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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**DRAFT ANNUAL REPORT
OF ACTIVITIES 2003**

I. WORKING FOR DEMOCRATIC STABILITY – AN OVERVIEW OF VENICE COMMISSION ACTIVITIES IN 2002

The European Commission for Democracy through Law, better known as the Venice Commission, is a Council of Europe body, composed of independent experts. It was established just after the fall of the Berlin wall to promote democracy, the rule of law and respect for human rights. From the very beginning it focused on assisting the new democracies in Central and Eastern Europe in the area of constitutional law without excluding co-operation with other countries.

With respect to 2003 the following main activities should be highlighted:

Constitutional reform

While nearly all Central and Eastern European countries have adopted new Constitutions following the end of the one-party rule, this process is not yet quite complete. In Serbia and Montenegro, following the adoption of the Constitutional Charter of the State Union, the member states still have to adopt new Constitutions. The Venice Commission was involved in work on drafting a new Constitution for Serbia.

In some countries important issues with respect to the separation of powers and the role of the various state organs are still not definitively resolved. Throughout 2003 the Venice Commission examined the various proposals for revising the Constitution of Ukraine. The Venice Commission was - and remains - involved in the constitutional reform process in Armenia.

Other countries are undertaking more technical revisions of their Constitution, for example in the prospect of future accession to the EU. In 2003 the Commission worked closely with Romania on its constitutional reform.

Settlement of Conflicts

A number of ethno-political conflicts in Europe require for their settlement changes to the constitutions or legislation of the respective countries. In 2003 the Venice Commission was involved in efforts to resolve the status of Transnistria in the framework of a new federal Constitution for Moldova. It also provided an assessment of the new Constitution of Chechnya.

Holding of free elections

Free and fair elections are the basis of any democracy. In 2003 the Commission further stepped up its activities in the electoral field, acting in close co-operation with the Office of Democratic Institutions and Human Rights (ODIHR) of OSCE. This concerned in particular the three countries in the Southern Caucasus but also Moldova, Ukraine and Albania.

Standard-setting

The Code of Good Conduct in Electoral Matters, adopted by the Commission in 2002, was accepted as the main reference document for electoral law by the Parliamentary Assembly, the Committee of Ministers and the Congress of Local and Regional Authorities.

Promoting the Rule of Law

The Commission reviewed a large number of laws of different European states. It continued to support, and work with, constitutional courts in old and new democracies through the Joint Council on Constitutional Justice and the CODICES database. In 2003 the Commission was involved in the reform of the judicial system in Bulgaria.

Respect for Human Rights

The Commission reviewed the laws of a large number of countries on topics such as the protection of minorities, the Ombudsman institution, religious freedom or freedom of association, using both the European Convention on Human Rights and the experience of European democracies as yardsticks. It adopted opinions on the implications of a legally binding human rights charter of the EU and the further development of the Geneva Conventions on prisoners of war and civilians in armed conflicts.

Looking beyond Europe

The Commission continued and intensified its co-operation with Constitutional and Supreme Courts and associations of such courts outside Europe, facilitating in particular, thanks to a contribution from Norway, the setting up of a judicial conference in Southern Africa following the model of the Commission. Its seminar on European and American constitutionalism provided a unique opportunity for a transatlantic dialogue on legal matters. The Committee of Ministers invited Kyrgyzstan to become the first non-European member state of the Commission.

II. COUNTRY SPECIFIC ACTIVITIES

1. ALBANIA

a. *Election Law and Administration*

The final meeting of the Bipartisan Committee for Electoral Reform took place in March in Tirana. The Venice Commission and its partner, the OSCE/ODIHR, participated with a view to bringing the electoral law and practices in Albania in line with European standards. The meeting focused in particular on complaints and appeals, the composition of election commissions, voters' lists and simplification of the election system.

Following this meeting, the Venice Commission, in co-operation with the Albanian Central Election Commission, organised a training workshop on elections, which took place in early September 2003 in Tirana, approximately six weeks before the Albanian local elections. Approximately 30 persons participated in the first part of the workshop, which was a specialised session dealing with electoral disputes and was aimed at members of the Central Election Commission and the Electoral Appeal Body as well as experts of the Constitutional Court. Approximately 50 persons participated in the second part, which dealt with electoral disputes, composition and functioning of election commissions as well as the electoral process itself including vote-counting, and was aimed at a broader public (including representatives of political parties and NGOs as well as members of the CEC and local election commissions).

b. *The Constitutional Court*

In April 2003 the Venice Commission held a joint seminar entitled the "Effects of the Decisions by the Constitutional Court". The aim of the seminar was to raise interest in and awareness of the role of the Court and respect for its decisions by the executive and legislative branches of government as well as by other courts. This was especially important as Albania had been criticised in a EU report for non-execution of a Constitutional Court decision and the Venice Commission had expressed concern about the matter¹.

Representatives from all parts of society were present at the seminar and took an active part in the discussion. There was excellent media coverage: the number of correspondents was high, and a clear message was passed onto the public: unconditional respect for the Constitutional Court's decisions.

At the June Session of the Venice Commission, the President of the Constitutional Court of Albania thanked the Venice Commission for its contribution to strengthening democratic institutions in Albania, in particular, for the letter sent by the President of the Venice Commission expressing his concern about the non-execution of the decisions of the Constitutional Court. Since then, the situation had considerably improved. Both the Speaker of Parliament and the President had expressed their recognition of the Constitutional Court as the guardian and final interpreter of the Constitution.

Following the successful joint seminar held in April, the Constitutional Court and the Venice Commission co-organised a Conference in Tirana on 26-27 November 2003, entitled "on the

¹ See the 2002 Annual Report.

Occasion of the 5th Anniversary of the Adoption of the Constitution of Albania: Stocktaking and Perspectives”. The conference was opened by the President of the Republic, the President of Parliament, the Prime Minister and Co-President of the Constitutional Commission. There were 110 participants, made up of representatives of the legislature, the executive, the judiciary and academic institutions.

The aim of the conference was, firstly, to take stock of five years of Constitutional practice in Albania in the presence of most of the members of the Venice Commission who have been assisting in the drafting of the Constitution since 1991; and secondly, in a small round table, to identify and assess the constitutional amendments that might be foreseen as a response to the needs identified in the five-year practice.

The conference dealt with what are the main constitutional issues in Albania: the Constitution and political institutions; the Constitution and local authorities; the role of the Constitutional Court as the guarantor of the Constitution; the nature of selected fundamental rights; the Constitution and international law; and the Constitution and the electoral process.

There was an extremely positive assessment of the Constitution. However, some constitutional amendments could be foreseen. The round table discussed amendments and drew conclusions.

The conference received excellent media coverage, including a press conference, which was televised on national channels.

2. ARMENIA²

a. *Constitutional reform*

At the June Session, it was recalled that in 2001 the Venice Commission had worked together with the Armenian authorities on the preparation of a revised Constitution of the Republic of Armenia. In Armenia, constitutional amendments may only be adopted by referendum. The referendum for the adoption of the revised Constitution, based on a somewhat different text, took place on 25 May 2003. The majority required for the adoption of the amended Constitution had not been reached at the referendum. The Armenian authorities were determined to make a further attempt at constitutional reform on a far broader basis involving the opposition. In order to re-launch the reform process, the Venice Commission agreed with the Armenian authorities to co-organise a conference on “Constitutional Reforms in Armenia” in Yerevan on 21 January 2004. The topics of the conference include: the need for constitutional reforms in Armenia; European standards on presidential regimes as opposed to parliamentary democracies; the

² *The following opinions concerning Armenia were adopted by the Commission during 2003:*

- *Opinion on the Law of the Republic of Armenia on Political Parties, (CDL-AD (2003) 5), adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003).*

- *Opinion on the Draft Law on the Human Rights Defender of Armenia, (CDL-AD (2003) 6), adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003), prepared on the basis of comments by Ms Serra Lopes.*

- *Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia by the OSCE/ODIHR and the Venice Commission (CDL-AD (2003) 21), adopted by the Commission at its 57th Plenary Session (Venice, 12-13 December 2003), prepared on the basis of comments by Mr Krennerich.*

relations between the Armenian Constitution and the European Convention on Human Rights; constitutional guarantees for an independent and impartial judiciary; and constitutional guarantees for local self-government. The conference is aimed at discussing the principle objectives of the constitutional reform with the majority and the opposition. The draft amendments to the Constitution will be first submitted to the Commission for an opinion and subsequently to parliament for the purpose of organising a referendum before June 2005.

b. *Draft law on the human rights defender of Armenia*

At its March Session, the Commission adopted the Opinion on the Draft Law on the Human Rights Defender of Armenia, (as it appears in CDL-AD (2003) 6), prepared on the basis of the comments of Ms Serra Lopes. The Commission had commented on an earlier draft Law in 2001³, and the comments not taken into account in the new draft Law were still valid, such as those relating to a more open formulation of the standing to bring a matter before the Public Defender and to introducing less restrictive provisions for the possibility for the Public Defender to take up issues on his/her own initiative. The opinion adopted by the Commission in 2003 dealt with the provisions that had been modified. The possibility for the Ombudsman to apply to the Constitutional Court was seen as a very positive element.

The most crucial outstanding issue was the appointment of the Ombudsman. The draft Law contained a significant improvement by providing for the appointment of the Public Defender by the Parliamentary Assembly in a vote with a qualified majority of the members of parliament. That was the solution preferred by the Venice Commission; however, it could not be implemented under the present Constitution. Pending the entry into force of the new Constitution, the opinion provided for the compromise solution of appointment of the Ombudsman by the President in consultation with the groups and factions represented in the National Assembly⁴ subject to the conditions that the draft Law makes it clear that the appointment is a temporary one, the mandate ends with the election of a successor by Parliament and the tasks of a president-appointed Ombudsman are purely technical (setting up the structures of the office and not dealing with any cases). At the March session of the Commission Mr Tuori recalled that a transitional solution such as the one in the opinion had already been envisaged in July 2002. Mr Heidenhain stressed that the ODIHR had reservations as to the transitional solution and its preference was not to appoint an Ombudsman at all, pending the entry into force of the revised Constitution.

At its October Session, the Commission was informed that the latest version of the Ombudsman Law as adopted in its second reading was in accordance with the Venice Commission's recommendations. In order to respect the requirements of the existing Constitution, the text provided that, pending the adoption of the new Constitution, the first Ombudsman would be appointed by the President in consultation with the parties represented in Parliament.

c. *The law of the Republic of Armenia on Political Parties*

At its March Session, the Commission adopted the Opinion on the Law of the Republic of Armenia on Political Parties, (as it appears in CDL-AD (2003) 5). The Vice Speaker of the

³ See CDL (2001) 26.

⁴ The same conclusion had been reached in 2002 by a working group set up by the Venice Commission: see CDL (2002) 109.

National Assembly of Armenia invited the Venice Commission to prepare an opinion as to whether the Law on Political Parties, as adopted by the National Assembly in July 2002 and amended in December 2002, was in accordance with the main recommendations of the Venice Commission⁵. A large number of the Commission's main recommendations had been taken into account in the text of the new Law; however, two main concerns remained. The first was the provision providing for the denial of state registration to parties having provisions in their Charter or Programme that run contrary to the Constitution, the laws or do not comply with the state registration requirements set out in the Law on Political Parties. Such a statutory provision might be used to prevent the registration of political parties aiming for the peaceful change of the constitutional order. The second concern was the provision providing for the forced dissolution and confiscation of the property of parties that do not participate in two subsequent parliamentary elections or fail to receive at least one percent of the votes in either of two subsequent parliamentary elections. The opinion recommended that the Law be amended so as to eliminate or modify those two provisions.

d. *Election law and administration*

At the request of the Constitutional Court of Armenia, the Venice Commission sent experts to Armenia in March 2003 to answer questions raised by judges handling the case of Mr Demirtchian, who was a candidate at the presidential elections and contested the results. Those questions were limited to general questions concerning the electoral dispute: international experience relevant to the admissibility of the application, the jurisdiction and competence of the Court to receive and weigh evidence adduced by the applicant and possible outcomes of the application concerning the electoral dispute. While the experts answered general questions on the electoral dispute and advised the Court as to the techniques used to resolve such cases, they did not determine, interfere with or influence the outcome of the case in question.

An electoral training workshop was held in Yerevan on 5-8 May 2003. Its purpose was to reduce the risk of election fraud and irregularities in the 25 May parliamentary election, so as to avoid a situation similar to that of the February and March presidential elections. The participation in the seminar was not very high, in particular regarding that of electoral administrations, judges, candidates and political parties.

At its December Session, the Commission endorsed the Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia, (CDL –AD (2003) 21), prepared by the OSCE/ODIHR and the Venice Commission on the basis of comments by Mr Krennerich.⁶ These Recommendations were elaborated following Resolution 1320 (2003) of the Parliamentary Assembly of the Council of Europe, which invites the Venice Commission to formulate opinions concerning possible improvements to legislation and practices in particular member states or applicant countries.⁷ The Commission transmitted the Joint Recommendations to the Armenian authorities. The Joint Recommendations identified the most problematic issues in the electoral law in Armenia and provided recommendations both on the legal and

⁵ *It should be recalled that in June 2002, Mr Tuori and Mr Vogel submitted on behalf of the Commission comments on the draft Law of the Republic of Armenia on Parties: see CDL (2002)90 and CDL (2002)89.*

⁶ *The Joint Recommendations had been adopted by the Council for Democratic Elections: see CDL-EL (2003) rev2 and CDL (2003) 52.*

⁷ *Point 11.ii.b.*

administrative framework of elections.⁸ The Joint recommendations listed a number of points in need of revision, *inter alia*, the unbalanced composition of election commissions (amendments should be made to increase their independence, their impartiality and the representativeness of their decisions); the redrawing of constituencies (amendments should be made so that the procedure for doing so is more precise, transparent, allows for a maximum deviation of only 10% to 15% in the number of voters between constituencies and that constituencies be established 180 days before the election); the deadline for appointing the Central Election Commission after the elections; the guarantee of the rights of observers and proxies as well as the posting of results at the polling stations.

In January 2004 ODIHR and the Venice Commission will meet with the Armenian authorities to discuss the implementation of the recommendations and further co-operation.

e. *Seminars, Conferences and Workshops*

In October 2003, the 8th Yerevan International Conference was held. The topic was “Basic Criteria of Limitation of Human Rights in the Practice of Constitutional Justice”. The speakers presented the major trends in their Constitutional case-law as to the limitation of human rights. This enabled the judges and the presidents of courts present to exchange information on their experiences and case-law on the subject, and to appreciate the wide range of issues with which constitutional courts were faced. The discussion focused on the freedom of expression and conscience and the right to property. The papers presented at the conference will be published by the Constitutional Court of Armenia, with the support of the Venice Commission.

⁸ *Most recommendations of the Joint Assessment made by the OSCE/ODIHR and the Venice Commission, CDL-AD (2002), have been incorporated into the Joint Recommendations.*

3. AZERBAIJAN⁹

a. *Election law and administration*

The co-operation between Azerbaijan and the Venice Commission in electoral matters, which had already begun in 2000, continued in 2003. In 2002 the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE (the OSCE/ODIHR) and the Venice Commission adopted two joint assessments¹⁰ on two different versions of the draft Election Code and submitted them to the Azeri authorities for their consideration. Some recommendations had been implemented, but further improvements to the Election Code were needed. The OSCE/ODIHR and the Venice Commission prepared a list of main recommendations for a meeting on the draft Election Code on 13-14 February 2003 in Strasbourg. After meeting with the Azeri drafters of the Code on 26-27 February 2003, a summary was prepared of the main recommendations implemented and the main recommendations that remained to be implemented.

In February 2003 the Venice Commission Secretariat was represented at a “Practical Scientific Conference” on the draft electoral code. Held in Baku, this Conference allowed the public to be informed on the draft code and the position of the authorities, the opposition and international experts.

At its March Session, the Commission formally adopted the main recommendations for amendments to the draft electoral code of Azerbaijan and decided to forward them to the Azeri authorities. These recommendations highlighted the basic points on which a revision of the draft electoral code was necessary. In particular, they underlined the need to revise the composition of the electoral Commissions, to ensure concrete measures against electoral fraud such as inking voters’ fingers, to clarify the questions of appeals and to ensure the proportionality of sanctions. They also pointed out the need for further simplification of the Code.

The Electoral Code was adopted by the national parliament (Milli Majlis) on 27 May 2003. The Code governs the conduct of referendums and parliamentary, presidential and municipal elections. Since its first draft appeared, the Electoral Code has undergone substantial changes, partly in response to the recommendations and suggestions from the OSCE/ODIHR and the Venice Commission, and from other organisations.

In September 2003 the Venice Commission organised an electoral training workshop in collaboration with the Central Electoral Commission of Azerbaijan, the Office of the Secretary General’s Representative in Baku and the Council of Europe’s Directorate General of Legal

⁹ *The following documents concerning Azerbaijan were adopted by the Commission during 2003:*

- *The Main Recommendations for Amendments to the draft Electoral Code of Azerbaijan, (CDL-AD (2003) 3, prepared by the OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 54th Plenary Session (Venice, 14-15 March 2003).*

- *Joint Final Assessment of the Electoral Code of the Republic of Azerbaijan, (CDL-AD (2003) 15), prepared by the OSCE/ODIHR and the Venice Commission on the basis of comments by Mr Georg Nolte, Mr Eugenio Polizzi, Mr Joe Middleton and Mr Rumens Maleev, adopted by the Commission at its 56th Plenary Session (Venice, 17-18 October 2003).*

¹⁰ *CDL (2002)131 and CDL (2002) 35.*

Affairs and Directorate General of Human Rights. The participants included representatives of non-governmental organisations, candidates, political parties and media as well as members of the Central Electoral Commission, lower commissions and election judges. However, the participation by opposition parties and candidates was not very high. The seminar dealt with topics such as candidates, voters, election campaigns, polling day, vote count and declaration of results and electoral disputes.

At its October Session, the Venice Commission adopted the Joint Final Assessment on the Electoral Code of the Republic of Azerbaijan, prepared by the OSCE/ODIHR and the Venice Commission, on the basis of comments by Mr Georg Nolte, Mr Eugenio Polizzi, Mr Joe Middleton and Mr Rumen Maleev.

