Venice Commission and that of the Council of Europe coincided. In the light of the strong interest expressed by non-Member States of the Council of Europe in the work of the Venice Commission, the Committee of Ministers decided to convert the partial agreement into an enlarged agreement.<sup>1</sup> In its Resolution (2002) 3 on the revised Statute of the Commission,<sup>2</sup> the Committee of Ministers wished 'to give to these states the possibility to take part in the work of the Commission on an equal footing'. Indeed, by then the Commission had already a dozen non-European observers: Argentina, Canada, the Holy See, Israel, Japan, Kazakhstan, the Republic of Korea, Kyrgyzstan, Mexico, the US and Uruguay as well as South Africa with a similar cooperation status.<sup>3</sup> While observer status was abolished in the revised Statute, existing observers were allowed to retain this status.<sup>4</sup> However, in practice they are invited only to one of the four annual sessions in December.

1. Full membership of a partial agreement is open only to Member States of the Council of Europe whereas an enlarged agreement necessarily comprises all Member States of the Council but allows for full membership of non-Member States of the Council (Art. I of Statutory Resolution (93) 28). New Member States of the Council of Europe become full members of an Enlarged Agreement by virtue of their accession to the Council itself (this implies also budgetary contributions). Montenegro as well as Monaco thus already automatically became full members of the enlarged agreement by virtue of their accession to the Council of Europe.
2. Adopted by the Committee of Ministers on 21 Feb. 2002 at the 784th meeting of the Ministers' Deputies.
3. The special cooperation status of South Africa stems from the time when the President of the Venice Commission, Mr La Pergola, was in the country together with Henry Kissinger and Lord Carrington to mediate between the ANC, Inkatha and the National Party. The Committee of Ministers then authorized the Commission to cooperate with South Africa. This mandate was the basis for a very intensive cooperation with that country, which eventually turned into



cooperation with Constitutional and Supreme Courts of the Southern African region in general. Content with this state of affairs, South Africa never formally sought observer status; its special cooperation status is in fact equivalent to it.

4. Article 2.8 of the revised Statute.

363. The conversion of the partial agreement to an enlarged agreement allowed for the accession of non-European states as full members of the Commission. Therefore on 1 January 2004, Kyrgyzstan became the first non-European full Member State of the Venice Commission, followed by Chile in 2005, the Republic of Korea in 2006, Morocco and Algeria in 2007, Israel in 2008, Peru and Brazil in 2009 as well as Mexico and Tunisia in 2010. This brings the current membership of the Venice Commission to fifty-seven states.

364. In fact, the Venice Commission's activities go beyond non-European members and observer states. The interest of non-European constitutional courts and equivalent bodies was so strong that the Commission cooperates with bodies uniting such courts in Africa, Asia and the Americas.<sup>1</sup> In the field of constitutional justice (see below), the activities of the Venice Commission are therefore nearly of a global scope.

1. See below in the chapter Constitutional Justice, Regional Co-operation, paras 385–386.

365. As concerns its opinions, the Commission is clearly most active in Central and Eastern Europe. This is understandable because after the fall of the Berlin wall, former communist countries had an urgent need for the adoption of new, democratic constitutions and they often lacked the experience in drafting such texts. Following a first wave of new constitutions, the Commission is now engaged in constitutional amendments, which are to solve remaining problems or which adapt constitutions to the rapidly changing needs of society. The largest number of opinions relates to the Balkans, the Caucasus and Ukraine. Although the Commission's Statute does not restrict its activity to Central and Eastern Europe, in practice however, it has been active only in a few of the old Member States of the Council of Europe. Opinions relating to Belgium<sup>1</sup> and Liechtenstein<sup>2</sup> were requested not by the countries concerned but by the Parliamentary Assembly. However, Finland<sup>3</sup> and Luxembourg<sup>4</sup> themselves requested opinions relating to their Constitutions. When the Government of Luxembourg requested three opinions in 2002,<sup>5</sup> they expressly pointed out that the Venice Commission is available for advice also to old Member States of the Council.

1. Opinion on Possible Groups of Persons to which the Framework Convention for the Protection of National Minorities could be applied in Belgium, adopted by the Venice Commission at its 50th Plenary Meeting, Venice, 8–9 Mar. 2002 (CDL-AD(2002)001).

