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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT**  
**(COMMISSION DE VENISE)**

**DRAFT ANNUAL REPORT OF ACTIVITIES 2012**

**PROJET DE RAPPORT ANNUEL D'ACTIVITES 2012**

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## I. WORKING FOR DEMOCRACY THROUGH LAW - AN OVERVIEW OF VENICE COMMISSION ACTIVITIES IN 2012

### 1. THE VENICE COMMISSION: AN INTRODUCTION<sup>1</sup>

The European Commission for Democracy through Law, better known as the Venice Commission, is a Council of Europe independent consultative body on issues of constitutional law, including the functioning of democratic institutions and fundamental rights, electoral law and constitutional justice. Its members are independent experts. Set up in 1990 under a partial agreement between 18 Council of Europe member states, it has subsequently played a decisive role in the adoption and implementation of constitutions in keeping with Europe's constitutional heritage.<sup>2</sup> The Commission holds four plenary sessions a year in Venice, working mainly in three fields: constitutional assistance, constitutional justice and election and referendum issues. In 2002, once all Council of Europe member states had joined, the Commission became an enlarged agreement of which non-European states could become full members. In 2012, it had 58 full members and 13 other entities formally associated with its work. It is financed by its member states on a proportional basis which follows the same criteria as applied to the Council of Europe as a whole. This system guarantees the Commission's independence vis-à-vis those states which request its assistance.

The Commission has the prime function of providing **constitutional assistance** to States, mainly, but not exclusively, those which participate in its activities.<sup>3</sup> Such assistance takes the form of opinions prepared by the Commission at the request not only of States, but also of organs of the Council of Europe, more specifically the Parliamentary Assembly, Committee of Ministers, Congress of Local and Regional Authorities and Secretary General, as well as of other international organisations or bodies which participate in its activities. These opinions relate to draft constitutions or constitutional amendments, or to other draft legislation in the field of constitutional law. The Commission has thus made an often crucial contribution to the development of constitutional law, mainly, although not exclusively, in the new democracies of central and eastern Europe.

The **aim of the assistance** given by the Venice Commission is to provide a complete, precise, detailed and objective analysis not only of compatibility with European and international standards, but also of the practicality and viability of the solutions envisaged by the States concerned. The Commission's recommendations and suggestions are largely based on common European experience in this sphere.

As concerns the **working methods**, the Commission's opinions are prepared by a working group composed of members of the Commission, at times assisted by external experts. It is ordinary practice for the working group to travel to the country concerned in order to meet and discuss with the national authorities, other relevant bodies and the civil society. The opinions contain an assessment of the conformity of the national legal text (preferably in its draft state) with European and international legal and democratic standards, and on proposals of improvement on the basis of the relevant specific experience gained by the members of the Commission in similar situations. Draft opinions are discussed and adopted by the Commission at one of its plenary sessions, usually in the presence of representatives of the country concerned. Following adoption, the opinions are transmitted to the State or the body which requested it, and comes into the public domain.

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<sup>1</sup> For more information, please refer to the Venice Commission's website: [www.venice.coe.int](http://www.venice.coe.int).

<sup>2</sup> On the concept of the constitutional heritage of Europe, see inter alia "The Constitutional Heritage of Europe", proceedings of the UniDem seminar organised jointly by the Commission and the Centre d'Etudes et de Recherches Comparatives Constitutionnelles et Politiques (CERCOP), Montpellier, 22 and 23 November 1996, "Science and technique of democracy", No.18.

<sup>3</sup> Article 3, paragraph 3, of the Statute of the Commission specifies that any State which is not a member of the agreement may benefit from the activities of the Commission by making a request to the Committee of Ministers of the Council of Europe.

The Commission's approach to advising states is based on dialogue with the authorities: the Commission does not attempt to impose solutions or abstract models; it rather seeks to understand the aims pursued by the legal text in question, the surrounding political and legal context and the issues involved; it then assesses on the one hand the compatibility of the text with the applicable standards, and on the other hand its viability and its prospects of successful functioning. In doing so, the Commission takes into account the specific features and needs of the relevant country.

Although the Commission's opinions are not binding, they are generally reflected in the law of the countries to which they relate, thanks to the approach taken and to the Commission's reputation of independence and objectivity. Furthermore, even after an opinion has been adopted, the Commission remains at the disposal of the State concerned, and often continues to provide its assistance until the constitution or law has been finally adopted.

The Commission has also played, and continues to play, an important role in the interpretation and development of the constitutional law of countries which have experienced, are experiencing or run the risk of ethnic/political conflicts. In this role, it supplies technical assistance relating to the legal dimension of the search for political agreement. The Commission has done so in particular at the request of the European Union.

While most of its work concerns specific countries, the Venice Commission also draws up **studies and reports on subjects of general interest**. Just a few examples demonstrating the variety, complexity and importance of the matters dealt with by the Commission are its reports on a possible convention on the rights of minorities, on "kin minorities", on independence of the judiciary, on individual access to constitutional justice, on the status of detainees at Guantanamo Bay, on counter-terrorist measures and human rights, on democratic control of security services and armed forces, on the relationship between freedom of expression and freedom of religion as well as the adoption of codes of good practice in electoral matters, on referendums and in the field of political parties.

These studies may, when appropriate, lead to the preparation of guidelines and even proposals for international agreements. Sometimes they take the form of scientific conferences under the Universities for Democracy (**UniDem**) programme, the proceedings of which are subsequently published in the "**Science and technique of democracy**" series.