This assessment states that the implementation of a large number of recommendations demonstrated the willingness of the authorities to bring the code closer in line with international standards and best practices. A large majority of the recommendations have been implemented as to the registration of candidates. As to the registration of voters the recommendation to reduce the number of voters in each polling station to 1,500 was followed. As to the electoral campaign and finance, the Code makes comprehensive provision for all aspects of the election campaign, including rules on equal access to the mass media and prohibitions on its abuse and reasonably detailed regulation on campaign finance. The rules in the Code concerning finance reporting are very ambitious; indeed, some may be too ambitious. Many measures were incorporated into the Code as enhancing transparency on election day: the use of transparent ballot boxes, reinforcement of the safeguards such as the use of the mobile ballot, the numbering of ballot papers; the publication of precinct results within two days of the election; and the prohibition of persons other than voters, commission members, accredited observers and the police at polling stations on election day. Nevertheless, it was regrettable that provision on inking voters' fingers was not adopted, as it is an effective solution to avoid multiple voting.

Some recommendations had not been taken into consideration and should be considered by the authorities in future legislative reviews. Amongst the most important are the following.

Firstly, with respect to the composition of electoral commissions, the aim of consensual decisions has not been achieved: the parliamentary majority has complete control over the composition of the election administration. The Code effectively preserves the pre-existing arrangements, which were subject to acute criticism in the past. The provisional solution (which will operate until 2005) adopts some of the suggestions in a draft model put forward by the OSCE/ODIHR and Venice Commission. However, unlike the draft model, that solution appears to give control of the commissions to the present parliamentary majority.

Secondly, the rules in the Electoral Code itself on observation of elections are not problematic; however, the ban in another text on observation by NGOs receiving foreign financing is problematic. This breaches paragraph 10.4 in the 1990 OSCE Copenhagen document.

Thirdly, the appeal procedures do not seem to be efficient enough. While the complaint system shows some improvements, it is a time-consuming procedure requiring a complainant first to lodge a complaint with the precinct commission, then an appeal with the constituency commission, then an appeal with the CEC. Only when the complaint has been rejected by the CEC may the complainant apply to a court (Court of Appeal) for a remedy. The Code should ensure direct access to a court to ensure effective and prompt protection of electoral rights.

Fourthly, although the drafters shortened the Electoral Code, it is still very long, cumbersome and detailed. Its use by election officials, candidates and potential complainants may be difficult: the authorities should publish concise summaries of the Electoral Code.

The Commission stressed that an electoral law, even one which is in conformity with international standards, is of limited value without proper implementation. Regrettably, this point was once again demonstrated during the presidential elections in Azerbaijan on 15 October.

b. *Draft law on the Constitutional Court*

Following the comments made by the Venice Commission in 2001 in an opinion on the draft Law on the Constitutional Court of Azerbaijan, a revised draft law on the Constitutional Court was prepared incorporating some of the recommendations made. The Commission adopted an opinion on this revised draft law in 2002.¹¹ The new law was finally adopted by the Milli Mejlis (the national parliament) on 23 December 2003. In accordance with the recommendations of the Commission the new law, *inter alia*, provides for direct appeals by citizens to the Constitutional Court. It also gives other courts and the Ombudsman the possibility to bring questions or cases before the Constitutional Court.

c. *Seminars, Conferences and Workshops*

On the occasion of the 5th anniversary of the Constitutional Court of Azerbaijan, a seminar on the “Role of the Constitution Court in the Protection of Democratic Values” was held in Baku in July 2003. Eight Constitutional Courts, the ECHR, members of the Venice Commission and its secretariat and about 50 persons from all Azeri state structures and layers of the national judiciary participated in the seminar. Apart from obvious functions of the constitutional courts in the protection of democratic values such as deciding on the admissibility of referendums 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. There was substantial media coverage, and the proceedings of the conference will be translated and published by the Constitutional Court with the support of the Venice Commission, the GTZ (German Agency for Technical Co-operation) and ABA-CEELI.

4. BELARUS¹²

a. *The draft law on the National Assembly of the Republic of Belarus*

At the October Session of the Venice Commission, after the Belarusian authorities indicated that the Venice Commission’s opinions and proposals would be carefully examined by Parliament,

¹¹ *Opinion on the draft law on the Constitutional Court of the Republic of Azerbaijan, (CDL (2002) 5), adopted by the Commission at its 50th Plenary Session (Venice, 8-9 March 2002).*

¹² *The following opinion concerning Belarus was adopted by the Commission during 2003:*

- *Opinion on the draft law on the National Assembly of the Republic of Belarus (CDL-AD (2003) 14), adopted by the Commission at its 56th Plenary Session (Venice, 17-18 October 2003).*

the Commission adopted an opinion on the draft law on the National Assembly of the Republic of Belarus. This opinion was drawn up at the request of the Belarusian authorities and on the basis of comments made by Mr O. Dutheillet de Lamothe, Mr G. Malinverni and Mr L. Omari. The conclusions in the opinion may be summarised as follows.

Firstly, insofar as the draft law on the National Assembly was drawn up on the basis of the 1994 Constitution of the Republic of Belarus, as amended by referendum on 27 November 1996, the Venice Commission can only repeat the criticisms that it made in its opinion adopted on 15-16 November 1996.¹³

Secondly, the draft law not only reinforces the tendency that has already been observed to over-concentrate power in the hands of the President of the Republic, it also provides in meticulous detail for presidential or executive interference at every stage of the existence, the exercise of power and the operation of the legislature.

Thirdly, in addition to enshrining an executive and a President of the Republic whose presence – and power – extend, in particular, into every area of parliamentary life, the law also serves to greatly reduce not only the autonomy of the legislature, but its competencies and activities as well.

Fourthly, the presence, too, of additional provisions that defy traditional notions of the separation of executive, legislative and judicial powers indicates a scant regard for the basic rules of democracy that are part of the European constitutional heritage.

Lastly, from a technical point of view, the Commission considers that the lengthy and at times excessively detailed nature of the draft is not conducive to clarity. Repetition of constitutional provisions and references to the latter should be avoided. The organisational details of the Chambers' activities would be better dealt with by the Chambers themselves, in their rules of procedure.

b. *Co-operation between the Venice Commission and the Constitutional Court of Belarus*

Co-operation between the Venice Commission and Constitutional Court of Belarus had been suspended following the constitutional referendum in 1996. Following the request by the Conference of European Constitutional Courts inviting the Venice Commission to resume co-operation with the Constitutional Court of Belarus and to report on that co-operation in the light of a request for full membership of the Court with the Conference, the Venice Commission organised a visit to Belarus by a delegation and organised a conference in Belarus in June 2003.

This visit took place shortly after Belarus had submitted the draft laws on the Parliament and the ombudsman to the Venice Commission for opinion. At the conference entitled “Strengthening of the Principles of a Democratic State Ruled by Law in the Republic of Belarus by way of Constitutional Control”, the delegation presented, *inter alia*, a critical report on the separation of powers, which was hotly debated. The delegation took note that even though the Constitution

¹³ In 1996 the Commission gave an opinion on the draft amendments to the 1994 Belarus Constitution (the basic points of the presidential draft revision were subsequently approved by a republic-wide referendum on 24 November 1996) and was highly critical of the bicameral system which the constitutional revision sought to introduce, mainly because of the clearly dominant role assigned to the President and the executive in general, in relation to Parliament, without any of system of checks and balances (see CDL-INF (1996) 8, para 12-24).

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. In its meetings with public authorities, the delegation stressed that any co-operation could take place only on the basis of concrete issues.

Taking note of the open attitude of some of its interlocutors, the delegation concluded that bodies, such as the Constitutional Court, that were willing to make progress towards democratisation should be encouraged and assisted. The Venice Commission reported on the visit to the Conference of European Constitutional Courts.

5. BOSNIA AND HERZEGOVINA¹⁴

a. *Draft Framework law on Higher Education*

The authorities in Bosnia and Herzegovina asked the Venice Commission to prepare an opinion on the constitutional problems raised by the apportionment of responsibility for education within the Federation of Bosnia and Herzegovina. That apportionment is a legal obstacle to the submission of the draft law on higher education, which has been prepared at State level, to the legislative authorities of Bosnia and Herzegovina.

In its October Session, the Commission adopted the opinion on the Transfer of Responsibility in the Field of Higher Education within the Federation of Bosnia and Herzegovina (CDL-AD(2003)17), prepared on the basis of comments made by Mr Jean-Claude Scholsem. The opinion first took stock of the internal problems connected with the allocation of responsibility for education in the Federation of Bosnia and Herzegovina, and then considered the most appropriate way of solving those problems. The opinion may be summarised as follows.

Firstly, under the current Federation Constitution, higher education falls within the responsibilities of the cantons. Secondly, although it would be a cumbersome process, revision of the Federation's Constitution is to be recommended in order to establish the Federation's responsibility for higher education clearly, unambiguously and irreversibly. Thirdly, while a delegation of competencies by the cantons would also be legally possible, it would require all 10 cantons to take parallel and strictly identical action, and it might even be considered reversible. Lastly, whatever the method chosen, very special attention must be paid to the financial aspects of the transfer made of responsibilities. As education is a large item of the budget, resolving the issue of responsibilities in the field (or, in a part of it, such as higher education) without at the same time resolving the financial aspects would risk leading to a chaotic situation.

¹⁴ *The following opinion concerning Bosnia and Herzegovina was adopted by the Commission during 2003:*

- *Opinion on the Transfer of Responsibility in the Field of Higher Education within the Federation of Bosnia and Herzegovina based on comments by Mr Jean-Claude Scholsem (CDL-AD (2003) 17), adopted by the Venice Commission at its 56th Plenary Session (Venice, 17-18 October 2003).*

Mr Arnaut, Chief of Cabinet, Ministry of Civil Affairs in Bosnia and Herzegovina, was present at the meeting. He agreed that delegation by the individual cantons did not provide sufficient legal certainty and that amending the Constitution was a far better solution. However, it would be difficult to ensure that the necessary financial means would be transferred to the Federation, together with the transfer of responsibilities.

b. *Termination of mandate of the Human Rights Chamber*

The Commission has already for several years advocated a merger between the Human Rights Chamber and the Constitutional Court. The Secretariat informed the October Session that an agreement between the State and the two entities had been concluded according to which the mandate of the Chamber ended on 31 December 2003. A special Human Rights Commission made up of former judges of the Chamber is to be set up within the Constitutional Court to deal with the backlog of cases. While this solution is not a true merger, it nevertheless takes up elements of the Venice Commission's proposal.

6. BULGARIA¹⁵

a. *Reform of the Judicial system*

Following the request of the Bulgarian Minister of Justice for the assistance of the Venice Commission in the reform of Chapter VI of the Constitution of Bulgaria dealing with the judiciary¹⁶, on 18-20 May 2003 a delegation of the Venice Commission held a series of meetings in Sofia with the Bulgarian authorities with a view to identifying possible steps in the judicial reform in Bulgaria.

At the June Session, the Bulgarian Minister of Justice presented the strategy and action plan for the reform of the judiciary in Bulgaria. As the election of a constituent assembly (Grand National Assembly) seemed unlikely in Bulgaria, the scope of Constitutional reform remained limited to what was possible in the purview of the ordinary law and constitutional changes which would not require the election of a Grand National Assembly.

At that session, the Venice Commission took note of the Memorandum on the Reform of the Judicial System in Bulgaria, made one amendment and approved the conclusions, which may be summarised as follows.

¹⁵ *The following opinions concerning Bulgaria were adopted by the Commission during 2003:*

- *Memorandum on the Reform of the Judicial System in Bulgaria (CDL-AD (2003) 12), taken note of and its conclusions were adopted by the Commission at its 55th Plenary Session (Venice, 13-14 June 2003).*

- *Opinion on the Constitutional Amendments Reforming the Judicial System in Bulgaria (CDL-AD (2003) 16), adopted by the Commission at its 56th Plenary Session (Venice, 17-18 October 2003).*

¹⁶ *Following a first opinion on the reform of the Judiciary in 1999 (CDL-INF (99) 5), the Venice Commission prepared another opinion on the Bulgarian Draft Law on Amendments and Addendum on Judicial System Act (CDL-AD (2002) 15) upon request by the Minister. Following the adoption of the Act, the Constitutional Court declared about 40 provisions of the revised Judicial System Act unconstitutional and annulled them in its decision of 16 December 2002.*

In Bulgaria, there was a widespread perception that the judiciary had achieved insufficient results in the combat of crime, especially organised crime and corruption, including corruption in the judiciary itself. The main issues discussed were how to achieve accountability of the judiciary while preserving it from undue interference from the executive and legislative branches of powers. Following the meetings in May, the delegation had identified as the main results of the visit:

- i. Magistrates (judges, prosecutors and investigators) should not benefit from a general immunity as set out in the Bulgarian Constitution, instead they should be protected from civil suits for actions done in good faith in the course of their functions.
- ii. An uncontroversial but important issue is to strengthen the administrative support for the court system: the training of judges and the budget of the courts should remain under the control of the judiciary.
- iii. Any action to remove incompetent or corrupt judges must meet the high standards set by the principle of the irremovability of the judges in order to protect the independence of judges and depoliticise any such move. One way of achieving this would be to have a small expert body made up solely of judges give an opinion on the capacity or behaviour of the judges concerned before an independent body would make a final decision.
- iv. The main issue regarding investigations is their effectiveness. Adequate training of investigators, be they part of the judiciary or the police, is seen as a key to the success in the fight against crime.
- v. The delegation reiterated the Commission's proposal to depoliticise the Supreme Judicial Council by having the parliamentary component of the Council elected with a qualified majority.
- vi. There is no uniform model in Europe as to prosecutors. In some countries the prosecutors are part of the judiciary; in others, part of the executive. Some countries have a centralised system in which the General Prosecutor is responsible for all prosecutions; others provide for the autonomy of the individual prosecutor. It is important to respect paragraph 10 of [Recommendation \(2000\) 19](#) of the Council of Europe.

In the light of the need to close the judicial chapter at the negotiation of the accession of Bulgaria to the European Union, the Bulgarian Minister of Justice again sought in August 2003 the Venice Commission's opinion on the draft Law to Amend and Supplement the Constitution of Bulgaria.

At its October Session, the Venice Commission adopted the Opinion on the Constitutional Amendments Reforming the Judicial System in Bulgaria, prepared on the basis of comments by Mr Sergio Bartole and Mr James Hamilton. The conclusions may be summarised as follows.

Firstly, the proposed constitutional amendments go in the right direction; however, they are not sufficient to bring about a comprehensive reform of the judicial system in Bulgaria. Secondly, while the amendments partly reflected previous Venice Commission recommendations (for example, the immunity of judges was reduced for acts not carried out in an official function), a

major recommendation¹⁷ of the Venice Commission - the depoliticisation of the Supreme Judicial Council by providing for a qualified majority for the election of its parliamentary component - had not been implemented. Thirdly, the Commission recommends that the discretion of the Supreme Judicial Council in confirming or denying permanent status to magistrates should be limited by specifying criteria for this decision at the constitutional level. In any case, this procedure should be restricted to courts of first instance. Lastly, the Commission insisted that members of the Supreme Judicial Council not vote on their own proposals to discharge magistrates from their posts.

According to the Minister of Justice, the meetings in Sofia and the adoption of the opinion have helped re-launch the project of judicial reform, which had lost impetus following the decisions of the Constitutional Court.

b. Law on the Ombudsman

At the October Session, the Secretariat informed the Commission that the National Assembly had adopted the Law on the Ombudsman. The law took into account the comments made by the rapporteurs of the Venice Commission (CDL (2001) 33 and 34), albeit with some exceptions. The proposal to elect the Ombudsman by a qualified majority was not reflected in the law.

7. CROATIA¹⁸

Constitutional law on the rights of national minorities

As part of an on-going process of following the revision and implementation of the Constitutional Law on human rights and freedoms and rights of national or ethnic minorities in the Republic of Croatia, at its March Session the Venice Commission adopted an opinion on the Constitutional Law on the Rights of National Minorities in Croatia (CDL-AD (2003) 9), drawn up on the basis of comments by Mr Van Dijk and Mr Matscher.

Although the final text of the Constitutional Law that was adopted on 13 December 2002 is in many ways a significant improvement as compared to previous drafts, some issues still require further clarification. Additional legislation should be adopted to cover such issues as the status of non-citizens and the safeguards concerning confidentiality of the identities of persons belonging to minorities in the electoral system with respect to proportional representation of national minorities in the Parliament and in local and regional self-government units.

The Commission was concerned that the representative bodies of national minorities have not been satisfactorily regulated in all respects, for example, while the councils of national minorities have a right to be informed about issues of significance for national minorities, they do not have a right to be consulted or a right to initiate review of the conformity of a general act with the Constitution before the Constitutional Court.

¹⁷ *The Venice Commission has been making this recommendation since 1999.*

¹⁸ *The following opinion concerning Croatia was adopted by the Commission during 2003:*

- *Opinion on the Constitutional Law on the Rights of National Minorities in Croatia (CDL-AD (2003) 9), prepared on the basis of comments by Mr Pieter Van Dijk and Mr Franz Matscher and adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003);*

The Venice Commission was informed by Mr Nick who had been involved in drafting the Law, that its wording was due to political reasons and that the minorities supported it; however, additional legislation needed to be adopted, and Croatian authorities were ready to pursue their work on the relevant legislative provisions.

8. GEORGIA¹⁹

a. *Draft law on Extremist Organisations and Unions*

At the June Session of the Commission, after Mr Demetrashvili, Mr Kolbaia and Mr Tordia stated their views on matters relating to Georgia, the Commission adopted the Opinion on the Draft Law on Prohibition of Extremist Organisations and Unions in Georgia as it stands in CDL-AD (2003) 11 rev, prepared on the basis of comments by Ms Flanagan and Mr Vogel.

The draft Law was examined in relation to its conformity with the European Convention on Human Rights, the Committee of Ministers' guidelines on human rights and the fight against terrorism and the EU Council Framework Decision on combating terrorism. The "Guidelines on Prohibition and Dissolution of Political Parties"²⁰, adopted by the Venice Commission were also considered. Two objectives of the text, to prevent the use of force for political purposes and to protect the constitutional order, were welcome. However, the opinion noted that the draft Law was insufficiently clear in its definition of what could be considered as "extremist activities" and who and what activities were the targets of the draft Law so as to be "prescribed by law" according to the case-law of the European Court of Human Rights; consequently, the risk arose of abusive control of political parties and unions. The opinion found it advisable that the draft Law be adjusted to comply with Articles 10 and 11 of the European Convention, as the text of the draft Law could apply not only to activities unacceptable under the Constitution and the European Convention, but also to activities acceptable in a pluralistic democracy. As to procedural requirements, additional guarantees should be envisaged with an aim to providing all conditions for access to justice and fair trial.