Note: All documents cited here are available on the public website of the Commission <[www.venice.coe.int](http://www.venice.coe.int)>. The Commission's document codes always start with the abbreviation CDL (French acronym for Commission européenne pour la Démocratie par la Loi), which can be followed by a code designating the sub-commission to which the document was presented. Texts adopted by the Commission become public immediately after their adoption. Until 2002 they were published in the CDL-INF series, since then in the CDL-AD series.

2. Opinion on the Amendments to the Constitution of Liechtenstein proposed by the Princely House of Liechtenstein, adopted by the Venice Commission at its 53rd Plenary Session, Venice, 13–14 Dec. 2002 (CDL-AD(2002)032).

3. Opinion on the Constitution of Finland adopted by the Venice Commission at its 74th Plenary Session, Venice, 14–15 Mar. 2008 (CDL-AD(2008)010).
4. Interim Opinion on the Draft Constitutional Amendments of Luxembourg adopted by the Venice Commission at its 81st Plenary Session, Venice, 11–12 Dec. 2009 (CDL-AD(2009)057).
5. Opinion on the Draft Law of Luxembourg on the Protection of Persons in Respect of the Processing of Personal Data: Endorsed by the Venice Commission at its 51st Plenary Session, Venice, 5–6 Jul. 2002 (CDL-AD(2002)019), Opinion on the Draft Law of Luxembourg on Freedom of Expression in the Media – Endorsed by the Venice Commission at its 51st Plenary Session, Venice, 5–6 Jul. 2002 (CDL-AD(2002)018) and the avis sur le projet de la Loi n° 4832 relative à la mise en place d'un médiateur au Luxembourg, adopté par la Commission de Venise lors de sa 52ème réunion plénière, Venice, 18–19 octobre 2002 (CDL-AD(2002)022).

#### §4. VENICE AS THE SEAT OF THE COMMISSION

366. According to Article 8.3 of the revised Statute, the seat of the European Commission for Democracy through Law is Venice and Article 6.3 provides that 'the Regione Veneto shall put a seat at the disposal of the Commission free of charge. Expenditure relating to the local secretariat and the operation of the seat of the Commission shall be borne by the Regione Veneto and the Italian Government, under terms to be agreed between these authorities'. Since its creation, with a single exception,<sup>1</sup> the Venice Commission held all its meetings in Venice. The seat of the Commission is the *Scuola Grande San Giovanni Evangelista* in Venice,<sup>2</sup> which the Regione Veneto puts at the disposal of the Commission for its four annual sessions, usually in March, June, October and December.

1. 13th Meeting, held in Warsaw on 21–22 May 2003.
2. The Scuola Grande di San Giovanni Evangelista was the seat of an important law guild founded in 1261. The magnificent interior includes the grand staircase by Codussi (around 1498), which leads to the hall, restyled around 1787 by Massari.

367. Article 8.1 of the revised Statute provides that '[t]he Commission shall be assisted by the Secretariat General of the Council of Europe...'. Given that the Council of Europe has its seat in Strasbourg the offices of the Secretariat of the Commission are located there as well. The Commission has no offices in Venice.<sup>1</sup>

1. And not even a postal address, which is sometimes difficult to understand for interlocutors who would like to contact the Commission at its seat.

#### §5. INDEPENDENT MEMBERSHIP

368. Article 2 of the revised Statute provides that '[t]he Commission shall be composed of independent experts who have achieved eminence through their experience in democratic institutions or by their contribution to the enhancement of law and political science. The members of the Commission shall serve in their individual capacity and shall not receive or accept any instructions'. Indeed, the list of members of the Venice Commission reads like an excerpt from the 'who's who' in constitutional law. It seems that governments pride themselves on appointing



high-level experts of great renown. A large majority of the members are either judge at a Constitutional or Supreme Court or eminent professor of law. While the statute mentions law and political science on an equal footing, the Commission has a clear majority of lawyers. Political scientists as members are rather the exception. This fact has certainly contributed to shaping the working methods of the Commission, which coherently uses a legal methodology. The organs of the Council, especially the Parliamentary Assembly, which is at the origin of the highest number of requests, welcome this approach, insisting that they expect a sound legal basis for their political assessment from the Venice Commission.

