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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

WORKING PAPER

**ON THE PROVISIONAL COURT
OF HUMAN RIGHTS
OR THE ENLARGEMENT OF
THE CONSTITUTIONAL COURT OF CROATIA**

**prepared by
the Secretariat**

**Provisional Court of Human Rights
or
Enlargement of the Constitutional Court**

Following the conclusions of the Report on the implementation of the Constitutional Law on human rights and freedoms and on the rights of national and ethnic communities and minorities in the Republic of Croatia, drawn up by Messrs Matscher, Malinverni and Nicolas, the Croatian delegation stated at the 27th meeting of the Commission in Venice that it would be difficult for Croatia to embark on a constitutional reform that modified the membership of the Constitutional Court by extending it to include international judges.

As suggested in the Opinion of the rapporteurs, however, the delegation proposed having international experts participate in the work of the Constitutional Court in an advisory capacity when the Court deals with cases concerning the protection of minority rights.

On the subject of advisers to the Constitutional Court of Croatia as already provided for in the rules of procedure of the Constitutional Court of Croatia (see document CDL(96)30), see in particular articles 4, 8, 10, 11, 14, 26, 42, 43, 47, 67, 72.

On the enlargement of the Constitutional Court to international advisers, the following points will be examined:

1. Legal status of international advisers:
 - 1.1. Status of international advisers at the Constitutional Court
 - a. Appointment of international advisers (competent authority, procedure, criteria, qualifications)
 - b. Number
 - c. Term of office
 - d. Responsibilities & Privileges and Immunities
 - e. Remuneration.
 - 1.2. Functions of international advisers
 - a. Presence of advisers during debates and hearings
 - b. Participation of advisers in deliberations
 - c. Presentation of advisers' opinion prior to the Court's ruling?
 - d. Publication of the advisers' opinion
 - e. Possibility of attaching the advisers' opinion to the Court's decision.

2. Jurisdiction of the enlarged Court:

2.1. *Rationae materiae*

All matters related to minority rights: violation of a right enshrined in constitutional law or in the Constitution (notably article 15), or of rights recognised in duly ratified international treaties.

2.2. *Rationae personae*

All applicants belonging to a minority.

2.3. Decision to convene the advisers

- a. By the Constitutional Court?

Ex officio?

. At the request of the parties?

- b. By another body?

3. Functioning of the Constitutional Court

- a. Study of the rules of procedure of the Constitutional Court at 4 March 1994.

- b. Current modus operandi of the Constitutional Court, in general and in the field of minority rights in particular.
Statistical data - assessment of needs.

- c. Amendments to the rules of procedure of the Constitutional Court, in the light of the enlargement of the Chamber, in order to make participation by the international advisers mandatory in the circumstances referred to in paragraph 2.

- d. Reference to the international advisers in other texts (eg the revision of the suspended provisions of the Law of 1991 relating to human rights and freedoms and the rights of national and ethnic communities or minorities in the Republic of Croatia)?

The more general questions of procedure and the examination of applications by the Constitutional court may be addressed for the record.