¹⁹ *The following opinions concerning Georgia were adopted by the Commission during 2003:*

- *Opinion on the Draft Law on Prohibition of Extremist Organisations and Unions in Georgia, (CDL-AD (2003) 11), adopted by the Commission at its 55th Plenary Session (Venice, 13-14 June 2003), based on comments by Ms Flanagan and Mr Vogel.*

- *Opinion on the Referendum on Decreasing the Number of Members of Parliament in Georgia, (CDL-AD (2003) 78), adopted by the Commission at its 57th Plenary Session (Venice, 12-13 December 2003), based on comments by Mr Zahle and Mr Bartole.*

- *Opinion on the Draft Law on Freedom of Conscience and Religious Entities of Georgia, (CDL-AD (2003) 20), adopted by the Commission at its 57th Plenary Session (Venice, 12-13 December 2003), based on comments by Mr Dimitrijević.*

- *Opinions on the Unified Election Code of Georgia as amended on 14 August 2003, (CDL (2003) 100 and 101) adopted by the Commission at its 57th Plenary Session (Venice, 12-13 December 2003) based on comments by Mr Krennerich and Mr Torfason.*

²⁰ *CDL-INF (2000) 1.*

b. *Referendum on decreasing the number of members of Parliament in Georgia*

At the request of the Parliamentary Assembly's Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, the Venice Commission prepared an opinion on the Referendum on the reduction of the number of members of parliament in Georgia to be held on 2 November 2003, at the same time as the parliamentary elections. At its October Session, the Commission appointed the rapporteurs, and in light of the urgency, empowered them to submit the opinion to the Monitoring Committee before the next Plenary Session and to the Georgian authorities before 2 November 2003; the rapporteurs did so.

At its December Session, the Venice Commission took note of the Opinion on the Referendum on Decreasing the Number of Members of Parliament in Georgia, (CDL (2003) 78), based on comments by Mr Zahle and Mr Bartole. The conclusion of the opinion was that a positive result of the referendum on the reduction of members of parliament scheduled for 2 November 2003 could only affect, subsequent to the necessary constitutional and legislative reforms, the parliamentary elections foreseen for 2007. It would not have any impact on the composition of the parliament resulting from the parliamentary elections of 2 November 2003. Mr Khetsuriani had expressed the same opinion at the October Session.

c. *Draft law on freedom of conscience and religious entities*

At its December Session, the Venice Commission adopted the Opinion on the Draft Law on Freedom of Conscience and Religious Entities of Georgia, (CDL-AD (2003) 20), prepared on the basis of comments by Mr Dimitrijević. The opinion questioned the need for a specific law on those matters, as freedom of thought, conscience and beliefs should in principle be governed primarily by the Constitution, while matters pertaining to religious communities and organisations may be governed by a general law on associations. Any such law would have to comply with the European Convention of Human Rights; therefore, amendments and clarifications needed to be made to the draft law. The procedure foreseen in the draft law for the registration of religious entities is cumbersome and its requirements would be very difficult to meet in practice. Moreover, the extent of control over the Statute of the religious entities by the Ministry of Justice raised issues as to its feasibility and desirability.

d. *Election law and administration*

At its June Session, the Venice Commission took note of the comments on the election code and the election administration in Georgia (CDL-EL (2003) 5). They were elaborated following resolution 1320 (2003) of the Parliamentary Assembly of the Council of Europe, which invites the Venice Commission to formulate opinions concerning possible improvements to legislation and practices in particular member states or applicant countries.²¹ The expert of the Venice Commission, Mr Krennerich indicated that the modified Electoral Code of Georgia had not taken into consideration a number of observations made by the Commission's opinion of 2002 (CDL-AD (2002) 9). Commenting on the new provisions he pointed out such shortcomings as registration of voters, absence of clear provisions on the duration of electoral campaign and lack of safeguards against a repetitive voting. The opinion also made reference to a number of problems related to the administration of electoral process and lack of training of electoral officials.

²¹ *Point 11.ii.b.*

At its December Session, the Venice Commission adopted the draft opinions of Mr Torfason and Mr Krennerich on the Unified Election Code of Georgia as amended on 14 August 2003 (CDL (2003) 100 and 101) and asked the Secretariat to prepare a consolidated opinion on the basis of those opinions and transmit it to the Georgian authorities.

The Unified Election Code constitutes the legal framework of presidential, parliamentary and local elections in Georgia. The opinions noted that a clear distinction should be made between the electoral law and its implementation. The Electoral Code of Georgia, as amended in August 2003, is a comprehensive law and provides in principle an adequate legal framework for democratic elections. Recent amendments show that note has been taken of some views and comments expressed by the Venice Commission regarding the original code.²² However, certain provisions still need improvement, such as those relating to the composition of the electoral commissions, the lack of indication of a maximum possible deviation of electoral districts from the average ratio of registered voters, the failure to reduce the high number of 50,000 supporters required for a candidature to a lower number, the failure to deal with the late deadline for withdrawing candidates and the absence in the Code of provisions setting a deadline for the distribution of election campaign material.

On 22-24 September 2003 an electoral training workshop was organised with the co-operation of the Foreign Ministry of Georgia and held in Tbilisi. This workshop covered the entire electoral process from the pre-electoral issues, such as the registration of candidates, to the post electoral period, focused on electoral disputes. Approximately 35 persons participated including members of NGOs, Supreme and District Court judges, members of the Central and Regional Electoral Commissions. The media were present. Venice Commission documents including the Code of Good Practices in Electoral Matters and the Election Evaluation Guide were published in Georgian and distributed during the workshop. Information to be included in a guide to voting was also published in Georgian and distributed to voters with the help of NGOs.

Immediately before the presidential election of 4 January 2004 the Venice Commission organised, in collaboration with the Directorate of Political Affairs, on 18 and 19 December in Strasbourg an electoral training seminar. The seminar focused on two main topics: transparency of the electoral process and electoral disputes in Georgia. Five experts shared their international expertise with the high-level Georgian participants, including the Chairman of the Constitutional Court, the Chairman of the Supreme Court, members of the Central Electoral Commission and from Districts commissions, judges from districts courts dealing with electoral disputes, and leaders from NGOs. Officials from the Autonomous Republic of Adjara also participated in the seminar.

9. KYRGYZSTAN

Following the involvement of the Commission in the constitutional revision in Kyrgyzstan in late 2002 (see Annual Report for 2002) Mr Kurmanbek Osmonov, First Deputy Prime Minister of the Kyrgyz Republic, attended the March Session of the Commission. He informed the Commission on the situation following the constitutional referendum in his country. He stressed that most citizens welcomed the constitutional changes. He drew in particular the Commission's attention to the new provisions concerning the Government, the extension of powers of the new

²² *CDL-AD (2002) 9 ; CDL-EL (2003) 5.*

unicameral Parliament and human rights issues. Mr Osmonov expressed the hope that a Government formed directly by the parliament will be more efficient in carrying out its tasks since it would have the support of the majority in the legislature. The Parliament became unicameral since it was considered more adapted to the needs of the country.

Following this visit, the Minister for Foreign Affairs of the Kyrgyz Republic, Mr Askar Aitmatov, addressed on 17 April 2003 a letter to President La Pergola expressing the wish of his country to become member of the Enlarged Agreement establishing the Venice Commission. On 4 December 2003 the Committee of Ministers invited Kyrgyzstan to become a member of the Enlarged Agreement.

10. LITHUANIA²³

a. *The draft law on amendments to the law on National Minorities in Lithuania*

At the March Session, Mr Bartole presented his comments on the draft Law on amendments to the Law on National Minorities in Lithuania. He was invited to provide a written opinion, and the Secretariat was invited to distribute it with a view to its adoption by a written procedure.

The opinion, which was drawn up on the basis of the comments by Mr Bartole and Mr Van Dijk and in co-operation with the Secretariat of the Framework Convention on National Minorities, may be summarised as follows.

The draft law is an important step but some of its provisions should be modified. In general terms, the legislation needs to be more specific as to the scope of the minority rights embodied and the guarantees of their effective exercise. In specific terms, the protection that the draft Law secures for Lithuanian citizens as to political, economic and social rights and freedoms should be extended to persons who fall under Lithuanian jurisdiction, belong to a national minority, but are not citizens. Clear criteria need to be laid down as to the right of a person to communicate with and receive information from administrative authorities in a minority language. A clear definition is required of the terms “the areas inhabited by persons belonging to a national minority” and “substantial” or “small numbers”, as these terms determine the right to education in the minority language. There is a need for provisions calling for a specific guarantee of proportional representation in state bodies.

b. *Seminar on Constitutional Justice and Rule of Law*

To mark the 10th anniversary of the Constitutional Court of Lithuania, the Venice Commission and the Constitutional Court of Lithuania held a seminar entitled “Constitutional Justice and the Rule of Law” on 4-5 September in Vilnius. The President of the Republic, Speaker of Parliament, the Prime Minister and the Minister of Foreign Affairs were present during the conference. The participants included the President of the ECHR, the ECJ and presidents and judges from approximately 25 Constitutional Courts or equivalent courts.

²³ *The following opinion concerning Lithuania was prepared and circulated with a view to adoption by the Commission by way of written procedure during 2003:*

- *Opinion on the Draft Law on Amendments to the Law on National Minorities in Lithuania (CDL-AD (2003) 13), based on comments by Mr Bartole and Mr Van Dijk.*

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 papers presented at the conference led to a substantial comparative discussion on the development of constitutional justice. The participating courts exchanged information on recent case-law and the latest constitutional developments in their own countries and on the international level.

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

11. MOLDOVA²⁴

a. *Work on a new Constitution*

On 9 February 2003 the President of Moldova, Mr Voronin, proposed the establishment of a Joint Constitutional Commission, composed of representatives of Moldova and Transnistria. This Commission was to have the task of drafting a new federal Constitution for Moldova in order to settle the problem of Transnistria. The mediators, the OSCE, Russia and Ukraine, as well as the Venice Commission were to have observer status on the Joint Constitutional Commission. During its March session Ambassador Tulbure, the Permanent Representative of Moldova to the Council of Europe, informed the Commission about the initiative of the President and underlined the interest of Moldova in co-operating with the Venice Commission. Both the Parliament of the Republic of Moldova and the Supreme Soviet of Transnistria approved in April 2003 a Protocol establishing the Joint Constitutional Commission.

A seminar on Federalism organised by the OSCE Parliamentary Assembly on 12 and 13 May 2003 in Chisinau and Tiraspol provided an opportunity for a first exchange of views. After the seminar representatives of the Venice Commission and the Council of the European Union met the delegations of both sides to the Joint Constitutional Commission and discussed main issues of the structure of the future state.

Due to procedural disagreements the first meeting of the Joint Constitutional Commission took place only in June 2003. The parties agreed on rules of procedure, exchanged documents outlining the respective positions and started to work on the human rights chapter of the future Constitution.

²⁴ *The following opinions concerning Moldova were adopted by the Commission during 2003:*

- *Opinion on the Election Law of the Republic of Moldova, (CDL-AD (2003) 1), prepared on the basis of comments by Mr Richard Rose and Mr Kåre Vollan, adopted by the Commission at its 53rd Plenary Session (Venice, 13-14 December 2002).*

- *Opinion on the Proposed Amendment to the Law on Parties and Other Socio-Political Organisations of the Republic of Moldova, (CDL-AD (2003) 8), prepared on the basis of comments by Mr James Hamilton, adopted by the Venice Commission at its 54th Plenary Session (Venice, 14-15 March 2003).*

- *Comments on the Draft Concept of the State National Policy of the Republic of Moldova, (CDL (2003) 51), prepared by Mr Christoph Grabenwarter, taken note of by the Commission at its 56th Plenary Session (Venice, 17-18 October 2003).*

In the framework of a seminar organised by the OSCE Mission to Moldova on 21 to 24 July 2003 a Venice Commission delegation composed of Messrs Malinverni, Scholsem and Tuori exchanged views on the main issues with both sides separately and together. Experts from the EU, Russia and Ukraine also took part in these meetings. During the Council of Europe seminar on “Frozen Conflicts in Europe” in Chisinau on 11 to 12 September 2003 a Venice Commission representative presented the state of negotiations.

A further seminar of the OSCE Parliamentary Assembly on “Distribution of powers in a federal system” on 29 to 30 September provided another opportunity for an exchange of views. Following the seminar experts of the Commission and the EU discussed the draft Human Rights Chapter with the Joint Constitutional Commission and the Venice Commission provided written comments on the draft on 13 October 2003.

b. *Election law*

In 2003, the Venice Commission continued the work it had started in 2002 at the request of the Secretary General on the Election Law of the Republic of Moldova.

Comments on the Election Law of the Republic of Moldova, made by Mr Richard Rose and Mr Kåre Vollan, were endorsed by the Venice Commission at its December Session in 2002.²⁵ While the experts agreed that the unification of the whole electoral legislation was a welcome initiative in general, they concluded that there were still many areas of concern in the law. There was, *inter alia*, a need, which the experts considered to be a priority, to lower the threshold required to be represented in Parliament. Moreover, there was a need to change the country’s single constituency into a system of local constituencies, which would provide geographically concentrated minorities with a fair chance of being represented.

As authorised by the Commission in that session, the Secretariat prepared a consolidated opinion²⁶ based on those comments, and after approval by the rapporteurs, submitted it to the Secretary General in January 2003.

c. *Proposed amendment to the law on parties and other socio-political organisations of the Republic of Moldova*

At its March Session, the Commission adopted an Opinion on the Proposed Amendment to the Law on Parties and Other Socio-Political Organisations of the Republic of Moldova, prepared on the basis of comments by Mr James Hamilton. It should be noted that the amendment under consideration had been passed in the Parliament of Moldova in December 2002 and the opinion was adopted in March 2003.

The three main features of the law are: annual control of political party and socio-political organisation membership lists by the Ministry of Justice as to the minimum number and

- *Comments on the Draft Concept of the State National Policy of the Republic of Moldova, (CDL (2003) 50), prepared by Mr James Hamilton, taken note of by the Commission at its 56th Plenary Session (Venice, 17-18 October 2003).*

²⁵ *CDL (2002) 156 and 157.*

²⁶ *CDL-AD (2003) 1.*

domicile of members (5,000 members, with at least 600 domiciled in each of at least half of the administrative and territorial units set out in the Law); a requirement to have structural subdivisions of political parties and socio-political organisations in half of the country's regions; and the power of the Ministry of Justice to ask courts of law to disband any political party or socio-political organisation that does not meet the established criteria.

The opinion stated that the content of the three features did not appear to be compatible with Article 11 of the European Convention on Human Rights. For example, as already pointed out by the Venice Commission in an earlier opinion,²⁷ the threshold of 5,000 members for the registration of a party was high and not necessary in a democratic society. Moreover, the law did not settle the issue of the establishment of parties at the local level. Locally and regionally based parties are a feature in many democracies, and there appears to be no necessity in a democratic society to prevent parties organised on a local or regional basis from contesting local elections, for example, in the case of Moldova, in Gagauzia.

In the opinion, it was pointed out that even if the new requirements were reasonable in themselves and pursued some legitimate legislative purpose, the manner in which the law had been introduced on the eve of an election was not compatible with Article 11 of the European Convention on Human Rights: the political parties had a matter of weeks in which to comply with the new requirements if they did not wish to lose the right to contest an election that was taking place several months later.

The opinion concluded that both the content and the short time frame of the new law were incompatible with Article 11 of the European Convention on Human Rights and could not be regarded as "necessary in a democratic society". Moreover, the new law did not follow the guidelines adopted by the Venice Commission²⁸ on the prohibition and dissolution of political parties and analogous matters.

The law potentially creates a serious obstacle to the holding of free and fair elections.

At the time the opinion was adopted, the Moldovan authorities reaffirmed their commitment to co-operating with the Venice Commission and indicated that the authorities would follow the opinions given on any piece of legislation examined by the Commission.

d. *The concept of the State National Policy of the Republic of Moldova*

At its October Session, the Commission took note of the comments prepared by Mr Grabenwarter and Mr Hamilton²⁹ on the Concept of the State National Policy of the Republic of Moldova. The Concept had been drafted in order to establish a set of principles that Moldova would apply in such areas as protection of national minorities, minority languages and promotion of the multi-cultural character of Moldovan society. Messrs Grabenwarter and Hamilton pointed out that although this document was of a mostly political nature, it would result in a number of legislative measures. They emphasised that there was a certain confusion in the terminology used, which might lead to an ambiguous interpretation of

²⁷ *CDL-AD (2002) 28.*

²⁸ *Adopted at its 41st Plenary Session on 10-11 December 1999.*

²⁹ *CDL (2003) 50 and 51.*

certain provisions of the concept. The rapporteurs were surprised by the authorities' intention to 'unify their efforts' with the mass media in order to promote the Statehood and felt that such an action might result in inappropriate pressure on the mass media. Another issue of concern was the absence of clear references to human rights standards in the text of the draft. Both rapporteurs recommended referring to the European Convention on Human Rights and other relevant instruments of the Council of Europe in the text.

e. *Conference on National Identity held in Chisinau in 2003*

The Commission in co-operation with the Ministry of Foreign Affairs of Moldova and the Department of Inter-ethnic relations organised a UniDem seminar on 'State consolidation and national identity' in Chisinau on 4–5 July 2003 (see Part III of the present Report). This activity was part of the programme of the Moldovan Presidency of the Committee of Ministers of the Council of Europe.

12. ROMANIA³⁰

Constitutional Reform

Romania wished to revise the Constitution of 1991 for two reasons: the first, to facilitate accession to NATO and the European Union; the second, to address some of the problems that have been observed since the entry into force of the Constitution.

In late 2002, the Romanian authorities asked the Venice Commission for its co-operation on unfinished texts concerning the reform of the Constitution. At its March Session, the Venice Commission adopted the Opinion on the Draft Revision of the Constitution of Romania (unfinished texts by the Committee for the revision of the Constitution), drawn up on the basis of comments by Mr Batliner, Mr Robert, Mr Constantinesco and Mr Vintró Castells.