369. A few countries have chosen to appoint high-level civil servants or even active Ministers. While such appointments could cast doubt on the independence of these persons, in practice the Commission has not experienced problems as to their independence, probably due to the high level of professionalism in the Commission and a feeling of collegiality between the members. A member who would blindly defend the interests of the government that appointed him or her would quickly lose all credibility within the Commission.<sup>1</sup>

1. Nevertheless, during the preparation of the revised statute, Mr Jurgens, then representative of the Parliamentary Assembly at the Plenary Sessions of the Venice Commission, suggested that the members of the Commission be elected by the Assembly in order to enhance their status and their independence. However, the Committee of Ministers did not follow this suggestion.

370. The members are appointed by the governments for a period of four years. They can be reappointed. The Member States shall also appoint a substitute member. On two occasions, governments did try to replace their member who had fallen into 'disgrace' at home. The Commission vigorously rejected these attempts. After the expiry of the term of office, the Member State is however free to appoint a different person.<sup>1</sup>

1. It is to be regretted that out of the fifty-seven members only twelve are women.

## §6. STANDARDS

371. The standards which the Venice Commission applies are first and foremost those of the Council of Europe: democracy, the protection of human rights and the rule of law. In the field of human rights, the European Convention on Human Rights and the case law of the Strasbourg Court of course provide guidance. In other fields, the Commission has had to identify elements of the Common Constitutional Heritage.

372. The Commission has learned to live with the diversity of constitutional systems in Europe, which it does not see as a problem but as a rich asset. The Commission never provides a model solution but will only comment on basic choices made within the country concerned. Therefore, the Venice Commission fully accepts for instance various systems of governance, be they presidential, semi-presidential or parliamentary. What it will however insist on is that the concrete

implementation of such a system within a country remains coherent and allows for sufficient checks and balances between the state powers. When the Commission criticizes texts, which give important powers to the executive, without adequate control mechanisms, the drafters of these texts sometimes refer to another European country with a semi-presidential system as a model. The Commission will then typically reply that that country has the benefit of settled legal traditions, which will restrain the political forces from abusing the possibilities the Constitution might offer. A country in transition, however, typically still lacks such legal traditions. Often, it will therefore be necessary to provide for more explicit rights of mutual control. The Venice Commission is thus open to various solutions but will insist on 'minimum standards' of the Common Constitutional Heritage.<sup>1</sup>

1. See Opinion on the possible follow-up to Parliamentary Assembly Recommendation 1629 (2003) on 'Future of Democracy: Strengthening Democratic Institutions' adopted by the Venice Commission at its 58th Plenary Session, Venice, 12–13 Mar. 2004 (CDL-AD(2004)015, paras 9–11); Opinion on Draft Constitutional Amendments concerning the Reform of the Judicial System in 'the Former Yugoslav Republic of Macedonia' adopted by the Commission at its 64th Plenary Session, Venice, 21–22 Oct. 2005 (CDL-AD(2005)038), para. 47.

373. In addition to these standards, the Commission will however also provide practical advice. The common knowledge of its members enables it to point out any elements in a draft constitutional setup which might prevent it from functioning efficiently without being contrary to any standard. This comparative method enables the Commission to point out that certain solutions have worked more or less smoothly in other states.

374. Usually, the Commission adopts its opinions by consensus. Voting on opinions is rather rare within the Commission. Objections to specific parts of an opinion are often taken into account in the final version of the adopted text.

#### §7. CONSTITUTIONAL COOPERATION WITH INDIVIDUAL COUNTRIES

375. The Venice Commission assists and advises its Member States in constitutional and para-constitutional matters. The Commission endeavours to assist these countries in bringing their constitution and legislation as close as possible to the principles of the Council of Europe. The Commission never imposes a solution on a country, but adopts a non-directive approach based on dialogue. Its rapporteurs typically visit the country concerned, where they meet not only with the authorities but also with the opposition and civil society. These visits allow the rapporteurs to adapt their comments to the specific situation and needs in each country.

376. Upon receipt of a request for an opinion, the Commission will first establish a small group of rapporteurs – usually between two and four of its members – and sometimes also outside experts. These rapporteurs first draft their individual comments.<sup>1</sup> On the basis of the members' comments and the results of the rapporteurs' visit to the country concerned, the Secretariat in Strasbourg will draw up a single, consolidated draft opinion.



