

## THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (THE VENICE COMMISSION)<sup>1</sup>

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The European Commission for democracy through law was officially founded in Venice at the conference of ministers of foreign affairs of the Council of Europe members in 1990 January 19-20. Witnesses of the event say, that this idea occurred even before the fall of Berlin wall, however the right time for its implementation had come later. The greatest deserts of the initiative in the foundation of the commission belonged to the minister of European affairs of Italy, former justice and Chairman of the Constitutional Court of Italy Prof. Antonio La Pergola. It is worth mentioning that he became the first Chairman of the Commission and still remains him. Nowadays his main occupation is in Luxembourg – he is a member of the European court of justice. The Commission in most cases is called the Venice Commission according to the place of its foundation and the because the plenary meetings usually take place in Venice.

On May 10th of 1990 the Committee of ministers of the European Council adopted a resolution (90) 6 “ On a partial agreement establishing the European Commission for democracy through law and approved the statute of the Commission. It has been established, that the Venice Commission is a consulting institution, co-operating with the member states of the European Council and with the states, that had not yet become member states, especially with the states of Central and East Europe. The most important sphere of its activity – guarantees provided by law, which stimulate the development of democracy.

The Commission while fulfilling its activities must aim at the following goals: investigate legal systems of the above mentioned states so that they would be co-ordinated; get acquainted with their legal cultures; study problems, which arise in the functioning of

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democratic institutes in order to establish and develop the latter. It has been also established in the Statute, that the Commission must give the priority to the following spheres of activities: constitutional principles and means of legislation in order to ensure more effective functioning of democratic institutes; principles of the rule of law; public rights and freedoms, especially those, which ensure participation of citizens in the activity of public institutes; role of local and regional self-government in the development of democracy. Methods and procedures of the work are established by the Venice Commission. It's working languages – English and French.

Venice Commission has the right to make research or present conclusions and recommendations on its initiative or at the request of the Committee of ministers of the European Council, Parliamentary Assembly, Secretary General or any of the member states of the European Council. On the approval of The Committee of minister's non-member states and various intergovernmental organisations may also apply to the Venice Commission. The Commission may establish relations with various institutes and centres of documents, studies and researches.

The Commission consists of independent experts, who have international recognition due to their work, related to democratic institutes, experience or merits in the development of law or sciences of politics. Each member state of the European Council, which has signed the partial agreement, assigns a member expert at the Commission. On the unanimous agreement of the Committee of ministers, non-member states may also participate in the work of the Commission. On the decision of the Venice commission such states may appoint their representatives to the Commission as associated members or observers. It should be noted, that there were 18 European states that became the members of the Commission upon its foundation. Today there are 37 of them. Five more states (Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina and Georgia) have their associated members at the Commission and other seven (Vatican, Japan, Canada, Argentina, USA, Kirghizia, Uruguay) – observers.

Basic work form of the Commission is plenary meetings, which are held 3-4 times per year and usually take place in Venice. Organisational matters are at the responsibility of Veneto region and the Government of Italy. The residence of the Commission secretariat is in Strasbourg. Legal department of the European Council. There are following subcommissions

created for investigation of separate issues: Constitutional reforms, Democratic institutes, Constitutional justice, Federal and regional state, Minority defence, International law and UniDem council (for relations with educational institutions). Each year the Commission submits a report on its activities to the Committee of ministers in which the main directives for future activity are presented as well. Representatives of the Committee of ministers and Parliamentary Assembly permanently participate at plenary meetings of the Commission.

The attention of the Venice commission is basically concentrated at the establishment of such fundamental principles as democracy, human rights and the rule of law. There are two ways of fulfilling the functions of the Commission:

- 1) co-operating with concrete states;
  - 2) investigating general problems using comparative law study methods.
- Contacts with concrete states are usually established on the initiative of the said states, i. e. upon their request to present conclusions and recommendations on the prepared constitution project, constitutional amendments and other basic legal act projects, etc. Such contacts are constantly initiated by the Committee of ministers or Parliamentary Assembly, i. e. these institutions ask the Venice Commission to present its conclusions on legal acts of concrete states, evaluate them according to the above mentioned principles. It should be mentioned that the Venice Commission is not a political institution, therefore its evaluations and conclusions have purely legal expertise nature, usually based on democratic or universally recognised principles of constitutional or international law.

However, competent institutions of the European Council occasionally present certain political evaluations and decisions upon the conclusions of the Venice commission experts. Belarus could be a recent example. In 1996 the project of a new constitution of this country received a negative evaluation by the Venice Commission. Namely that was a basis for Parliamentary Assembly to pass a decision concerning suspension of a special guest status of Belarus in the Council of Europe after the above mentioned constitution had been passed. Some issues related to evaluation of Bosnia and Herzegovina legal acts have similar, i. e. political aspects. Questions of constitutional development of Balkan states (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Serbia, Macedonia) lately are included into an agenda of each plenary meeting of the Commission and sometimes constitute a significant part of it.