The main points made in the opinion may be summarised as follows. National minorities should be allowed to use the minority language in judicial proceedings. The replacement of the expression "national minority" by "minority national communities" might be problematic as it is unclear and differs from the traditional and generally accepted vocabulary. The proposed section on the dissolution of Parliament is ambiguous: one should either keep the former text or refer to the one proposed by the Venice Commission in an opinion adopted in July 2002.³¹ Rather than *ex officio* senators, respect for the democratic principle would demand a composition of the Senate based entirely on the popular will. As to the introduction of the principle of subsidiarity in the Constitution, it is problematic as there is no definition that is acceptable to everyone: the powers of the various authorities should be determined by an institutional statute in order to avoid increasing the number of conflicts of powers. There is a need to remove any ambiguities as to the military authorities and the direction of policy in that area. The current provisions

³⁰ *The following opinion concerning Romania was adopted by the Commission during 2003:*

- *Opinion on the draft revision of the Constitution of Romania (unfinished texts by the Commission for the revision of the Constitution), (CDL-AD (2003) 4), drawn up on the basis of comments by Mr Batliner, Mr Robert, Mr Constantinesco and Mr Vintró Castells, adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003).*

³¹ *CDL-AD (2002) 12, point 46.*

prohibiting the extradition of Romanian citizens may be problematic should a European arrest warrant come into force.³² A remedy against disciplinary decisions delivered by the Judicial Service Commission is needed. The jurisdiction of Constitutional Court must be clarified as to what conflicts it may consider and who may initiate proceedings for constitutional review.

At the March Session, the Romanian Minister of Justice thanked the Venice Commission for its co-operation and indicated that most of the Commission's suggestions had been retained.

At the October Session, Mr Farcas informed the Commission that most of the Venice Commission's proposals³³ had been followed in the Constitutional revision. The revised text was adopted by Parliament in September 2003 and approved by referendum on 18-19 October.

He stated that the revision facilitated the affirmation of common European values, in particular the separation and the balance of powers and the independence of courts – especially concerning the role and the method of nominating the Judicial Service Commission. The Supreme Court has been converted to a Supreme Court of Cassation and Justice. Judges alone are competent for custody and house search. Parliament can no longer revoke a decision of the Constitutional Court. In addition, a certain number of provisions are aimed at facilitating the accession of Romania to the European Union.

13. RUSSIAN FEDERATION³⁴

a. Draft Constitution of the Chechen Republic

In January, the Commission was called upon by the President of the Parliamentary Assembly to prepare an opinion on the text of the Draft Constitution of the Chechen Republic which was submitted to referendum on 23 March 2003.³⁵ A first draft, which had been prepared by the Commission's rapporteurs in co-operation with experts appointed by the Congress of Local and Regional Authorities and by the Directorate General of the Legal Affairs of the Council of Europe, was discussed at a meeting in Paris on 3 March 2003 with a delegation from the Russian Federation. The draft submitted to the Commission included a large number of amendments resulting from this discussion.

³² See para. 103-105 of Opinion CDL-AD (2002)12 and point 25 of the Supplementary Opinion CDL-AD (2002) 21.

³³ See documents CDL-AD (2002) 12 and 21; CDL-AD (2003) 4.

³⁴ The following opinions concerning the Russian Federation were adopted by the Commission during 2003:

- *Opinion on the draft Constitution of the Chechen Republic, (CDL-AD (2003) 2), adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003), based on comments by Mr Jowell, Mr Malinverni, Mr Scholsem, Mr Nolte, Mr Merloni, Mr Lesage, Mr Campbell and Mr Marcou.*

- *Comments on the draft Law of the Chechen Republic on Elections to the Parliament of the Chechen Republic as submitted to Referendum on 23 March 2003 (CDL (2003) 21 fin.), at its 54th Plenary Session (Venice, 14-15 March 2003), by Mr Nolte and Ms Schenkel.*

³⁵ *On the same occasion, he asked for an opinion on the Draft Law of the Chechen Republic on Elections to the Parliament. That was the subject of separate comments by Mr Nolte and Ms Schenkel.*

In the opinion adopted by the Commission at its March session, it was noted that the draft Constitution closely followed the model of the Federal Constitution and unambiguously reaffirmed that the Chechen Republic is part of the Russian Federation. Although the parts dealing with human rights were copied from the Federal Constitution³⁶, there were three discrepancies that reduced protection: those concerning the right to life, the right to appeal to international human rights bodies and a list of the human rights which may not be restricted in an emergency. The powers of the Republic in areas such as education and culture should have been set out more clearly. More room could have been provided for the official use of the Chechen language. The powers of the President appeared excessive, *inter alia*, the President's appointing half the members of the Central Electoral Commission (which according to international standards should be an impartial body); his exclusive power to present candidatures for appointment to chairman, deputy chairman and judges of the Constitutional Court; and his right to dissolve Parliament if it adopts a normative act which contradicts federal law or the Constitution of the Republic. His powers to suspend acts of the executive, to veto laws and take part in Parliamentary sessions are problematic; the last power is problematic in respect to the separation of powers. The draft Constitution has two features that are unusual for a federal system: the first is that the President of the Russian Federation has the power to depose the President of the Chechen Republic; the second is that the Parliament of the Republic may be dissolved by a federal law. The Parliament of the Republic is relatively weak. However, this does not mean that the draft Constitution cannot contribute to a future settlement. In conclusion, the draft can become a first step leading to a further process of devolution of powers to the Republic on the basis of the possibilities offered by the Federal Constitution.

Before the adoption of the opinion Mr Toumanov stated that he appreciated the work of the rapporteurs and that he in many respects agreed with their views, in particular, on the questions of the death penalty and the need to enlarge the powers of the Constitutional Court of the Republic. However, he strongly disagreed with some of the other views expressed; for example, he stated that the draft Constitution of Chechnya was based on the Russian model of presidentialism, a model which had already been accepted by the Venice Commission. Moreover, in a crisis situation, there was a particular need for a strong president.

The President of the Parliamentary Assembly commended the Commission for its quick work, which was valuable for the Assembly. While the Commission reached its conclusions independently, they were very much in line with the Assembly's approach. It should be noted that the Venice Commission restricted its opinion to the text of the draft Constitution. Its opinion was taken into account when the Bureau of the Assembly took its decision not to send observers to the referendum.

b. *Draft law on the Chechen Republic on elections to the Parliament of the Chechen Republic*

At its March Session, the Commission took note of the Comments on the Draft Law of the Chechen Republic on Elections to the Parliament of the Chechen Republic, by Mr Nolte and Ms Schenkel. Due to the time constraints and the fact that the draft law was available only in Russian, only five of the fifteen chapters of the draft legislation were analysed. The provisions are rather detailed; the system is heavily regulated. In some cases, the right to freedom of

³⁶ *As a consequence, the weaknesses of the respective text in the Federal Constitution apply also to the present text. See the Opinion of the Venice Commission on the Constitution of the Russian Federation, CDL(94)11.*

expression should be taken into account and underlined. The complexity of the provisions concerning the financing of elections may give rise to unintended violations of electoral law. The fulfilment of those provisions would require some manpower; this may be a burden on smaller parties.

c. *Seminars*

The first seminar to take place in the Russian Federation after its accession to the Venice Commission was held on 3-4 October 2003 at the Moscow State Institute (University) of International Relations on the topic "Direct democracy: referendum as a tool of citizens' participation in public life" (see Part III of the present Report).

14. SERBIA AND MONTENEGRO

a. *Adoption of the Constitutional Charter of Serbia and Montenegro*

On 4 February 2003 the Constitutional Charter of Serbia and Montenegro was finally adopted. The text was prepared with a strong input from the Venice Commission. Its adoption paved the way for the State Union becoming a member of the Council of Europe and thereby also a full member of the Venice Commission on 3 April 2003.

b. *Charter on Human and Minority Rights and Civil Liberties*

The Constitutional Charter of Serbia and Montenegro does not contain a human rights chapter but refers in this respect to a separate Charter on Human and Minority Rights and Civil Liberties. On 6 February 2003 the Constitutional Commission asked for the opinion of the Venice Commission on the draft Charter. On 14 and 15 February a Venice Commission delegation took part, together with a representative of the Directorate General of Human Rights of the Council of Europe, in a Roundtable on the drafting of the Charter organised by the OSCE Mission to Belgrade.

Mr Helgesen as the rapporteur presented his written comments on the draft text. He expressed his high appreciation for the quality of the drafting of the Charter. The draft did not only take international standards fully into account but often went beyond them. If any criticism could be made, it was that sometimes the text might be too generous in granting rights. He made a number of more technical comments on the drafting of various articles such as the right of property. With respect to one of the outstanding controversial issues he took a very clear position by underlining that it was essential to provide for the direct applicability of the Charter.

At its March session Mr Helgesen informed the Commission that the Charter had in the meantime been adopted and that, as urged by the Commission, it was to be directly applicable. Many of his technical comments were also taken into account in the final text and he congratulated the authors on their excellent work. The Commission took note of Mr Helgesen's comments.

c. *Resolution on the assassination of Serbian Prime Minister Djindjic*

At its March session the Commission adopted a Resolution expressing its shock and dismay following this brutal assassination and its conviction that the death of Mr Djindjic is a loss not only for Serbia but for Europe as a whole.

d. *Constitutional reform in Serbia*

Following the adoption of the Constitutional Charter of Serbia and Montenegro, the Constitutions of the two member states have to be adapted. In Serbia the adoption of an entirely new Constitution is desirable since the present text dates from the Milosevic period. The Serbian National Assembly established a Constitutional Commission with the task of drafting a new Serbian Constitution in February 2003.

Within the Constitutional Commission the chapter of the draft Constitution on judicial power proved particularly controversial. The OSCE Mission to Belgrade therefore took the initiative to invite Venice Commission experts to Belgrade for a Workshop on Judicial Power and the new Serbian Constitution on 25 to 26 September 2003. The Venice Commission delegation discussed with members of the Constitutional Commission and representatives of the judiciary in particular the necessary constitutional guarantees for judicial independence, appointment procedures for judges and prosecutors and the role of the Judicial Council. It was agreed to intensify co-operation between the Constitutional Commission and the Venice Commission.

Both the President of the Constitutional Commission, Minister Batic, and the President of its Sub-Commission on territorial organisation, Mr Canak, thereafter attended the October session of the Commission and asked for the further assistance of the Venice Commission, starting with a workshop on territorial organisation to be held in late November 2003. This workshop had however to be cancelled at short notice due to the dissolution of the National Assembly and the early elections in Serbia.

e. *Constitutional Reform in Montenegro*

Mr Krivokapic, President of the Parliament of Montenegro, informed the Commission at its December session that constitutional reform was delayed in Montenegro as well, due in particular to political tensions such as an opposition boycott of parliament.

15. “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”³⁷

Law on the Public Attorney (Ombudsman)

At the request of the Ministry of Justice of “the former Yugoslav Republic of Macedonia”, the Venice Commission prepared an opinion on the draft Law on the Public Attorney (Ombudsman). The opinion, based on comments by Ms Serra Lopes, as adopted by the Venice Commission at its March Session may be summarised as follows.

The draft Law was generally a good one. It had to be seen in light of the implementation of the Ohrid Agreement, which, *inter alia*, provided for a strong ombudsman institution. The opinion

³⁷ The following opinion concerning “the former Yugoslav Republic of Macedonia” was adopted by the Commission during 2003:

- *Opinion on the draft Law on the Public Attorney (Ombudsman) of “the former Yugoslav Republic of Macedonia” (CDL-AD (2003) 7) prepared on the basis of comments by Ms Serra Lopes, adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003).*

stressed the need to see the office as a unified institution and not one with separate ombudspersons for the majority and minority populations. The draft Law states that the public attorney protects the constitutional and legal rights of citizens when such rights have been violated by bodies of state administration and by other bodies and organisations with public mandates. It was suggested that the public attorney be accessible to all persons and not just citizens. The procedure of appointment of the public attorney should be set out in a clearer way. The list of the qualifications of a candidate for public attorney should include the requirement of a well-established reputation for integrity and independence. The public attorney is to undertake actions and measures to protect a person from unfair delays in judicial and administrative proceedings and acts. Here, the “actions and measures” to be undertaken should be stipulated. There were also problems with the ability of the public attorney to continue a case (one initiated by the public attorney, a third party or one where it is very difficult or impossible to obtain the agreement of the persons concerned) without the agreement of the person concerned.

The recommendations made in the opinion were mostly followed; however, problems remained in two areas: that of persons entitled to petition the public attorney (only citizens) and that of the possibility of the public attorney continuing a case against the will of the person concerned.

16. UKRAINE³⁸

a. *Constitutional Reform*

At its March Session, the Venice Commission was informed of a meeting on the proposals to amend the Constitution that had taken place in Kyiv on 25-26 February between a Venice Commission delegation and the Parliamentary Ad-hoc Commission of the Supreme Rada of Ukraine. The three objectives of the constitutional reform were the appointment of the Government by Parliament, the creation of conditions for a stable majority in the Parliament and reform of the judiciary. The delegation had expressed its concern as to the idea being put forward by some Ukrainian officials to nominate judges for a 10-year term. The delegation had the impression that the Parliament and the presidential administration were working separately on constitutional amendments. Ms Stanik informed the Commission that the Ukrainian authorities were unanimous as to the need to carry out constitutional reform and that once the public opinion was known (after the President of the Ukraine’s submission of his set of proposals to a nationwide consultative referendum), the authorities could come up with a single set of proposals for amending the Constitution. The Commission decided to continue its co-operation with the Ukrainian authorities on possible constitutional reform.

³⁸ *The following opinions concerning Ukraine were adopted by the Venice Commission during 2003:*

- *Opinion on three Draft Laws Proposing Amendments to the Constitution of Ukraine, (CDL-AD (2003) 19), adopted by the Commission at its 57th Plenary Session (Venice, 12-13 December 2003), prepared on the basis of comments by Mr Bartole, Ms Flanagan, Ms Thorgeirsdottir and Mr Tuori.*

- *Comments on the Draft Law on Election of People’s Deputies of Ukraine (I), (CDL-AD (2004) 001), adopted by the Commission at its 57th Plenary Session (Venice, 12-13 December 2003), prepared by Mr Vollan.*

- *Comments on the on the Draft Law on Election of People’s Deputies of Ukraine (II), (CDL-AD (2004) 002), adopted by the Commission at its 57th Plenary Session (Venice, 12-13 December 2003), prepared by Mr Sanchez Navarro.*

On 6 March 2003 the President of Ukraine submitted a draft Law containing far-reaching amendments to the Constitution of Ukraine to nationwide public discussion. The Monitoring Committee of the Parliamentary Assembly asked the Venice Commission to provide an opinion on this text.

Ms Stanik informed the Commission at its June Session that a nationwide discussion had resulted in more than 30,000 amendments. The Ministry of Justice had summarised the amendments and proposals received and sent them to the President of the State for consideration. At the time of the session, some leaders of deputy factions and groups in the *Verkhovna Rada* were negotiating with the President of the State with a view to preparing a single set of proposals for amending the Constitution. Ms Stanik recalled the procedure for adopting amendments to the Constitution: after the *Verkhovna Rada* approves a draft law on amendments in its first reading, that draft law must be submitted to the Constitutional Court for examination. Once the Constitutional Court has delivered a judgment on the draft law, the *Verkhovna Rada* may adopt it in its second reading. Ms Stanik reiterated the commitment by the Ukrainian authorities to send the final proposal for amendments to the Constitution of Ukraine to the Venice Commission as soon as it was ready.

At the same Session, Mr Tuori recalled that the Venice Commission had been asked by the Monitoring Committee of the Parliamentary Assembly to give an opinion on the Draft Law “on Amendments to the Constitution of Ukraine”. An opinion³⁹ had been prepared based on the comments of the rapporteurs on the Draft Law on Amendments to the Constitution of Ukraine as it stood on 6 March 2003, at the time of its submission to a nationwide discussion. That opinion and the comments of the rapporteurs⁴⁰ had been transmitted to the Ukrainian authorities. In the light of the recent developments in Ukraine, the Commission decided not to adopt the opinion on the draft amendments of 6 March 2003, but to provide an opinion on the final draft proposal for amendments to be submitted to the *Verkhovna Rada*.

At the December Session, the Commission adopted the Opinion on Three Draft Laws Proposing Amendments to the Constitution of Ukraine as it appears in CDL-AD (2003) 19, prepared on the basis of comments by Mr Bartole, Ms Flanagan, Ms Thorgeirsdottir and Mr Tuori. The President of Ukraine had indeed submitted a revised version of his proposal in July; however, it was replaced by three draft laws proposed by different groups of parliamentarians of the *Rada* and which were submitted to the Constitutional Court of Ukraine. The opinion dealt with those three draft laws.

The three draft laws were: the first Draft Law on amendments to the Constitution of Ukraine, prepared by Parliamentary Deputies A. Matviyenko and others (no. 3027-1 of 1 July 2003 – CDL (2003) 79); the second Draft Law on amendments to the Constitution of Ukraine, prepared by Parliamentary Deputies S.B. Havrish and others (no. 4105, of 4 September 2003 – CDL (2003) 80); and the third Draft Law on amendments, prepared by Parliamentary Deputies S.B. Havrish and others (no. 4180 of 19 September 2003 – CDL (2003) 81).

³⁹ *Draft Opinion on the Draft Law on Amendments to the Constitution of Ukraine, CDL (2003) 41, based on comments by Mr Bartole (CDL (2003) 34), Mr Batliner (CDL (2003) 33), Ms Flanagan (CDL (2003) 35) and Mr Tuori (CDL (2003) 31).*

⁴⁰ *Ibid.*

There was an exchange of views between the Venice Commission and Mr Matvienko and Mr Havrysh before the opinion was adopted.

The Opinion reached the following conclusions.

The Commission recognised and welcomed the efforts in Ukraine to reform the system of government in a way bringing Ukraine closer to European democratic standards; however the precise solutions that had been chosen in the various drafts did not seem to have attained that aim and introduced other amendments to the Constitution that seemed to be a step backwards.

Draft Law no. 3027-1 proposed a number of amendments that went in the desired direction of providing for additional powers to the *Verkhovna Rada*. However, the provisions on the appointment of the members of Government might lead to conflicts between the organs of state power. Other provisions, such as those on the status of the deputies, the election of judges and on extending the powers of the Prosecutor's Office were problematic from the point of view of European democratic standards.