1. Members' individual comments usually become restricted documents, which means that they are not available to the general public during the year following their publication.

377. This draft opinion is then forwarded to the requesting authorities who may make any remarks. Depending on the complexity of the issue, the draft opinion is then either referred to a sub-commission<sup>1</sup> or directly presented to the Plenary Session, which will discuss and adopt the opinion, often with the participation of representatives of the country concerned. Whenever there are new developments concerning an adopted opinion, the Secretariat will report to the Plenary Session under the agenda item 'Follow up to previous opinions'.

1. In addition to the two joint organs (Joint Council on Constitutional Justice and Council for Democratic Elections) the following sub-commissions have been established: Democratic Institutions, Human Rights, Judiciary, Federal and Regional State, Protection of Minorities, International Law, External Relations, Administrative and Budgetary Questions.

378. Occasionally, the Venice Commission also acts as a legal adviser to the European Union in its mediation efforts for the settlement of ethno-political conflicts. In such cases, the advice of the Commission is sought to mould possible political compromise between the parties of the conflict into constitutional shape.<sup>1</sup> Standard models like autonomy or federalism are often rejected from the outset by one of the parties. Tailor-made agreements have therefore to be offered in order to convince both sides. This advice often does not result in the formal adoption of an opinion but is directly reflected in the results of the negotiations.

1. For example, Kosovo, 'the Former Yugoslav Republic of Macedonia', State Union of Serbia and Montenegro.

379. Sometimes the Commission's assistance is needed within very short deadlines. This is why the Venice Commission is also referred to as a 'constitutional fire brigade' or as a provider of 'constitutional first-aid'. As such, the opinions of the Venice Commission are non-binding but sometimes the political organs of the Council of Europe will refer to them in the framework of their monitoring procedures and thus press for the implementation of the recommendations made by the Venice Commission.<sup>1</sup>

1. For example, the Opinion on the Amendments of 9 Nov. 2000 and 28 Mar. 2001 to the Constitution of Croatia, adopted by the Venice Commission at its 47th Plenary Meeting, Venice, 6–7 Jul. 2001 (CDL-INF (2001)015), the Opinion on the Reform of the Judiciary in Bulgaria, adopted by the Commission at its 38th Plenary Meeting, Venice, 22–23 Mar. 1999 (CDL-INF(1999)005) or the Opinion on the Constitutional Aspects of the Death Penalty in Ukraine, adopted by the Commission at its 33rd Plenary Meeting, Venice, 12–13 Dec. 1997 (CDL-INF(1998)001rev). [note: since the revision of its Statute, the Commission refers to its Plenary Sessions rather than its Plenary Meetings.]

#### §8. TRANSNATIONAL STUDIES AND OPINIONS: DEFINING THE COMMON CONSTITUTIONAL HERITAGE

380. While the majority of requests for opinions<sup>1</sup> relate to individual states, over time, requests for general opinions or studies have given the Commission the

opportunity to identify – if not to define – standards in the field of constitutional law, which constitute the Common Constitutional Heritage.

1. Article 3.1 of the revised Statute allows the Commission to undertake studies at its own initiative as this was the case for example with its Study on the Composition on Constitutional Courts, *Science and Technique of Democracy*, no. 20.

381. Important examples of such studies are the Report on the Preferential Treatment of National minorities by their kin-State, which for the first time comprehensively dealt with the issue of kin-minorities,<sup>1</sup> and the Opinion on the Protection of Human Rights in Emergency Situations,<sup>2</sup> where the Commission set out strict criteria for the limitation of human rights in such cases. Moreover, in its Opinion on PACE Recommendation 1713 (2005) on the Democratic Oversight of the Security Sector in Member States,<sup>3</sup> the Commission has undertaken a study on internal security services, which complements its study of 1997 on Internal Security Services in Europe<sup>4</sup> in the light of new challenges since 9/11. In this context, the two opinions on the International Legal Obligations of Council of Europe Member States in respect of Secret Detention Facilities and Inter-State Transport of Prisoners<sup>5</sup> (generally referred to as the CIA renditions opinion) and the Opinion on the possible need for further development of the Geneva Conventions,<sup>6</sup> which rejects proposals that a new category of ‘enemy combatants’ – as the persons held in Guantanamo – existed and would warrant a revision of the Geneva Conventions, should be mentioned. In the field of the judiciary, the Commission adopted a report on judicial independence<sup>7</sup> and it currently works on a report on individual access to constitutional justice, which is to deal with the issue how individual complaints on the national level can be a relief for the overburdened European Court of European Rights.