Another big group of states which problems are constantly being solved by the above-mentioned Commission are countries of Central and East Europe, including Baltic States. The Venice commission actively participated during constitutional reforms in the said countries, preparing and considering laws regulating human and citizen rights, legal acts regulating issues of national minorities, solving tasks of legal system reforms. In 1992 the project of a constitution of the Republic of Lithuania was an object of consideration of the Venice commission. In the course of consideration of the said project notes and suggestions, that have been pointed out, were for the most part related to some aspects of legal status of persons and some moments in co-ordination relations between state powers. All recommendations were taken into considerations later perfecting the project of the Constitution. That is the reason why hearing evaluations of national and foreign specialists stating, that the constitution of Lithuania corresponds to the basic qualities or European constitution model and established human rights and freedoms in fact do not differ from those of international standards, we must remember, that the Venice commission contributed to the development of the basic law of Lithuania.

Our nearest neighbour – Latvia – co-operated with the Venice commission for quite intensively and for a long period. The Commission monitored the Citizenship law and projects of its amendments; legal status of persons, who did not have the citizenship, but permanently resided in Latvia; status of national minorities etc. However, most of these issues were considered in the Venice commission on the initiative of institutions of the European Council.

After declaring, that Estonia is allowed to begin a real procedure of joining the European Council, the Venice commission considered whether there were no legal impediments for this country to join structures of West Europe. Even upon positive evaluations of the Venice commission Estonia was obliged to make some provisions of Estonian constitution conform the basic legal principles of the European Union. Besides, the Venice commission considered questions of constitutional development in other countries of this region – Czech, Poland, Slovakia, Hungary, Romania – as well.

The Venice commission pays special attention to the countries that became free from totalitarian regimes: Moldova, Russia, the Ukraine, and earlier – Belarus. The Commission considered projects of constitutions and many of their most important laws of all the said countries. The Venice commission intensively co-operates with Armenia, Azerbaijan

and Georgia. The Commission has established relations with countries of Middle Asia – Kirghizia and Kazakhstan.

Relations of the Commission have been lately even expanding: collaboration was established with states of Africa and Latin America. Relations with South Africa were established in 1993. Since 1996 the Venice commission together with Switzerland have been fulfilling a program "Democracy: from law-books to real life" in South Africa. In 1998 the representatives of Mozambique parliament applied to the Venice commission making a request for methodical support fulfilling constitutional reform in their country. Argentina and Uruguay also became interested in the activities of the Commission, therefore they have their representatives in the observer status at the Commission.

The Venice commission on its initiative and on the initiative of institutions of the European Council fulfils investigations of general international problems. Some of them may be mentioned: "Protection of minorities rights", "The relationship between international and domestic law", "Emergency powers", "Law and foreign policy", "Participation of minorities in public life", "The composition of Constitutional courts", "Federal and regional states", "Constitutional law and European integration", "Parliamentary immunity", "Restrictions of activity of political parties" "Financing of political parties", etc. Some investigations are fulfilled on the initiative of scientific institutions, the Venice commission helps to organise seminars and conferences together with UniDem program. So far about 20 investigations have been fulfilled and their materials have been published in the series of publications of the European Council as publications of the Venice commission. One of such seminars – "Citizenship and state succession" – was organised by the Venice commission together with the Institute of international relations and political sciences of Vilnius University in 1997 in Vilnius.

Relations of the Venice commission with constitutional courts should be mentioned separately. They are established through a corresponding subcommission of constitutional justice, which pays special attention to newly founded courts and organises special seminars. Beside that, the secretariat of the Venice commission has the data of all constitutional courts, i. e. a new Documentation centre is being formed. The data is transferred by Internet and issued in CD-ROM. The Venice commission has its publication "Bulletin on Constitutional Case Law" in English and French. 44 constitutional courts (or analogous institutions) from all

over the world submits the information to the Bulletin through their special representatives. The publication is issued three times per year.

The Venice commission maintains work relations with European conference of constitutional courts. The Commission co-operates with these institutions not violating its independence.

As has already been mentioned, the Venice commission is non-political, independent institution of expertise nature. Its decisions, prepared documents are interpreted as recommendations. However, these recommendations are followed, countries show free will implementing them. Occasionally institutions on the European Council refer to them as well. Therefore it may be concluded, that the Venice commission successfully fulfils its program provisions on the development of democratic principles and ideas, strengthening of democratic institutes in Europe and even further.