Regarding Draft Laws no. 4180 and no. 4105, the proposal to adopt a system of indirect election of the Head of the State would in principle be conducive to establishing a parliamentary system of government. It was therefore surprising that those drafts maintained stronger powers for the President than provided for by Draft no. 3027-1. The logic behind a system of dividing executive power between two organs, the President and the Government, both deriving their legitimacy from Parliament was not apparent and seemed not to be conducive to effective governance. Moreover, those drafts also contained similar problematic provisions on the judiciary, the public prosecutor's office and the status of deputies as draft no. 3027-1.

As regards particular aspects of the drafts, the Commission strongly recommended:

- ensuring that the provisions on the National Deputies do not link an individual Deputy to membership of a parliamentary faction or bloc in a way infringing his or her free and independent mandate;
- withdrawing the proposed amendment on the limited tenure of judges; and
- ensuring the conformity of the role and functions of the Prosecutor's Office with European standards.

b. *Two draft amendments to the law on elections of people's Deputies*

At its December Session, the Commission adopted the opinion of Mr Vollan on the Draft Law on Election of People's Deputies of Ukraine (I): Draft introduced by people's deputies M. Rud'kowsky and V. Melnychuk (CDL-AD (2004)1) and the opinion of Mr Sanchez Navarro on the Draft Law on Election of People's Deputies of Ukraine (I): Draft introduced by people's deputies S. Havrysh, Y. Ioffe and H. Dashutin (CDL-AD (2004)2).

Both drafts followed the general structure of the existing Law; consequently, many of the points highlighted by the previous opinion by the Venice Commission could be repeated.⁴¹ Both drafts proposed the introduction of a purely proportional system of election of deputies.

The recommendations made by Mr Vollan as to the first draft (introduced by Rud'kowsky) included that a detailed tabulation of results of polling stations be made available to the public; that a party not strike members (e.g. potential substitutes) from its list after the election; that there be a reduction of the number of voters per polling station if polling day for parliamentary and local elections continued to be on the same day; that the provisions on electoral commissions ensure balanced commissions; that a more unified system be introduced for establishing the voters' register - such as one based on continuously maintained civic records; that more explicit regulation be introduced against in-kind contributions to party campaigns by way of campaign advertisements; that provisions be introduced as to when and why a candidate may withdraw before an election; that the provisions enabling the CEC to cancel the registration of parties and candidates be reconsidered so as to eliminate any potential abuse.

In his opinion, Mr Sanchez Navarro identified a number of shortcomings in the second draft (introduced by Mr Havrysh) including: the disparity between the polling stations regarding the number of voters; the right to be elected being subject to a five-year residence requirement; the requirement to form the 450 constituencies before every election; the too detailed provisions concerning the nomination of candidates; and the minimum number of votes to recover the electoral deposit was too high.

c. *Two draft laws amending the law on minorities of Ukraine*

Mr Matscher informed the Commission at its December Session that a request had been made for the Commission to provide expert assistance in respect of two draft laws amending the law on national minorities of 1922.⁴² Other similar draft laws had been prepared by the Ukrainian authorities, and it was not clear which draft would be considered for adoption. A meeting was scheduled to take place in Strasbourg in January 2004, at which the Ukrainian authorities and international experts, including Mr Matscher, would exchange views on the compatibility of the draft laws with the obligations under the Framework Convention for the Protection of National Minorities. The Commission took note of Mr Matscher's provisional comments on the draft legislation and instructed the rapporteur to prepare a draft opinion for its following Plenary Session.

17. CONSTITUTIONAL DEVELOPMENTS IN OTHER MEMBER AND OBSERVER STATES

In 2003 the Commission continued its regular exchanges of views with its members, begun in 2000, on constitutional issues of interest in their countries with special emphasis on observer countries. The following issues were addressed:

⁴¹ CDL-INF (2001) 022, *Opinion on the Ukrainian Law on Elections of People's Deputies, adopted by the Verkhovna Rada on 13 September 2001, adopted by the Venice Commission at its 48th Plenary Session (Venice, 19-20 October 2001).*

⁴² See CDL (2003) 88 and 89.

- Canada : the legalisation of same-sex marriages, the appointment of judges, electoral law and the appointment of judges;
- Hungary : constitutional amendments with a view to accession to the EU;
- Italy : the proposed constitutional reform and the law on the media ;
- Japan : recent developments with respect to the possible future abolition of the death penalty ;
- Korea : recent developments in the Korean peninsula;
- Mexico : discussions on constitutional reform;
- Slovenia : constitutional amendments to facilitate accession to the EU and NATO ;
- Spain : the proposal by the Basque government for a new Statute for the Basque region;
- United Kingdom : the reform of the House of Lords, the office of the Lord Chancellor, the procedure for judicial appointments, the proposed Bill of Rights for Northern Ireland and parliamentary control of the executive.

III. STUDIES, REPORTS AND SEMINARS OF THE COMMISSION

1. STUDIES AND REPORTS OF THE COMMISSION

While most of the work of the Commission is country specific, the Commission also prepares, at its own initiative or at the request of outside bodies such as the Parliamentary Assembly of the Council of Europe, studies and reports addressing problems of general interest in the member and observer states.

a. Possible need for further development of the Geneva Conventions

In the framework of the preparation of the Resolution on “Rights of persons held in the custody of the United States in Afghanistan or Guantanamo Bay”¹, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly requested the opinion of the Venice Commission on the possible need for a further development of the Geneva Conventions in the light of new categories of combatants that have emerged recently. The four Geneva Conventions of 1949 and the two Additional Protocols of 1977 form the core of international humanitarian law. This area of law has to cope with new developments such as new methods of warfare, the growing role of irregular and non-state actors in armed conflicts, the increase and growing internationalisation of terrorism and the global fight against terrorism following the attacks of 11 September 2001. These developments raise the crucial issue of the capacity of international humanitarian law to adequately address armed conflicts in their contemporary forms.

Meeting in Venice, for its 57th plenary session, the Venice Commission adopted the opinion on the possible need for further development of the Geneva Conventions.² The opinion focuses on the question of whether the rules of international humanitarian law, as they concern the detention and treatment of persons that have been arrested on the battlefield of an international armed conflict, need further development in the light of the new types of conflicts connected with the fight against terrorism.

The opinion contains an exhaustive analysis of the relevant provisions of the 1949 Geneva Conventions (GC III relating to the treatment of prisoners of war, and GC IV relating to the protection of civilians) and the first additional Protocol relating to the protection of victims of international armed conflicts, as well as of human rights law. It concludes that no person under the control of a State, regardless of his or her status, is devoid of legal protection of his or her fundamental and non-derogable human rights.

Members of State armed forces or militia groups who fulfil Article 4 (2) GC III requirements are to be considered prisoners of war (POWs) and treated accordingly. All other persons, who were captured on the battlefield and are not civilians, are to be considered POWs and enjoy protection of GC III if and until otherwise determined by a competent tribunal, on the basis of Article 5(2) GC III.

¹ Resolution 1340 (2003) adopted by the Parliamentary Assembly on 26 June 2003.

² CDL-AD (2003)18.

All civilian persons who are nationals of a party to an international armed conflict, and who actively participated in hostilities, but do not fulfil the requirements for being given POW status (thus including “unprivileged” combatants such as, for example, suspected members of an international terrorist network such as Al Qaeda), fall within the category of “other protected persons”. Such persons enjoy the protection of GC IV.

Persons, who are nationals of a state *not* a party to the conflict and who thus cannot benefit from the protection of GC IV, enjoy basic standards of humane treatment including the right to a fair and regular trial under customary international law as set forth in the First Additional Protocol and human rights law.

Stressing the importance of respect for and proper implementation of the existing rules of international humanitarian and human rights law, the Commission’s opinion nevertheless leaves the door open to the progressive development of international law which may be required to meet or anticipate the new threats to international peace and security.

b. Implications of a legally-binding EU Charter of fundamental rights on human rights protection in Europe

At the request of the Parliamentary Assembly, the Commission prepared an opinion on the “Implications of a legally-binding EU Charter of fundamental rights on human rights protection in Europe”³ which was adopted at the 57th Plenary Session (12-13 December 2003).

The opinion contains in the first place an outline of the development of human rights protection within the European Communities and of the parallel extension of review by the Strasbourg Court of acts and legislation of Community institutions. It further analyses the impact of the likely incorporation of the EU Charter of fundamental rights into the future European Constitution and the relations of the Charter with the European Convention on Human Rights.

In the opinion, the Commission addresses in particular two main risks linked with the legally-binding EU Charter: diverging case-law between the ECJ and the Strasbourg Court and national courts having to choose between inconsistent decisions of the two courts.

In the Commission’s opinion, these risks would be significantly reduced if the European Union ratified the European Convention on Human Rights. This solution would indeed be perfectly logical, given that the EU evolves into a federal state-like structure: the Charter would play the same role as national bills of rights and the ECJ the role of the highest national jurisdictions. The European Court of Human Rights would exercise an external control of the acts and laws of the Union in the same way as it controls those of the 45 member States, including the current 15 EU member States. It would indeed be inadmissible if the latter States by transferring powers to the European Union could avoid the supervision of the European Court.

The Commission identifies a number of further advantages which would be brought by ratification of the European Convention by the European Union. Indeed, the Union would finally be duly represented in the proceedings before the European Court of Human Rights. In addition, the creation of new dividing lines within Europe would be avoided and the credibility of the EU’s human rights policies would be enhanced.

³ CDL-AD (2003)22

Certain amendments to the European Convention and to the EU treaty would certainly be necessary in order to allow ratification. The competent bodies are already carrying out the necessary preparatory works, which needs to be pursued.

In the Commission's opinion, it would be useful to foresee the possibility for the ECJ to seek preliminary rulings (or, prior to ratification, advisory opinions) from the European Court of Human Rights. This would serve to settle a number of applications pending and potential applications to the ECJ.

c. The establishment, organisation and activities of political parties

Since 1998 the Commission has been involved in a number of issues concerning political parties. In 1999 it adopted Guidelines on prohibition and dissolution of political parties and analogous measures (CDL-INF (2000) 1) and in 2001 Guidelines on financing of political parties (CDL-INF (2001) 8). Considering the impact of these documents and the interest in the subject of political parties shown by the statutory organs of the Council of Europe as well as by member states of the Council of Europe (from 1998 to 2002 the Commission was asked to give opinions on different pieces of legislation on parties and public unions in Armenia, Georgia, Moldova and Ukraine), the Commission pursued its work in 2002 and in 2003 by examining the general legal framework of political parties in its member countries. 42 countries replied to a questionnaire drawn up by the Commission for this purpose.

The replies to the questionnaire enabled the Commission to draft a report on the establishment, organisation and activities of political parties which was adopted at its 57th plenary session in December 2003⁴. The report shows that national practice in the field of political parties differs from country to country and ranges from detailed regulation of their activities by specific legislation to non-interference of public authorities with the process of establishment and functioning of political associations.

The Commission underlined that it was difficult to propose a set of recommendations as to the best way of dealing with this issue; however, it asked its rapporteurs to prepare a document mainly indicating practices and approaches to be avoided by member states. In taking this decision the Commission based itself on its vast experience in dealing with legislation on political parties in some Member States of the Council of Europe, where a number of incompatibilities with the standards of the organisation and more specifically with the European Convention on Human Rights were identified. These guidelines should be adopted in 2004.

2. THE UNIDEM PROGRAMME (University for Democracy)

a. UniDem seminar on 'State Consolidation and National Identity', Chisinau, 4 – 5 July 2003

The Commission, in co-operation with the Ministry of Foreign Affairs of Moldova and the Department of Inter-ethnic relations, organised a seminar on 'State consolidation and national identity' in Chisinau on 4–5 July 2003. This activity was part of the programme of the

⁴ CDL-AD (2004) 4.

Moldovan Presidency of the Committee of Ministers of the Council of Europe. The working sessions were held in the Republic Palace.

The main aim of this activity was to explore different models of a multi-ethnic State and the practice of other countries co-operating in the framework of the Council of Europe in this field. After a number of reports (14), presenting, among other issues, the situation in such countries as Belgium, Canada, Hungary, Latvia, Romania, the Russian Federation, Spain and Switzerland, the participants held a fruitful discussion on the subject of integrating some of the positive examples into Moldova's internal policy. This exchange of views was of particular importance in the light of the negotiation process between Chisinau and Tiraspol and the announced constitutional reform aimed at the federalisation of Moldova.

More than 100 participants including representatives of the Ministry of Foreign Affairs, the Presidency, the Parliament of Moldova, professors from different universities and NGOs attended the opening session of the seminar. Representatives of Transnistria, Gagauzia and different ethnic and linguistic minorities also attended this event. Mr Nicolae Dudau, Minister of Foreign Affairs of Moldova welcomed the participants and presented the address of the President of the Republic of Moldova.

This seminar received large press coverage and most Moldovan television, radio and written media covered the event. The proceedings will be published in the Series Science and Technique of Democracy.

b. UniDem seminar on "European and American Constitutionalism", Göttingen, 23-24 May 2003

The Commission, in co-operation with the Institute of International Law of the University of Göttingen, organised a seminar on European and American Constitutionalism in Göttingen on 23 to 24 May 2003. More than 80 constitutional lawyers participated in the seminar.

The seminar focused on several topics where the American and the European approach tend to differ:

- Freedom of Speech;
- Human Dignity;
- The Protective Function of the State;
- Constitutional Adjudication;
- Democracy and International Influences.

On each of these subjects a leading European and a leading American specialist presented a report and two other experts, often from third countries such as Canada, Peru, South Africa, Japan and Israel, provided additional comments. Discussions were extremely lively and interesting. A growing tendency to stress differences between the American and European approach was noted. This, however, only strengthens the need for a transatlantic dialogue.

The proceedings of the seminar will be published.

c. *UniDem seminar on 'Direct democracy: referendum as a tool of citizens' participation in public life', Moscow, 3 – 4 October 2003.*

The Commission, in co-operation with the Moscow State Institute (University) of International Relations (MGIMO) and the Information Centre of the Council of Europe in Moscow, organised a seminar on “Direct democracy: referendum as a tool of citizens’ participation in public life” in Moscow on 3 – 4 October 2003.

The main aim of this activity was to explore different experiences in organising referendums in Russia and such countries as France, Switzerland and in candidate countries to the European Union. After a number of reports (9) the participants held a fruitful discussion on the subject of different techniques of organising this type of vote and some new trends both in Russia and in other European countries in organising referendums on national, regional and local levels. Representatives of the Central Electoral Commission of the Russian Federation gave an extensive presentation of the development of referendums on local and regional levels in Russia, paying special attention to problems related to the organisation of such votes in different federal entities.

Approximately 40 participants, including representatives of the Ministry of Foreign Affairs, the Central Electoral Commission of the Russian Federation, the Constitutional Court, professors from MGIMO and other universities, attended the seminar. The seminar was opened by Professor Anatoli Torkunov, Rector of the Moscow State Institute (University) of International Relations. Students of the Faculty of international law took an active part in the discussion of the subjects presented by the rapporteurs. The proceedings will be published in the series Science and Technique of Democracy.

d. *UniDem Campus for the legal training of the civil service*

The UniDem Campus project was established in 2001 with the aim of strengthening efficient administration and good governance as well as democratisation and human rights in South East Europe. Through six five-day seminars per year, organised on the basis of lectures introducing the subject and discussions of practical examples proposed by the lecturer, the programme aims at providing legal training to civil servants in subjects such as the protection of fundamental rights, including the rights of national minorities, the standards of public life and effective administration, the rule of law and the issues raised by accession to the EU. Civil servants who attend the seminars are expected and required to share the knowledge acquired at the Campus amongst their colleagues in their respective countries.

In 2003, the programme was enlarged and is now aimed at officials from eleven countries: Albania, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, “the former Yugoslav Republic of Macedonia”, Moldova, Romania, Slovenia, Serbia and Montenegro and Ukraine. The seminars addressed the following topics:

- EU legislation: effectiveness and impact on national legal systems (January)
- Human Rights protection in Europe: the Council of Europe, the EU, the OSCE and the UN systems (February)
- The principle of non-discrimination and the protection by the public administration of the rights of national minorities (March/April)
- Public administration in the context of the decentralisation process (May)

- Environmental protection and human rights (September)
- Reform of the civil service in Europe (November)

This year, 40 lecturers and some 170 civil servants from eleven countries attended the Campus seminars.

3. OTHER SEMINARS AND CONFERENCES

Workshop on Autonomy Arrangements and Internal Territorial Conflicts (Oslo, 14-15 November 2003)

Several representatives of the Commission took part in a Workshop on Autonomy Arrangements and Internal Territorial Conflicts, organised by the Ministry for Foreign Affairs of Norway in co-operation with the Oslo International Peace Research Institute and the Norwegian Human Rights Centre. The seminar was devoted to the question of whether various forms of autonomy arrangements, including federalism, provide a viable institutional framework for resolving internal territorial conflicts. Facilitators in various peace processes and experts who had given advice or written extensively on the subject took part in the workshop.

The Venice Commission representatives gave an overview of the relevant Venice Commission activities and discussed the question to what extent European models of federalism can be useful for solving conflicts. Other participants addressed in particular conflicts outside Europe. Discussions focused on Iraq, Sri Lanka, Bosnia, Cyprus, Russia and other countries.

The Final Report of the seminar contains operational advice on how to contribute to finding solutions for such conflicts.

IV. CONSTITUTIONAL JUSTICE

1. JOINT COUNCIL ON CONSTITUTIONAL JUSTICE

At its second meeting in Oslo on 9 May 2003, the Joint Council on Constitutional Justice consolidated its role as the appropriate forum to discuss matters of regional co-operation and the exchange of case-law between constitutional courts and equivalent bodies (constitutional councils, supreme courts exercising constitutional jurisdiction, etc.). The Council has attained cruising speed and has assumed its role of steering the activities of the Centre on Constitutional Justice from the previous meetings of the Sub-Commission on Constitutional Justice with the liaison officers from constitutional courts and equivalent bodies.

Major activities of the Centre are the publication of the *Bulletin on Constitutional Case-Law* and the database CODICES. The purpose of the Centre remains to enable a mutual exchange of information between the courts and to inform the interested public about their decisions. To this end, the Commission has established a network of liaison officers with the courts. Three times a year, they contribute to the *Bulletin* and the database CODICES of the Commission.