1. Adopted by the Venice Commission at its 48th Plenary Meeting, Venice, 19–20 Oct. 2001, CDL-INF(2001)019.
2. CDL-AD(2006)015, adopted by the Venice Commission at its 66th Plenary Session, Venice, 17–18 Mar. 2006.
3. CDL-AD(2005)033, adopted by the Venice Commission at its 64th Plenary Session, Venice, 21–22 Oct. 2005.
4. CDL-INF(1998)006, adopted by the Venice Commission at its 34th Plenary Meeting, Venice, 7 Mar. 1998.
5. CDL-AD(2006)009, adopted by the Venice Commission at its 66th Plenary Session, Venice, 17–18 Mar. 2006.
6. CDL-AD(2003)018, adopted by the Venice Commission at its 57th Plenary Session, Venice, 12–13 Dec. 2003.
7. CDL-AD(2010)004, adopted by the Venice Commission at its 82nd Plenary Session, Venice, 12–13 Mar. 2010.

382. Sometimes, such studies are presented and discussed during UniDem (Universities for Democracy) seminars and later published in the Commission’s *Science and Technique of Democracy* series. In its UniDem Campus held in Trieste, the Venice Commission trains civil servants from the Balkans on issues of constitutional law and on other topics related to the activities of the Council of Europe.<sup>1</sup> Often in the presence of the requesting authority, the Commission discusses the draft opinion at one of its plenary sessions – sometimes after having scrutinized it in a meeting of one of its sub-commissions.



1. Recent seminars were held on: Interregional and Transfrontier Co-operation: Promoting Democratic Stability and Development (February 2010); The Protection of the Fundamental Rights of Irregular Migrants (November 2009); The Independence of the Judicial System from the Executive and Legislative Power (September, 2009).

#### §9. CONSTITUTIONAL JUSTICE

383. A further branch of the Commission's activities includes cooperation with constitutional courts and equivalent bodies. Since its creation, the Venice Commission has been aware that it is not sufficient to assist states in the adoption of democratic constitutions but that these texts have to be implemented in society. While the implementation of a constitution is incumbent on all state agencies, constitutional courts and equivalent bodies are key players for the control of this implementation.

384. As early as 1991, the Commission started to collect and disseminate constitutional case law and to organize seminars with constitutional courts. The Commission fosters mutual exchanges between the constitutional courts and – when necessary – supports courts under undue pressure by other state powers.<sup>1</sup> Three times a year, it publishes the *Bulletin on Constitutional Case-Law* and the database CODICES, which report on important constitutional decisions. The fully searchable database CODICES (<[www.CODICES.CoE.int](http://www.CODICES.CoE.int)>) already contains about 7,000 judgments, court descriptions, constitutions and the laws on the courts searchable via the Systematic Thesaurus of the Commission and in full text.

1. For example, Declaration on behalf of the Constitutional Court of Ukraine: <[www.venice.coe.int/files/2005\\_12\\_17\\_ukr\\_declaration\\_appointment\\_cc\\_judges\\_E.asp](http://www.venice.coe.int/files/2005_12_17_ukr_declaration_appointment_cc_judges_E.asp)>.

385. The Commission's activities in the field of constitutional justice are directed by the Joint Council on Constitutional Justice, which is a mixed body, composed of members of the Venice Commission and liaison officers appointed by courts from more than fifty countries, as well as the European Court of Human Rights, the Court of Justice of the European Communities as well as the Inter-American Court of Human Rights.

