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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

in co-operation with

THE SOUTHERN AFRICAN JUDGES COMMISSION

MEETINGS of the SAJC:

**Exchange of views with
the Venice Commission**

**Exchange of views with
the European Court of Human Rights**

Working meeting of the SAJC

**17-20 March 2006
Venice, Strasbourg**

SYNOPSIS

Within the programme of cooperation with the Southern African Judges Commission (SAJC) funded by the Irish and Italian governments, the Venice Commission has organised a visit of the Chief Justices, members of the SAJC to Europe. The aims of the visit were threefold:

- to hold an exchange of views with the Venice Commission during its 66th plenary session (Venice, 17-18 March 2006);
- to exchange views with the European Court of Human Rights (Strasbourg, 20 March 2006) and
- to hold a working meeting of the SAJC (Strasbourg, 20 March 2006).

1. Exchange of views with the Venice Commission during its 66th plenary session (Venice, 17-18 March 2006)

The Permanent Representative of Ireland to the Council of Europe, Ambassador Sharkey, welcomed the participation of the SAJC members in the session and recalled the outstanding contribution of the Venice Commission to the transition of Central and Eastern European countries towards democracy. The Commission's role in this process was also appreciated by the European Union. At the same time, the Commission's action in the Southern African region, which had started in 1994, was less known but was developing fruitfully. The presence of the SAJC at this plenary session highlighted the success of this line of action of the Commission. The Ambassador stressed that Europeans could not only share their experiences with Africans but were also happy to learn from them.

The Permanent Representative of Italy to the Council of Europe, Mr Lonardo, welcomed the SAJC members on behalf of the Committee of Ministers of the Council of Europe, noting that the simultaneous presence of the representatives of the Union of Arab Constitutional Courts and Councils was an opportunity not only for an exchange with Europe but even between these sub-regions.

Mr Buquicchio conveyed the gratitude of the Venice Commission to the governments of Norway, Ireland and Italy for their financial support of the Commission's activities in the Southern African region. Mr. La Pergola recalled his participation in the passage of South Africa from an apartheid regime to democracy and expressed his high appreciation for the Constitutional Court of South Africa.

Introducing the presentations on the constitutional review in common law countries and countries with specialised constitutional courts, Mr La Pergola noted that constitutional review had been 'invented' by the US Supreme Court and had spread to the common law countries. The scholar Kelsen had been the author of an alternative to the US system, by introducing centralised constitutional review. Today constitutional justice was spreading beyond Europe and became a universal phenomenon. The distinction between the two models was gradually diminishing.

The President of the Constitutional Court of South Africa and President of the SAJC, Mr Langa, started his presentation (CDL-JU(2006)*) by thanking the participants for their generous remarks concerning his Court. He also expressed gratitude to the Commission for its support of the SAJC which he hoped would continue. He recalled the history of the creation of the Constitutional Court of South Africa and its competences as well as its exceptional role in the certification of the present, democratic Constitution. After the abolition of apartheid, the Constitutional Court had been the first judicial institution in which South Africans had confidence and which remedied the old legal culture where judges were not independent and proper judicial review was not exercised.

The President of the Constitutional Court of Slovakia and member of the Venice Commission Mr Jan Mazak outlined the advantages and disadvantages of centralised constitutional review (CDL-JU(2006)*) and gave a comparative analysis of the competences of specialised constitutional courts, which had the advantage of providing legal certainty as to the validity of legislation. The method of composition of the courts had to be balanced in order to give the court the necessary legitimacy to strike down acts of parliament. Drawbacks were an increase in the length of procedures and possible problems with ordinary courts. He pointed out that mixed models deserved a more extensive analysis and could be the subject of a future study.

The Chief Justice of Uganda, Mr Odoki, expressed the hope that the SAJC would lead to a yet more independent judiciary in Africa and that the Venice Commission could inspire judgments by the African courts. Mr Jowell and other participants noted that the exchange of views between Europe and Africa was a two way street, they had much in common and things to learn from one another. For example, tensions between the judiciary and other branches of state power were common to many jurisdictions. Competences in the field of socio-economic rights were an interesting feature of African courts.

During the discussion the representatives of the SAJC stressed the importance of the present enriching exchange of views, thanked the Commission for its support and informed the Commission of the particularities of constitutional review by their respective courts.

2. Exchange views with the European Court of Human Rights (Strasbourg, 20 March 2006)

Several judges of the European Court of Human Rights took part in the meeting, which was chaired by Vice President of the Court, Mr C.L. Rozakis. Four judges gave presentations on various aspects of the Convention, namely:

- John Hedigan – on private life v. freedom of the press;
- Dean Spielmann – the Convention and Criminal Law;
- Sverre Erik Jebens – the right to cross-examine witnesses in criminal proceedings;
- Ineta Ziemele – issues relating to Article 3 of the Convention.

Each presentation was followed by discussion. The SAJC members appreciated the exchange and especially were interested in the case-law of the ECHR evoked during the discussion. The Court registry representatives put at the disposal of the SAJC members the HUDOC data base on CD-ROM. The participants agreed that such exchanges were useful should be continued in the future.

3. Working meeting of the Southern African Judges Commission (Strasbourg, 20.3.2006).

The members of the SAJC discussed the first draft Guidelines on Addressing Issues of Concern among Member States of the SAJC, prepared by a working group composed of the Chief Justice of Uganda Mr Odoki and the Chief Justice of Namibia Mr Shivute. Certain amendments were suggested and participants agreed to adopt the final text at the next meeting of the SAJC.

The Chief Justice of Namibia presented a report on the pilot visit to Namibia on the South African Electronic Law Reports Project.

There was a question raised as to the modification of the name of the Commission. The Commission could have, as the Venice Commission does, a full and a shorter title. The full title had to contain a reference to the Chief Justices as da facto they were the members of the Commission. “Zanzibar Commission” was suggested as a shorter title. The judges also were presented with a proposal for a logo of the SAJC.

It was announced that the Coordinator of the SAJC Ms Ruth Makhambeni would be leaving the Commission in September 2006. The participants thanked her for her contribution to the functioning of the SAJC.

The next meetings of the SAJC in 2006 could take place in Mozambique and Mauritius. The Venice Commission was asked to coordinate the dates and the place of the meetings.

The participants expressed their gratitude to the Venice Commission for the support in general and for the organisation of the meetings in Europe in particular.