In addition to the regular issues of the *Bulletin*, a special volume on "the relations between the constitutional courts and the other national courts, including the interference in this area of the action of the European courts" was published upon request by the Presidency of the Conference of European Constitutional Courts.

At the end of 2003, CODICES contained about 3900 précis and more than 4000 full texts of decisions from constitutional courts and equivalent bodies together with constitutions, the laws on the courts and descriptions of their jurisdiction, composition etc. In addition to précis, constitutions have been made fully searchable according to the Commission's Systematic Thesaurus.

The Centre also offers access to its highly specialised library on constitutional justice, which could be enriched through considerable donations from the participating courts. Another pillar of the Centre is the very active so-called 'Venice Forum', which allows the courts to have a confidential exchange of views on cases before them.

2. REGIONAL CO-OPERATION

At its Preparatory Meeting for the XIIIth Conference (Nicosia, 16-18 October 2003), the Circle of Presidents of the **Conference of European Constitutional Courts** chose the topic "Criteria for the Limitation of Human Rights" as the theme of its next Conference in 2005. The proposal had been made by the Constitutional Court of Armenia building upon a seminar on the same topic co-organised by the Venice Commission in Yerevan on 3-4 October 2003.

The Cypriot Presidency of the Conference asked the Commission to publish a Special Bulletin on this topic as a working document for the Conference

At the Preparatory Meeting, the Secretariat of the Commission also reported on the co-operation between the Commission and the Constitutional Court of Belarus in view of the request of the Court for full membership with the Conference.

The **Association of Constitutional Courts using the French Language (ACCPUF)**, provided further case-law of its member courts for inclusion into the CODICES database thus enlarging the geographical scope of the information available. In accordance with the co-operation agreement, ACCPUF continued to contribute financially for the inclusion of its case-law into the database.

In October 2003, the Commission and the **Conference of the Constitutional Control Organs of the Countries of Young Democracy** signed a co-operation agreement which allows for the exchange of information between the members of the Conference and the courts participating in the work of the Joint Council on Constitutional Justice.

From the viewpoint of regional co-operation, a particularly successful event was the organisation of the Conference on "Sustaining the independence of the judiciary – co-operation of the judiciary of the region" (Zanzibar 21-22 July 2003). At this Conference threats to the independence of the Southern African constitutional and supreme courts were identified and remedies discussed. Backing from peer courts was seen as a powerful tool to support courts in such a situation. Consequently, during the Conference, the Chief Justices decided to create the **Southern African Judges Commission (SAJC)** uniting these courts with the goal of assisting member courts against undue pressure from the legislative or executive branches of power. As an equally important issue, the SAJC was to promote the exchange of case-law between the courts in the region and abroad. The knowledge about similar case-law in other countries would allow the courts to take decisions which might displease the other state powers.

In order to enable this exchange of information, the Venice Commission offered to include précis on relevant case-law into the CODICES database. As a follow up to the Zanzibar Conference the Commission brought together liaison officers from the participating courts ranging from Uganda in the North to South Africa in the South, to train them in the preparation of cases for inclusion into CODICES (Windhoek, 28-29 November).

The Venice Commission activities with respect to Southern Africa were made possible by voluntary contributions from Norway and Switzerland.

3. SEMINARS IN CO-OPERATION WITH CONSTITUTIONAL COURTS (COCOSEM)

In 2003, the Commission co-organised a number of conferences and seminars in co-operation with constitutional courts in its series of events entitled Constitutional Court Seminars (CoCoSem), which is geared to strengthening the position of constitutional courts as the guarantors of constitutional rights and the rule of law. Indeed these principles were the common denominator of the seminars. The respect for the judicial power and the requirement to execute its decisions are key elements of the rule of law. Only when these preconditions are met, can a constitutional court effectively fulfil its role as guarantor of human rights upholding democratic values.

The Seminar on "The Effects of Decisions of the Constitutional Court" (28-29 April 2003, Tirana) had the specific purpose of raising support for the **Constitutional Court of Albania** for the execution of its judgements. Problems, which the Court had encountered in this respect, had triggered the Commission to ask its President to remind the Albanian authorities

of the importance of the implementation of the Constitutional Court's decisions and on the role of the Constitutional Court in a democratic society

The issue of the execution of the decisions of the Constitutional Court was also intensely discussed at the "Conference on the occasion of the 5th anniversary of the Constitution of Albania – stock taking and perspectives." Members of the Commission who had assisted in the drafting process for the Albanian Constitution participated in the work. The Conference made a very positive assessment of the Constitution but also found scope for further improvement (for both events see also Part II "Albania" above).

In the light of a request by the Conference of European Constitutional Courts inviting the Venice Commission to resume co-operation with the **Constitutional Court of Belarus**, the Commission co-organised 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 *inter alia* discussed problems of the separation of powers in Belarus. The delegation also learned that even though the Constitution and the Law on the Constitutional Court provided only for appeals from state bodies, the Constitutional Court had in fact extended its jurisdiction to allow appeals also from individuals. The Court based this extension and the ensuing human rights case-law on articles of the Constitution, which provide that individuals can make petitions to any state body including courts (see also the Part II "Belarus" above).

On the occasion of the 5th anniversary of the **Constitutional Court of Azerbaijan**, the Commission co-organised a Conference on the "Role of the Constitutional Court in the protection of democratic values" (Baku, 14-15 July 2003) with the aim of analysing the position of the constitutional courts in the state structure and their role in the protection of democratic values. Apart from obvious functions of constitutional courts in the protection of democratic values such as deciding on the admissibility of referendums 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 (see also Part II "Azerbaijan" above).

On 4-5 September, the Commission organised together with the **Constitutional Court of Lithuania** a Conference on Constitutional Justice and the Rule of Law in Vilnius. The discussions focused on the interaction of three spheres of courts: ordinary courts, constitutional courts and European courts. Complementarity between these judicial systems was seen a precondition for in the maintenance of the rule of law (see also Part II Lithuania above).

In co-operation with the **Constitutional Court of Armenia**, the Commission organised a Conference on "Criteria for the Limitation of Human Rights" (Yerevan, 3-4 October). This Conference allowed identifying ways to guarantee the human rights and to prevent excessive restrictions to them. The application of such techniques to specific rights such as the freedom of expression, the freedom of religion or the right to property was discussed (see also Part II Armenia above)..

V. ELECTORAL LAW

1. DEVELOPMENT OF THE ACTIVITIES OF THE COUNCIL FOR DEMOCRATIC ELECTIONS

On 30 January 2003, the Parliamentary Assembly of the Council of Europe adopted Resolution 1320 (2003), by which¹

“The Assembly ... invites the Venice Commission:

- i. to set the activities of the Council for Democratic Elections on a permanent footing and consider the Council one of its own bodies while maintaining its current form of mixed membership, as specified in Resolution 1264;
- ii. to implement the aims of the Council for Democratic Elections, as set out in Resolution 1264, and, in particular, continue its activities with a view to:
 - a. setting up a database comprising, *inter alia*, the electoral legislation of Council of Europe member states;
 - b. formulating opinions, in co-ordination with the Assembly, on all general questions relating to electoral matters as well as opinions concerning possible improvements to legislation and practices in particular member states or applicant countries;
 - c. drafting, as soon as possible, a computerized questionnaire, setting out in a practical form the general principles of the Code of Good Practice in Electoral Matters, which would give the observer delegations a better overview of the electoral situation.”

At its ninth session (February 2003), the Congress of Local and Regional Authorities of the Council of Europe adopted Resolution 148 (2003) and Recommendation 124 (2003) going in the same direction.

As a permanent body, the Council for Democratic Elections met prior to each Plenary Session of the Venice Commission (13 March, 12 June, 16 October and 11 December 2003).

2. CODE OF GOOD PRACTICE IN ELECTORAL MATTERS

The above-mentioned Recommendation by the Congress of Local and Regional Authorities, as well as a recommendation by the Parliamentary Assembly,² recommended the Committee of Ministers to transform the *Code of good practice in electoral matters* into a European convention.

¹ See [Doc. 9682](#), report of the Political Affairs Committee, rapporteur: Mr Clerfayt.

² Recommendation 1595 (2003) of the Parliamentary Assembly.

In its replies to these recommendations, the Committee of Ministers “has noted with satisfaction the adoption by the Venice Commission in October 2002 of the Code of Good Practice in Electoral Matters, which was subsequently adopted also by the Parliamentary Assembly and by the Congress of Local and Regional Authorities... recognises the importance of the Code and is pleased to note that it is already serving as a useful reference document for related Council of Europe activities.” According to the Committee of Ministers, “A convention in this field would further highlight the importance for all Council of Europe member states to adhere to the fundamental principles of democratic elections (i.e. universal, equal, free, secret and direct suffrage). For the convention to have any added value, however, its standards would have to be no less exacting than those in the Code.” Furthermore, “it may prove difficult at this moment to draft a legal instrument (particularly a binding one) on this matter... in the immediate future a sustained effort should be made to increase awareness in member states of the existence and merits of the Code of good practice in electoral matters”.³

The Committee of Ministers could adopt in 2004 a political declaration calling on authorities of the member states to take account of the Code of good practice in electoral matters.

3. ELECTION EVALUATION GUIDE

The Council for Democratic Elections and the Venice Commission adopted an election evaluation guide,⁴ which is not confined solely to legislation, but also covers the issue of its implementation. This document includes three questionnaires to be used during election observation: a questionnaire on visits to polling stations before opening, a questionnaire to be completed for each polling station and a questionnaire on observation of the vote counting.

The Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe already used the Election evaluation guide during election observation.

4. ELECTORAL SYSTEMS

The Council for Democratic Elections and the Venice Commission adopted a report on “Electoral systems: overview of available solutions and selection criteria”.⁵ This report is divided into two parts. The first one deals with “electoral systems on offer” and summarises the various possibilities governing the casting of votes as well as the counting of votes and the distribution of seats. The second part is dedicated to criteria for selecting a particular election system and the implications of that choice. It underlines in particular the three major functions of an electoral system: representation, selection and investiture, which are completely fulfilled by no election system. It summarises the three historical models of democracy: the elitist model, the mass democracy model and the consumerist individuation model.

³ *CM/AS(2003)Rec1595 final and CM/Cong(2003)Rec124 final.*

⁴ *CDL-AD (2003) 10.*

⁵ *CDL-AD (2004) 3.*

5. OTHER TRANSNATIONAL ACTIVITIES

a. Information document for voters

The Council for Democratic Elections and the Venice Commission adopted “Elements for information documents for voters”,⁶ which include the main features of free and fair elections and are the basis for documents to be distributed to voters at an election. This was the case for the parliamentary elections, which took place in Georgia in 2003.

b. Electronic voting

The Council for Democratic Elections and the Venice Commission were represented at all meetings of the Multidisciplinary Ad Hoc Group of Specialists on legal, operational and technical standards for e-enabled voting and of its sub-group, the Group of Specialists on legal and operational standards for e-enabled voting. The Group is preparing a draft recommendation of the Committee of Ministers on e-voting.

In particular, the Venice Commission should adopt in 2004 an opinion on the compatibility of remote voting and electronic voting with the Council of Europe requirements (Article 3 of the Additional Protocol to the European Convention on Human Rights and the Code of Good Practice in Electoral Matters). This opinion is being prepared following discussions in the Ad Hoc Group of Specialists.

6. RECOMMENDATIONS ON THE ELECTORAL LAW AND THE ELECTORAL ADMINISTRATION

In conformity with the above-mentioned Resolution 1320 of the Parliamentary Assembly (point 11.ii.b), the Council for Democratic Elections has started drafting recommendations concerning possible improvements to legislation and practices in particular member states. The first ones, which were already adopted in 2003, related to Georgia⁷ and to Armenia.⁸ The Venice Commission and the OSCE/ODIHR prepared jointly the recommendations on the electoral law and the electoral administration in Armenia.

7. OTHER ACTIVITIES WITH RESPECT TO SPECIFIC COUNTRIES

The Venice Commission adopted opinions on electoral law in Azerbaijan⁹, Georgia¹⁰, Chechnya (Russian Federation)¹¹ and Ukraine¹² (see supra Part II). The Venice Commission and OSCE/ODIHR prepared jointly the opinions on Azerbaijan.

⁶ CDL (2003) 43.

⁷ CDL-EL (2003) 5.

⁸ CDL-AD (2003) 21.

⁹ CDL-AD (2003) 3 and CDL-AD (2003) 15.

¹⁰ CDL-AD (2004) 5.

¹¹ CDL (2003) 21 *fin*.

¹² CDL-AD (2004) 1 and 2.

The Venice Commission also co-operated in the revision of the Albanian Electoral Code.

The Venice Commission assisted the Central Election Commission of Georgia in the preparation of the November 2003 and January 2004 elections, and the Constitutional Court of Armenia in the settlement of disputes related to the presidential elections.

8. SEMINARS AND TRAINING WORKSHOPS

a. UniDem seminar

A UniDem seminar on « Direct Democracy: Referendum as a Tool of Citizens' Participation in Public Life » was organised in Moscow in October 2003 (see supra Part III).

b. Electoral training workshops

Four training workshops on the holding and supervision of elections were organised in Armenia, Albania, Azerbaijan and Georgia. This is a new activity of the Venice Commission aimed at ensuring that common European standards are applied in practice, through a better knowledge of how they are applied in other European countries. The target groups of these training workshops are people involved in the preparation, adoption and implementation of electoral law, first of all election administrators and election observers, but also judges, lawyers and media for example.

9. RELATIONS WITH OTHER SUPRANATIONAL AND INTERNATIONAL ORGANISATIONS

a. Joint programme with the European Commission

The European Commission accepted, in the framework of the European Initiative for Democracy and Human Rights (EIDHR), a joint programme with the Venice Commission entitled "Democracy through free and fair elections", to be carried out during the years 2004 and 2005.

b. Cooperation with the OSCE

The OSCE/ODIHR and the Parliamentary Assembly of the OSCE are observers at the Council for Democratic Elections.

The Venice Commission continued co-operating with the OSCE/ODIHR in electoral matters, in particular in the drafting of the opinion on the electoral code of Azerbaijan and of the recommendations on the electoral law and the electoral administration in Armenia, as well as in the revision of the electoral code of Albania.

Furthermore, the Venice Commission was involved in the preparation of the document on "Existing Commitments for Democratic Elections in OSCE Participating States", which summarises the existing international standards in this field.

c. Association of Central and Eastern European Election Officials (ACEEEO)

The ACEEEO is observer at the Council for Democratic Elections.

At the request of ACEEEO, the Venice Commission is preparing an opinion, to be adopted in 2004, on the draft Convention by this Association on "Elections standards, electoral rights and freedoms". Furthermore, the Venice Commission took part in the annual meeting of the ACEEEO, which focused on Media and Elections as well as on e-voting; this was an opportunity to discuss the question of election standards.

VI. CO-OPERATION BETWEEN THE COMMISSION AND THE STATUTORY ORGANS OF THE COUNCIL OF EUROPE, THE EUROPEAN UNION AND OTHER INTERNATIONAL ORGANISATIONS

1. CO-OPERATION WITH THE COMMITTEE OF MINISTERS

Representatives from the Committee of Ministers participated in all the Commission's plenary sessions during 2003. The following Ambassadors attended the sessions during 2003 :

Mr Yuri Sterk, Permanent Representative of Bulgaria, Mr Niels-Jorgen Nehring, Permanent Representative of Denmark, Mr Alexei Tulbure, Permanent Representative of Moldova, Mr Shpëtim Caushi, Permanent Representative of Albania, Mr Stephen Howarth, Permanent Representative of the United Kingdom, Mr Numan Hazar, Permanent Representative of Turkey, Mr Zoltan Taubner, Permanent Representative of Hungary, Mr Christian Ter Stepanian, Permanent Representative of Armenia, Mr Agshin Mehdiyev, Permanent Representative of Azerbaijan and Mr Estanislao De Grandes Pascual, Permanent Representative of Spain. They informed the Commission about the work of the Committee of Ministers and in particular its Rapporteur Group on Legal Co-operation.

Several subjects were discussed or points made including: the Code of Good Practice in Electoral Matters, relations between the European Union and the Council of Europe, the reform of the working methods of the Council of Europe, the enlargement of the Commission to include non-European States, the Commission's opinion on kin-minorities, the conflict in Nagorno Karabakh and legal reforms in their respective countries.

The Committee of Ministers welcomed the adoption of the Code of Good Conduct in Electoral Matters

2. CO-OPERATION WITH THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

Co-operation between the Commission and the Parliamentary Assembly remained particularly close. President Schieder attended all plenary sessions of the Commission with the exception of the December session when a rail strike prevented him from reaching Venice. Mr Jurgens from the Legal Affairs Committee of the Assembly was present at all plenary sessions.

President Schieder and Mr Jurgens regularly informed the Commission about the activities of the Assembly of interest to the Commission. This concerned *inter alia* the accession of new member states to the Council of Europe, the world-wide abolition of the death penalty, the International Criminal Tribunal, the immunity of members of parliament, preferential treatment by a state of kin-minorities abroad and the position of the Lord Chancellor in the British legal system. They addressed further co-operation between the Assembly and the Venice Commission in particular in the area of electoral law and with respect to legal issues relevant for the functioning of the European Court of Human Rights. The Commission was moreover informed about the follow-up given by the Assembly to Venice Commission texts. The most prominent examples were the opinions on the draft Constitution of Chechnya and on constitutional reform in Liechtenstein as well as the use of the Code of Conduct in Electoral Matters by the Assembly.

On 14 June 2003, before the start of the 55th Plenary Session, the Enlarged Bureau of the Commission met with the Presidential Bureau of the Assembly to discuss ways to further enhance co-operation. Both sides stressed their high appreciation of the excellent co-operation and confirmed their willingness to maintain and develop it further. It was noted that the Assembly increasingly asked for the opinion of the Venice Commission on important issues. Such requests were now coming not only from the Committee on Legal Affairs and Human Rights and the Monitoring Committee, but also from the Bureau of the Assembly. Particular attention was paid to the intense co-operation in the field of electoral law and its possible extension to the issue of referendums.

The Council on Democratic Elections, established as a tri-partite body of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe in 2002, met four times in 2003 (see Part V above). A member of the Parliamentary Assembly, Mr Erik Jurgens, was elected as the chair replacing Mr Georges Clerfayt.