386. Due to the strong interest from non-European constitutional courts in its activities, the Venice Commission established cooperation with the Association of Constitutional Courts using the French language (ACCPUF), the Southern African Chief Justices Forum, the Conference of Constitutional Control Organs of Countries of Young Democracy (CIS countries), Association of Asian Constitutional Courts and Equivalent Bodies, the Union of Arab Constitutional Courts and Councils, the Ibero-American Conference of Constitutional Justice and the Conference of Tribunals of Countries of Portuguese Language. The partner courts are usually invited to contribute to the CODICES database. In January 2009, the Venice Commission invited all its partner courts as well as Commonwealth courts to the first World Conference on Constitutional Justice in Cape Town, hosted by the Constitutional Court of South Africa. On the basis of a declaration adopted there, a Bureau uniting these groups was mandated to prepare a Statute for the World Conference

as a permanent body. A second World Congress is scheduled for January 2011 in Rio de Janeiro, Brazil.

#### §10. ELECTORAL MATTERS

387. For any democratic society, free and fair elections are of paramount importance. Therefore, the Commission made electoral legislation an important field of its activity and promotes European electoral standards within its Member States. The Commission defined the principles applicable to democratic elections in its Code of Good Practice in Electoral Matters<sup>1</sup> and a number of other electoral standard-setting texts<sup>2</sup> as well as a Code of Good Practice and guidelines on political parties.<sup>3</sup> It also drafts opinions and recommendations on the electoral legislation of member countries and organizes training seminars targeting all the actors involved in the electoral process. To a large extent these activities are carried out through the Council for Democratic Elections, a joint body set up in cooperation with the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe.

1. Code of good practice in Electoral Matters: Guidelines and Explanatory Report – Adopted by the Venice Commission at its 52nd session, Venice, 18–19 Oct. 2002 (CDL-AD(2002)023rev).
2. Report on Electoral Law and Electoral Administration in Europe -Synthesis study on recurrent challenges and problematic issues Adopted by the Council for Democratic Elections at its 17th meeting (Venice, 8–9 Jun. 2006) and the Venice Commission at its 67th Plenary Session, Venice, 9–10 Jun. 2006 (CDL-AD(2006)018); Opinion on Parliamentary Assembly Recommendation 1704 (2005) on Referendums: towards good practices in Europe adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 Oct. 2005) and the Venice Commission at its 64th Plenary Session, Venice, 21–22 Oct. 2005 (CDL-AD(2005)028); Referendums in Europe – An analysis of the legal rules in European States – Report adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 Oct. 2005) and the Venice Commission at its 64th Plenary Session, Venice, 21–22 Oct. 2005 (CDL-AD(2005)034).
3. Code of Good Practice in the field of Political Parties adopted by the Venice Commission at its 77th Plenary Session, Venice, 12–13 Dec. 2008 (CDL-AD(2009)021). Guidelines on prohibition and dissolution of political parties and analogous measures, adopted by the Venice Commission at its 41st Plenary Session, Venice, 10–11 Dec. 1999 (CDL-INF(2000)001); Guidelines and Report on the Financing of Political Parties: adopted by the Venice Commission at its 46th Plenary Meeting, Venice, 9–10 Mar. 2001 (CDL-INF(2001)008); Guidelines and Explanatory Report on Legislation on Political Parties: some specific issues, adopted by the Venice Commission at its 58th Plenary Session, Venice, 12–13 Mar. 2004 (CDL-AD(2004)007rev); Report on the Participation of Political Parties in Elections adopted by the Council for Democratic Elections at its 16th meeting (Venice, 16 Mar. 2006) and the Venice Commission at its 67th Plenary Session, Venice, 9–10 Jun. 2006 (CDL-AD(2006)025).

#### §11. CONCLUSION

388. Clearly, several factors have contributed to the Venice Commission's success: its independent membership, its integration into the structures of the Council of Europe, its open approach based on dialogue and the acceptance of constitutional diversity, but a key factor was certainly timing: the fall of the communist regimes gave the Commission ample opportunity to prove its usefulness to its Member



States and the organs of the Council of Europe and thus to establish its current reputation.

389. Over the years, the experience gained in cooperating with the new Member States has allowed the Commission to identify common standards, which are applicable and needed all over Europe. This consolidation of the Common Constitutional Heritage is far from completed. Apart from contributing to democratic transition in Central and Eastern Europe, this consolidation will probably remain the major lasting achievement of the Venice Commission.

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by  
Sixteen staff members of the Council of Europe  
Edited by Tanja E.J. Kleinsorge

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