A number of important activities of the Commission in 2003 were undertaken at the request of the Parliamentary Assembly. This concerns in particular:

- The opinion on the draft Constitution of the Chechen Republic;
- The opinion on the Constitutional Law on the Rights of National Minorities in Croatia;
- The opinion on the possible need for the further development of the Geneva Conventions;
- The opinion on the implications of a legally-binding EU Charter on Fundamental Rights on Human Rights Protection in Europe;
- The opinion on the draft Amendments to the Constitution of Ukraine.

3. CO-OPERATION WITH THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

The Congress was represented at the Plenary Sessions of the Commission by the President of its Institutional Commission, Mr Hans-Ulrich Stöckling at the 54th Session, by its former President, Mr Llibert Cuatrecasas, at the 55th and 56th Sessions, and by the President of the Chamber of Regions, Mr Giovanni Di Stasi, at the 57th Session. They informed the Commission about the activities of the Congress of interest to the Commission, in particular the monitoring of local and regional autonomy in Council of Europe member States by the Congress and the request to introduce references to local and regional autonomy into the future constitutional treaty of the European Union. Mr Alain Delcamp, Honorary President of the group of independent experts of the Congress, presented to the Commission at its 57th Plenary Session the Congress Report on the state of local democracy in Europe.

The Congress continued to participated actively in the Council on Democratic Elections, established in 2002 as a tri-partite body of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe (see Part V above).

4. REQUESTS FROM THE SECRETARY GENERAL OF THE COUNCIL OF EUROPE

At the request of the Secretary General of the Council of Europe the Commission adopted opinions on the Electoral Code and on proposed amendments to the Law on Political Parties of the Republic of Moldova.

5. CO-OPERATION WITH THE EUROPEAN UNION

a. *Possible accession of the European Community to the Enlarged Agreement*

The revised Statute of the Commission adopted in 2002 explicitly provides for the possibility of accession of the European Community to the Enlarged Agreement. Contacts were established in this respect both between President La Pergola and President Prodi and between the Secretariat and the competent services of the European Commission.

b. *Joint programme*

A new joint programme between the European Commission and the European Commission for Democracy through Law was concluded in 2003. It will be effective throughout 2004 and 2005 and address the question of “Democracy through free and fair elections”. It is part of the European Initiative for Democracy and Human Rights (see Part V above).

c. *Opinion on the Implications of a legally binding European Union Charter of fundamental rights on human rights protection in Europe*

At the request of the Parliamentary Assembly the Commission adopted on 12-13 December 2003 an opinion on the “Implications of a legally binding European Union Charter of fundamental rights on human rights protection in Europe”. The Commission noted that the ECJ, despite not being bound by the ECHR, has drawn inspiration from it and from the case-law of the European Court of Human Rights and has done an admirable work to develop a human rights approach consistent with the Strasbourg system. In order to avoid possible divergences in the case-law of the Strasbourg and Luxembourg Courts once the Charter of fundamental rights of the European Union becomes binding, the Commission expressed the view that ratification by the European Communities of the ECHR would be an appropriate solution, and that the ECJ should be empowered to seek preliminary rulings on human rights matters from the Strasbourg Court (see Part III above).

d. *Co-operation with respect to Moldova*

Both the Venice Commission and the Council of the European Union have observer status on the Moldovan Joint Constitutional Commission established to draft a new Constitution for Moldova to settle the issue of Transnistria. Both bodies maintained close contacts in this respect throughout the year, coordinating positions also with OSCE, and the Commission provided legal advice to the Policy Unit of the EU Council.

e. *Constitutional Justice*

The Court of Justice of the European Communities appointed a liaison officer who contributes to the *Bulletin on Constitutional Case-Law* and the database CODICES of the Commission. In February 2003 the Commission published a Special Bulletin on the relations between constitutional courts on the one hand and ordinary courts and European Courts on the other hand. A number of decisions presented in this Bulletin relate to the issue of preliminary requests from constitutional courts to the Court of Justice.

f. Plenary sessions

Mr Armando Toledano Laredo represented the European Commission at the plenary sessions of the Commission.

6. CO-OPERATION WITH THE OSCE

The Commission has worked from the very beginning in close co-operation with the OSCE. Representatives of the Office of Democratic Institutions and Human Rights (ODIHR) of OSCE participated in all Plenary Sessions of the Commission. Co-operation with ODIHR is particularly intense in the electoral field where ODIHR participates in the Council on Democratic Elections and a large number of activities are carried out jointly by the Venice Commission and ODIHR (see Part V above).

With respect to the work on a new Constitution of Moldova and the settlement of the issue of Transnistria the Venice Commission worked in close co-operation with the OSCE Mission to Moldova. Representatives of the Venice Commission also participated in two seminars on Federalism organised by the OSCE Parliamentary Assembly (see Part II above).

A P P E N D I X I**LIST OF MEMBERS OF THE EUROPEAN COMMISSION
FOR DEMOCRACY THROUGH LAW**

Mr Antonio LA PERGOLA (Italy), President, Judge at the Court of Justice of the European Communities
(Substitute: Mr Sergio BARTOLE, Professor, University of Trieste)

* * *

Mr Luan OMARI (Albania), Vice-President, Vice President, Academy of Science of Albania

Mr Pieter VAN DIJK (The Netherlands), Vice-President, State Councillor, Former Judge at the European Court of Human Rights
(Substitute: Mr Erik LUKACS, Former Legal Adviser, Ministry of Justice)

Mr Jeffrey JOWELL (United Kingdom), Vice-President, Professor of Public Law, University College London
(Substitute : Mr Anthony BRADLEY, Professor)

* * *

Mr Giorgio MALINVERNI (Switzerland), Professor, University of Geneva
(Substitute : Mr Heinrich KOLLER, Professor Basel University)

Mr Franz MATSCHER (Austria), Professor, University of Salzburg, Former judge at the European Court of Human Rights
(Substitute: Mr Christoph GRABENWARTER, Professor of Public Law, University of Graz)

Mr Ergun ÖZBUDUN (Turkey), Professor, University of Bilkent, Vice President of the Turkish Foundation for Democracy
(Substitute : Mr Erdal ONAR, Associate Professor, Faculty of Law, Ankara University)

Mr Jean-Claude SCHOLSEM (Belgium), Professor, Law Faculty, University of Liège

Mr Helmut STEINBERGER (Germany), Director of the Max-Planck Institute, Professor, University of Heidelberg
(Substitute : Mr Georg NOLTE, Professor of Public Law, University of Goettingen)

Mr Jan HELGESEN (Norway), Professor, University of Oslo

Mr Gerard BATLINER (Liechtenstein), Member, Academic Council of the Liechtenstein Institute¹
(Substitute : Mr Wilfried HOOP, Lawyer, Aspen)

¹ *Term of office expired on 25 August 2003, a new member has not yet been appointed.*

Mr Ján KLUCKA (Slovakia), Judge, Constitutional Court
(Substitute: Mr Peter KRESAK, Professor, Member of the National Council of Slovakia)

Mr Peter JAMBREK (Slovenia), Professor, Dean, Graduate School of Government and European Affairs, Former Minister of the Interior, Former President of the Constitutional Court, Former Judge at the European Court of Human Rights
(Substitute: Mr Anton PERENIC, Professor of Law, former Judge of the Constitutional Court)

Mr Kestutis LAPINSKAS (Lithuania), Judge, Constitutional Court
(Substitute : Ms Zivile LIEKYTE, Director, Department of Legislation and Public Law, Ministry of Justice)

Mr Cyril SVOBODA (Czech Republic), Deputy Prime Minister, Minister of Foreign Affairs
(Substitute : Ms Eliska WAGNEROVA, Vice-Chairman, Constitutional Court)

Mr Aivars ENDZINS (Latvia), President, Constitutional Court

Ms Hanna SUCHOCKA (Poland), Ambassador of Poland to the Holy See

Mr Alexandre DJEROV (Bulgaria), Advocate, Member of the National Assembly
(Substitute: Mr Vassil GOTZEV, Judge, Constitutional Court)

Ms Carmen IGLESIAS CANO (Spain), Director of the Centre for Constitutional Studies
(Substitute: Mr Angel J. SANCHEZ NAVARRO, Sub Director of the Centro de Estudios Políticos y Constitucionales)

Mr Rune LAVIN (Sweden), Justice, Supreme Administrative Court
(Substitute : Mr Hans Heinrich VOGEL, Professor in Public Law, University of Lund)

Mr Stanko NICK (Croatia), Ambassador of Croatia in Hungary
(Substitute: Mrs Marija SALECIC, Legal Adviser, Constitutional Court)

Mr Tito BELICANEC, ("The former Yugoslav Republic of Macedonia"), Professor, Faculty of Law, University of Skopje
(Substitute: Mr Igor SPIROVSKI, Secretary General, Constitutional Court)

Mr Kaarlo TUORI (Finland), Professor of Administrative law, University of Helsinki
(Substitute: Mr Matti NIEMIVUO, Director at the Department of Legislation, Ministry of Justice)

Mr Hjörtur TORFASON (Iceland), Former Judge, Supreme Court of Iceland
(Substitute : Ms Herdis THORGEIRSDOTTIR)

Mr László SÓLYOM (Hungary), Former President of the Constitutional Court
(Substitute : Mr Peter PACZOLAY, Deputy Head, Office of the President of the Republic of Hungary)

Mr François LUCHAIRE (Andorra), Honorary President of the University of Paris I, Former member of the French Constitutional Council, former President of the Constitutional Tribunal of Andorra

Mr Peeter ROOSMA (Estonia), Adviser, Supreme Court of Estonia

Ms Siuzanna STANIK (Ukraine), Ambassador of Ukraine in Switzerland

Mr Gaguk HARUTUNIAN (Armenia), President, Constitutional Court
(Substitute : Mr Armen HARUTUNIAN, Counsellor, Constitutional Court, Rector, State Administration Academy)

Mr Henrik ZAHLE (Denmark), Professor, Institute of Legal Science, University of Copenhagen
(Substitute: Mr John LUNDUM, High Court Judge)

Ms Maria POSTOICO (Moldova), Chairperson of the Committee on Legal Affairs, appointments and immunities, Parliament of Moldova
(Substitute: Mr Vasile RUSU, Deputy Chairperson of the Committee on Legal Affairs, appointments and immunities, Parliament of Moldova)

Mr Marat V. BAGLAY (Russia), former President of the Constitutional Court
(Substitute: Mr Vladimir TOUMANOV, former President of the Constitutional Court)

Mr Cazim SADIKOVIC (Bosnia and Herzegovina), Dean, Faculty of Law, University of Sarajevo²

Mr Dimitri CONSTAS (Greece), Professor and Director of the Institute of International Relations, Panteion University Athens, Former Minister for the Press and Mass Media, former Ambassador of Greece to the Council of Europe
(Substitute: Ms Fani DASKALOPOULOU-LIVADA, Assistant Legal Adviser, Legal Department, Ministry of Foreign Affairs)

Mr Olivier DUTHEILLET DE LAMOTHE (France), State Counsellor, Member of the Constitutional Council
(Substitute : Mr Alain LANCELOT, Former member of the Constitutional Council)

Ms Lydie ERR (Luxembourg), Member of Parliament

Ms Finola FLANAGAN (Ireland), Director General, Senior Legal Adviser, Head of the Office of the Attorney General
(Substitute : Mr James HAMILTON, Director of Public Prosecutions)

Mr Panayotis KALLIS (Cyprus), Supreme Court Judge
(Substitute : Mr Petros CLERIDES, Deputy Attorney General of the Republic)

Ms Rodica Mihaela STANOIU (Romania), Minister of Justice
(Substitute: Mr Alexandru FARCAS, Minister of European Integration)
(Substitute: Mr Bogdan AURESCU, Director General, Ministry of Foreign Affairs)

Mr Ugo MIFSUD BONNICI (Malta), President Emeritus

² Former Associate member, became member on accession to the Council of Europe on 24 April 2002.

Mr José CARDOSO da COSTA (Portugal), Former President of the Constitutional Court
(Substitute : Ms Assuncao ESTEVES, Former member of the Constitutional Court)

Mr Vojin DIMITRIJEVIC, (Federal Republic of Yugoslavia), Director, Belgrade Human Rights Centre³
(Substitute: Mr Vladimir DJERIC, Advisor to the Minister of Foreign Affairs)

Mr Piero GUALTIERI⁴ (San Marino), Professor
(Substitute : Ms Barbara REFFI, State Attorney)

Mr John KHETSURIANI⁵ (Georgia), President, Constitutional Court
(Substitute : Mr Levan BODZASHVILI, Head of International Relations, Constitutional Court)

Mr Lätif HÜSEYNOV⁶ (Azerbaijan), Professor of Public International Law

Ms Cholpon BAEKOVA⁷ (Kyrgyzstan), Head of Teaching Department, Department of Law, Kyrgyz State National University

ASSOCIATE MEMBERS

Mr Anton MATOUCEWITCH (Belarus), Deputy Rector, Commercial University of Management

OBSERVERS

Mr Hector MASNATTA (Argentina), Ambassador, Executive Vice-Chairman, Centre for constitutional and social studies

Mr Yves de MONTIGNY, Senior General Counsel, Manager Public Law Group, Department of Justice
(Substitute: Mr Gérald BEAUDOIN (Canada), Professor, University of Ottawa, Senator)

Mr Vincenzo BUONOMO (Holy See), Professor of International Law, Latran University

Mr Amnon RUBINSTEIN (Israel), Dean, Interdisciplinary Centre

Mr Naoyuki IWAI (Japan), Consul, Consulate General of Japan, Strasbourg

Mr Oljas SOULEIMENOV (Kazakhstan), Ambassador of Kazakhstan in Rome

³ *Former Associate member, became member on accession to the Council of Europe on 3 April 2003.*

⁴ *Replaced Mr Giovanni Gualandi.*

⁵ *Replaced Mr Avtandil Demetrashvili.*

⁶ *Replaced Mr Khanlar Hajiev.*

⁷ *Nominated on accession of Kyrgyzstan to the Enlarged Agreement on 1 January 2004.*

Mr OH, Haeng-kyeom (Republic of Korea), Ambassador of the Republic of Korea to Luxembourg, Belgium and the European Union

Mr Porfirio MUÑOZ LEDO (Mexico), Ambassador Extraordinary and Plenipotentiary, Permanent Observer to the Council of Europe

Mr Jed RUBENFELD (United States of America), Professor, Yale Law School

Mr Miguel SEMINO (Uruguay), Ambassador of Uruguay in Paris

SECRETARIAT

Mr Gianni BUQUICCHIO

Mr Thomas MARKERT

Mrs Simona GRANATA-MENGHINI

Mr Pierre GARRONE

Mr Rudolf DÜRR

Mr Sergueï KOUZNETSOV

Ms Caroline MARTIN

Mrs Helen MOORE

Ms Dubravka BOJIC-BULTRINI

Ms Helen MONKS

Ms Tatiana MYCHELOVA

Mr Gaël MARTIN-MICALLEF

Ms Sandra MATRUNDOLA

Ms Brigitte AUBRY

Ms Marian JORDAN

Mrs Emmy KEFALLONITOU

Mrs Brigitte RALL

Ms Ana GOREY

Mrs Marie-Louise WIGISHOFF

Ms Caroline GODARD

A P P E N D I X I I
OFFICES AND
COMPOSITION OF THE SUB-COMMISSIONS

- President : Mr La Pergola
- Vice-Presidents : Mr van Dijk, Mr Omari, Mr Jowell
- Bureau : Mr Baglay, Mr Dutheillet de Lamothe, Mr Zahle, Mr Steinberger, ,
- Chairmen of Sub-Commissions : Mr Conostas, Ms Flanagan, Mr Helgesen, Mr Jambrek, Mr Luchaire, Mr Malinverni, Mr Matscher, Mr Mifsud Bonnici, Mr Özbudun, Mr Scholsem, Mr Solyom, Ms Suchocka, Mr Tuori
- Constitutional Justice : Chairman: Mr Sólyom - members: Mr Bartole, Mr Cardoso da Costa, Mr Djerov, Mr Dutheillet de Lamothe, Mr Endzins, Mr Gotzev, Mr Hamilton, Mr Harutunian, Mr La Pergola, Mr Lapinskas, Mr Lavin, Mr Malinverni, Mr Roosma, Mr Scholsem, Mr Spirovski, Ms Stanik, Mr Steinberger, Ms Suchocka, Mr Torfason, Mr Vogel, Mr Zahle - observers: Canada, Israel
- Federal State and Regional State : Chairman: Mr Malinverni - members: Mr Aurescu, Mr Bartole, Mr Belicanec, Ms Iglesias, Mr Jowell, Mr La Pergola, Mr Matscher, Mr Sadikovic Mr Scholsem, Mr Steinberger, Mr Tuori – observers: Canada, USA
- International Law : Chairman: Mr Conostas - members: Mr Aurescu, Mr Cardoso da Costa, Mr Djerov, Mr Farcas, Mr Gotzev, Mr Helgesen, Mr Huseynov, Mr Klucka, Mr La Pergola, Mr Luchaire, Mr Lukacs, Mr Malinverni, Mr Matscher, Mr Nick, Mr Steinberger, Mr Torfason
- Protection of Minorities : Chairman: Mr Matscher - members: Mr Aurescu, Mr Bartole, Mr Belicanec, Mr Conostas, Mr Farcas, Mr Hamilton, Mr Helgesen, Mr Huseynov, Mr Klucka, Mr Malinverni, Mr Nick, Mr Özbudun, Mr Scholsem, Mr Sólyom, Mr Torfason, Mr Tuori, Mr van Dijk – observers: Canada
- Constitutional Reform : Chairman: * members: Mr Bartole, Mr Cardoso da Costa, Mr Djerov, Mr Dutheillet de Lamothe, Mr Endzins, Mr Farcas, Mr Gotzev, Ms Iglesias, Mr La Pergola, Mr Lapinskas, Mr Luchaire, Mr Lukacs, Mr Malinverni, Mr Nolte, Mr Omari, Mr Özbudun, Mr Roosma, Mr Scholsem, Mr Spirovski, Mr Steinberger, Ms Suchocka, Mr Torfason, Mr Tuori – observers: Israel
- Democratic Institutions : Chairman: Mr Scholsem - members: Mr Belicanec, Mr Cardoso da Costa, Mr Dutheillet de Lamothe, Mr Endzins, Ms Err, Mr Farcas, Mr Hamilton, Mr Harutunian, Ms Iglesias, Mr Jambrek, Mr Jowell, Mr Klucka, Mr Lapinskas, Mr Lavin, Mr Luchaire, Mr Malinverni, Mr Omari, Mr Özbudun, Mr Roosma, Mr Svoboda, Mr Torfason, Mr Tuori, Mr Vogel

- UniDem Governing Board : Chairman: Mr Luchaire - members: Mr Cardoso da Costa, Mr Conostas, Mr Djerov, Mr Helgesen, Mr Jambrek, Mr Jowell, Mr La Pergola, Mr Lavin, Mr Özbudun, Ms Suchocka, Mr Svoboda, Mr van Dijk, Mr Vogel – observers: Holy See, ODIHR

- Co-opted members : Prof. Evans (Johns Hopkins University, Bologna), Prof. von der Gablentz (College of Europe, Bruges), Prof. Masterson (European University Institute, Florence), Mr Koller (Federal Office of Justice, Berne)

- Southern Africa : Chairman: Ms Flanagan - members: Mr Cardoso da Costa, Mr Hamilton, Mr Helgesen, Mr Jambrek, Mr Jowell, Mr Lavin, Mr La Pergola, Mr Torfason, Mr Tuori, Mr Vogel - observers: Canada, USA

- Mediterranean Basin : Chairman: Mr Mifsud Bonnici - members: Mr Conostas, Mr Djerov, Mr Dutheillet de Lamothe, Mr Gotsev, Ms Iglesias, Mr La Pergola, Mr Nick, Mr Omari, Mr Özbudun – observers: Israel

- Administrative and Budgetary Questions : Chairman: Mr Tuori - members: Mr Malinverni, Mr Matscher, Mr van Dijk

- South-East Europe : Chairman: Mr Jambrek – members: Mr Belicanec, Mr Conostas, Mr Djerov, Mr Farcas, Mr Gotsev, Mr Luchaire, Mr Lukacs, Mr Nick, Mr Omari, Mr Sadikovic, Mr Spirovski, Mr Torafason

- Emergency powers : Chairman: Mr Özbudun

- Latin America : Chairman: Mr Helgesen

- Ethics Committee : Chairman: Ms Suchocka – members: Mr Helgesen, Mr Jowell, Mr Scholsem, Mr van Dijk

APPENDIX III

MEETINGS OF THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW IN 2003¹

Plenary Sessions

54 th Session	14-15 March
55 th Session	13-14 June
56 th Session	17-18 October
57 th Session	12-13 December

Bureau

Meeting enlarged to include the Chairmen of Sub-Commissions
- 13 March

Meeting enlarged to include the Chairmen of Sub-Commissions
12 June

Meeting of the Enlarged Bureau with the Presidential Bureau of the Parliamentary Assembly
13 June

Meeting enlarged to include the Chairmen of Sub-Commissions
16 October

Special meeting of the Presidency on “perspectives for the future development of the Venice Commission”
8 November (London)

Meeting enlarged to include the Chairmen of Sub-Commissions
- 11 December

SUB-COMMISSIONS

Constitutional Justice

Meeting of Working Group on the systematic thesaurus
8 May (Oslo)

3rd Congress ACCPUF
18-19 June (Ottawa)

Preparatory Meeting XIII Conference of European Constitutional Courts
16-17 October (Nicosia)

Joint Council on Constitutional Justice

20th Meeting - 9 May (Oslo)
(Meeting with Liaison officers from Constitutional Courts)

¹ *All meetings took place in Venice unless otherwise indicated..*

Democratic Institutions

13 March
16 October
11 December

International Law

12 June
16 October

Unidem Governing Board

12 June
11 December

Council for Democratic Elections

13 March
12 June
16 October
11 December

Electoral Law

Electoral Law Training Workshop
5-8 May (Yerevan)

Electoral Law Training Workshop
2-4 September (Tirana)

Electoral Law Training Workshop
8-10 September (Baku)

Electoral Law Training Workshop
22-24 September (Tbilisi)

Assistance to the Central Electoral Commission of Georgia in the framework of the legislative elections

26 October-8 November (Tbilisi)

Assistance to the Commission for reforming the City of Mostar in developing electoral systems

11-19 November (Mostar)

Assistance to the Central Electoral Commission of Georgia in the framework of the legislative elections

15 December 2003-10 January 2004 (Tbilisi)

Seminar on the elections in Georgia

18-19 December (Strasbourg)

MEETINGS OF WORKING GROUPS AND RAPPORTEURS

Armenia

Meeting on co-operation between Armenia and the Council of Europe
17 January (Strasbourg)

Assistance to the Constitutional Court of Armenia on complaints relative to the Presidential elections
26-29 March (Yerevan)

Meeting on legal reform to be undertaken in Armenia
23-24 September (Strasbourg)

Azerbaijan

Meeting on the draft Electoral Code
13-14 February (Strasbourg)
26-27 February (Baku)
14 April (Strasbourg)

Bosnia and Herzegovina

Follow up meeting on the merger of the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina
10-11 April (Sarajevo)

Bulgaria

Seminar on judicial reform
19-20 May (Sofia)

Conference on judicial reform
9 September (Sofia)

Moldova

Meeting on laws on political parties and public meetings
7-8 July (Chisinau)

Meeting with the Joint Constitutional Commission on the revision of the Constitution of Moldova
21-24 July (Chisinau)

Northern Ireland

Assistance to the Northern Ireland Human Rights Commission on a draft bill of rights for Northern Ireland
22-24 October (Belfast)

Russian Federation

Meeting on Constitution of Chechnya
3 March (Paris)

Serbia and Montenegro

Meeting on drafting of Human Rights Charter for Serbia and Montenegro
14-15 February (Belgrade)

Workshop on “territorial organisation in Serbia”
24-25 November (Belgrade)

Ukraine

Meeting on the the proposals on amendments to theUkrainian Constitution
25-26 February (Kyiv)

Possible revision of the Geneva Conventions

Informal meeting
17 September (Strasbourg)
7 November (London)

Implications of a legally binding EU Charter of fundamental rights on human rights protection in Europe

Working Group Meeting
19 September (Strasbourg)
8 November (London)

CONSTITUTIONAL JUSTICE SEMINARS

Seminar on “the effects of constitutional courts decisions” in co-operation with the Constitutional Court of Albania
28-29 April (Tirana)

Conference on “Strengthening of the principles of a democratic State ruled by law in the Republic of Belarus by way of constitutional control”
26-27 June (Minsk)

Conference on “the Role of the Constitutional Court in the protection of democratic values” on the occasion of the 5th Anniversary of the Constitutional Court of Azerbaijan
14-15 July (Baku)

Conference on “Sustaining the independence of the judiciary: co-operation of the judiciary in the region”
21-22 July (Zanzibar, Tanzania)

Seminar on “Constitutional Justice and the Rule of Law” in co-operation with the Constitutional Court of Lithuania and on the occasion of the 10th anniversary of the Constitutional Court of Lithuania
4-5 September (Vilnius)

Seminar on “the basic criteria for restrictions to human rights in the practice of constitutional justice” in co-operation with the Constitutional Court of Armenia
3-4 October (Yerevan)

Conference on the occasion of the 5th anniversary of the adoption of the Constitution of Albania

26-27 November (Tirana)

2nd Seminar for liaison officers from highest courts of the Southern Africa region

28-29 November (Windhoek, Namibia)

UNIDEM AND OTHER SEMINARS AND CONFERENCES

UniDem Seminar on « European and American constitutionalism », in co-operation with the Institute of International Law, University of Göttingen

23-24 May (Göttingen)

UniDem Seminar on “State consolidation and national identity”

4-5 July (Chisinau)

UniDem Seminar on “Direct Democracy: Referendum as a tool of Citizens’ participation in public life”

3-4 October (Moscow)

UNIDEM CAMPUS FOR THE LEGAL TRAINING OF THE CIVIL SERVICE

EU Legislation: effectiveness and impact on national legal systems

27-31 January (Trieste)

Human Rights protection in Europe: the Council of Europe, the European Union, the OSCE and the UN system

24-28 February (Trieste)

The principle of non-discrimination and the protection by the public administration of the rights of national minorities

31 March-4 April (Trieste)

Public administration in the context of the decentralisation process

26-30 May (Trieste)

Working session on UniDem Campus

21 July (Brdo, Slovenia)

Environment protection and human rights

22-26 September (Trieste)

Reform of the civil service in Europe

24-28 November (Trieste)

PARTICIPATION IN OTHER SEMINARS AND CONFERENCES

Participation in a seminar on Federalism in Mexico and relations between Mexico, Latin America and the European Union, organised by the Mission of Mexico to the European Union and the College de Bruges

17 January (Bruges)

Participation in a meeting on electoral standards

30-31 January (Vienna)

Participation in the closing session of the Bipartisan Commission on electoral reform

24-26 March (Tirana)

Participation in the first meeting of the expert group on legal and operational norms relative to e-voting (EE-S-LOS) – Integrated Project

10-11 April (Strasbourg)

2 July (Strasbourg)

18-19 September (Strasbourg)

3-5 December (Strasbourg)

Participation in a Colloquy on « Bosnia and Herzegovina on the road to European integration »

19 May (Sarajevo)

Participation in a meeting on electoral standards

19-20 May (Vienna)

Participation in a Seminar on « The constitutional context of reconciliation with a totalitarian past » organised by the Czech Constitutional Court in co-operation with the Deutsche Stiftung für internationale rechtliche Zusammenarbeit (IRZ)

27-28 May (Brno)

Participation in a Conference on Federalism

11-12 July (Kazan, Russian Federation)

Seminar on the Ombudsman

1-2 September (Yerevan)

Participation in a meeting of the Sub-Committee on Strengthening of Democratic Institutions organised by the Political Affairs Committee of the Parliamentary Assembly

11 September (Paris)

Participation in a preparation day for the Summer University

5 September (Verdun)

Participation in a Seminar on “Frozen conflicts in Europe – the approach of democratic security”, organised by the Moldovan presidency of the Committee of Ministers

11-12 September (Chisinau)

Participation in a collegial working session on the launching of a cross-border and cross-national academic programme devoted to a study of conditions for peace, stability and development in the region of South-Eastern Europe

15 September (Ljubljana)

Participation in a meeting on the electoral rights of handicapped persons

21-23 September (Geneva)

Participation in an OSCE seminar on “Judicial power in the Serbian Constitution”

25-26 September (Belgrade)

Participation in the second Parliamentary Seminar on Federalism

29-30 September (Chisinau)

Participation in the 12th Annual Conference of ACEEEO

23-26 October (London)

Participation in a meeting on “the status of parliamentarians, immunities and incompatibilities: towards the harmonisation of existing standards” organised by the Committee on Rules of Procedure and Immunities of the Parliamentary Assembly

27 October (Bucharest)

Workshop on Autonomy Arrangements and Internal Territorial Conflicts

14-15 November (Oslo)

Participation in a Symposium on “Young people and democratic institutions: from disillusionment to participation”

27-28 November (Strasbourg)

Seminar on the launch of the Southern African Judges Commission

6 December (Johannesburg)

APPENDIX IV**LIST OF PUBLICATIONS
OF THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW¹****SERIES – SCIENCE AND TECHNIQUE OF DEMOCRACY**

- No. 1 Meeting with the presidents of constitutional courts and other equivalent bodies² (1993)
- No. 2 Models of constitutional jurisdiction*³
by Helmut Steinberger (1993)
- No. 3 Constitution making as an instrument of democratic transition (1993)
- No. 4 Transition to a new model of economy and its constitutional reflections (1993)
- No. 5 The relationship between international and domestic law (1993)
- No. 6 The relationship between international and domestic law*
by Constantin Economides (1993)
- No. 7 Rule of law and transition to a market economy (1994)
- No. 8 Constitutional aspects of the transition to a market economy (1994)
- No. 9 The Protection of Minorities (1994)
- No. 10 The role of the constitutional court in the consolidation of the rule of law (1994)
- No. 11 The modern concept of confederation (1995)
- No. 12 Emergency powers*
by Ergun Özbudun and Mehmet Turhan (1995)
- No. 13 Implementation of constitutional provisions regarding mass media in a pluralist democracy (1995)
- No. 14 Constitutional justice and democracy by referendum (1996)
- No. 15 The protection of fundamental rights by the Constitutional Court⁴ (1996)

¹ *Also available in French*

² *Speeches in the original language*

³ *Publications marked with * are also available in Russian*

- No. 16 Local self-government, territorial integrity and protection of minorities (1997)
- No. 17 Human Rights and the functioning of the democratic institutions in emergency situations (1997)
- No. 18 The constitutional heritage of Europe (1997)
- No. 19 Federal and Regional States* (1997)
- No. 20 The composition of Constitutional Courts (1997)
- No. 21 Citizenship and state succession (1998)
- No. 22 The transformation of the Nation-State in Europe at the dawn of the 21st century (1998)
- No. 23 Consequences of state succession for nationality (1998)
- No. 24 Law and foreign policy (1998)
- No. 25 New trends in electoral law in a pan-European context (1999)
- No. 26 The principle of respect for human dignity in European case-law (1999)
- No. 27 Federal and Regional States in the perspective of European integration (1999)
- No. 28 The right to a fair trial (2000)
- No. 29 Societies in conflict: the contribution of law and democracy to conflict resolution (2000)
- No. 30 European Integration and Constitutional Law (2001)
- No. 31 Constitutional implications of accession to the European Union (2002)
- No. 32 The protection of national minorities by their kin-State (2002)
- No. 33 Democracy, Rule of Law and Foreign Policy² (2003)
- No. 34 Code of good practice in electoral matters* (2003)
- No. 35 The resolution of conflicts between the central State and entities with legislative power by the Constitutional Court² (2003)

⁴ *An abridged version is also available in Russian.*

OTHER PUBLICATIONS

Bulletin on Constitutional Case-Law – 1993 – 2003 (three issues per year)

Special Bulletins -

- Description of Courts (1999)*
- Basic texts - extracts from Constitutions and laws on Constitutional Courts - issues Nos 1–2 (1996), issues Nos 3-4 (1997), issue No 5 (1998), issue No 6 (2001)
- Leading cases of the European Court of Human Rights (1998)*
- Freedom of religion and beliefs (1999)
- Special Edition Leading cases 1 - Czech Republic, Denmark, Japan, Norway, Poland, Slovenia, Switzerland, Ukraine (2002)
- Inter Court Relations (2003)

Annual Reports -

1993 - 2003

Brochures -

- 10th anniversary of the Venice Commission (2001)*
- Revised Statute of the European Commission for Democracy through Law (2002)
- The Venice Commission (2002)
- UniDem Campus – Legal training for civil servants (2003)

APPENDIX V

LIST OF DOCUMENTS ADOPTED IN 2003

- CDL-AD (2003) 1 Opinion on the Election law of the Republic of Moldova;
- CDL-AD (2003) 2 Opinion on the draft Constitution of the Chechen Republic adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003);
- CDL-AD (2003) 3 Main recommendations for amendments to the draft Electoral Code of the Republic of Azerbaijan drawn up by the Venice Commission and ODHIR, adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003);
- CDL-AD (2003) 4 Opinion on the draft revision of the Constitution of Romania (unfinished texts by the Committee for the revision of the Constitution) adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003);
- CDL-AD (2003) 5 Opinion on the law of the Republic of Armenia on Political Parties adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003);
- CDL-AD (2003) 6 Opinion on the draft law on the Human Rights Defender of Armenia adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003);
- CDL-AD (2003) 7 Opinion on the draft law on the Public Attorney (Ombudsman) of “the former Yugoslav Republic of Macedonia” adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003);
- CDL-AD (2003) 8 Opinion on the proposed amendment to the law on parties and other socio-political organisations of the Republic of Moldova adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003);
- CDL-AD (2003) 9 Opinion on the constitutional law on the rights of national minorities in Croatia adopted by the Commission at its 54th Plenary Session (Venice, 14-15 March 2003);
- CDL-AD (2003) 10 Election Evaluation Guide adopted by the Council for Democratic Elections at its 5th Meeting (Venice, 12 June 2003) and by the Commission at its 55th Plenary Session (Venice, 13-14 June 2003);
- CDL-AD (2003) 11 Opinion on the draft law on prohibition of extremist organisations and unions in Georgia adopted by the Commission at its 55th Plenary Session (Venice, 13-14 June 2003);

- CDL-AD (2003) 12 Memorandum on the reform of the judicial system in Bulgaria adopted by the Commission at its 55th Plenary Session (Venice, 13-14 June 2003);
- CDL-AD (2003) 13 Opinion on the draft law on amendments to the law on national minorities in Lithuania adopted by the Commission at its 55th Plenary Session (Venice, 13-14 June 2003);
- CDL-AD (2003) 14 Opinion on the draft law on the National Assembly of the Republic of Belarus adopted by the Commission at its 56th Plenary Session (Venice, 17-18 October 2003);
- CDL-AD (2003) 15 Joint final assessment of the Electoral Code of the Republic of Azerbaijan by the Venice Commission and ODIHR;
- CDL-AD (2003) 16 Opinion on the constitutional amendments reforming the judicial system in Bulgaria adopted by the Commission at its 56th Plenary Session (Venice, 17-18 October 2003);
- CDL-AD (2003) 17 Opinion on the transfer of responsibility in the field of higher education within the Federation of Bosnia and Herzegovina adopted by the Commission at its 56th Plenary Session (Venice, 17-18 October 2003);
- CDL-AD (2003) 18 Opinion on the possible need for further development of the Geneva Conventions adopted by the Commission at its 57th Plenary Session (Venice, 12-13 December 2003);
- CDL-AD (2003) 19 Opinion on three draft laws proposing amendments to the Constitution of Ukraine adopted by the Commission at its 57th Plenary Session (Venice, 12-13 December 2003);
- CDL-AD (2003) 20 Opinion on the draft law on freedom of conscience and religious entities of Georgia adopted by the Commission at its 57th Plenary Session (Venice, 12-13 December 2003);
- CDL-AD (2003) 21 Joint recommendations on the Electoral Law and the Electoral Administration in Armenia by the Venice Commission and ODIHR
- CDL-AD (2003) 22 Opinion on the implications of a legally binding EU Charter of fundamental rights on human rights protection in Europe adopted by the Commission at its 57th Plenary Session (Venice, 12-13 December 2003).