After assisting States in adopting democratic constitutions, the Commission pursues its action aimed at achieving the rule of law by focussing on their implementation. This is why **constitutional justice** is one of the main fields of activity of the Commission, which has developed close co-operation with the key players in this field, i.e. constitutional courts, constitutional councils and supreme courts, which exercise constitutional jurisdiction. As early as 1991, the Commission set up the Centre on Constitutional Justice, the main task of which is to collect and disseminate constitutional case-law. The Commission's activities in this field are supervised by the **Joint Council on Constitutional Justice**. This is made up of members of the Commission and liaison officers appointed by the participating courts in the Commission's member, associate member and observer countries, by the European Court of Human Rights, the Court of Justice of the European Communities and the Inter-American Court of Human Rights.

Since 1996, the Commission has established **co-operation with a number of regional or language based groups of constitutional courts**, in particular the Conference of European Constitutional Courts, the Association of Constitutional Courts using the French Language, the Southern African Chief Justices' Forum, the Conference of Constitutional Control Organs of Countries of New Democracy, the Association of Asian Constitutional Courts and Equivalent Institutions, the Union of Arab Constitutional Courts and Councils, the Ibero-American Conference of Constitutional Justice, the Conference of Constitutional Courts of Countries of Portuguese Language and the Conference of Constitutional Jurisdictions of Africa.

In January 2009, the Commission organised, together with the Constitutional Court of South Africa, a **World Conference on Constitutional Justice**, which for the first time gathered regional groups and language based groups.

That Conference decided to establish an association, assisted by the Venice Commission and open to all participating courts, with the purpose of promoting co-operation within the groups, but also between them on a global scale. In co-operation with the Federal Supreme Court of Brazil, the Venice Commission organised a Second Congress of the World Conference (16-18 January 2011, Rio de Janeiro) during which a Statute of the World Conference was discussed. This Statute was adopted by the Bureau, composed of representatives of the regional and language based groups in Bucharest on 23 May 2011 and entered into force on 24 September 2011. At the end of 2012, 60 constitutional courts and equivalent bodies had joined the World Conference as full members. The Venice Commission acts as the secretariat for the World Conference.

Since 1993, the Commission's constitutional justice activities have also included the publication of the **Bulletin Constitutional Case-Law**, which contains summaries in French and English of the most significant decisions over a four month period. It also has an electronic counterpart, the **CODICES database**, which contains some 7,000 decisions rendered by over 95 participating courts together with constitutions and descriptions of many courts and the laws governing them.<sup>4</sup> These publications have played a vital "cross-fertilisation" role in constitutional case-law.

At the request of a constitutional court and the European Court of Human Rights, the Commission may also provide **amicus curiae briefs**, not on the constitutionality of the act concerned, but on comparative constitutional and international law issues.

One final area of activity in the constitutional justice sphere is the support provided by the Commission to constitutional and equivalent courts when these are subjected to pressure by other authorities of the State. The Commission has even, on several occasions, been able to help some courts threatened with dissolution to remain in existence. It should also be pointed out that, generally speaking, by facilitating the use of support from foreign case-law, if need be, the Bulletin and CODICES also help to strengthen judicial authority.

Lastly, the Commission holds seminars and conferences in co-operation with constitutional and equivalent courts, and makes available to them on the Internet a forum reserved for them, the "Venice Forum", through which they can speedily exchange information relating to pending cases.

The **ordinary courts** have become a subject of growing importance to the Commission. The latter is asked increasingly to give an opinion on constitutional aspects of legislation relating to the courts. Frequently, it co-operates in this sphere with other Council of Europe departments, so that the constitutional law viewpoint is supplemented by other aspects. With its report on the independence of the judicial system (Part I - Independence of judges (CDL-AD(2010)004 and Part II - Prosecution Service (CDL-AD(2010)040), the Commission produced a reference text, which it uses in its opinions on specific countries.

The Commission also co-operates with **ombudspersons**, through opinions on the legislation governing their work, and by offering them *amicus ombud* opinions on any other subject, opinions which, like *amicus curiae* briefs, present elements of comparative and international law, but contain no verdict on the possible unconstitutionality of a text, a decision which only the constitutional court itself can take. The Commission promotes relations between ombudspersons and constitutional courts with the aim of furthering human rights protection in member countries.

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<sup>4</sup> CODICES is available on CD-ROM and on line (<http://www.CODICES.coe.int>).

**Elections and referendums** which meet international standards are of the utmost importance in any democratic society. This is the third of the Commission's main areas of activity, in which the Commission has, since it was set up, been the most active Council of Europe body, leaving aside election observation operations.

The activities of the Venice Commission and the Council for Democratic Elections also relate to political parties, without which elections in keeping with Europe's electoral heritage are unthinkable.

In 2002, the **Council for Democratic Elections** was set up at the Parliamentary Assembly's request. This is a subordinate body of the Venice Commission comprising members of the Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. The Council for Democratic Elections also includes an observer from the OSCE/ODIHR. The Council for Democratic Elections and the Venice Commission have done much to set European standards in the electoral sphere, adopting a good number of general documents, the most important of which are the **Code of Good Practice in Electoral Matters** (2002), which is the Council of Europe's reference document in this field, and the **Code of Good Practice for Referendums** (2007),<sup>5</sup> **Guidelines on the international status of elections observers** (2009) and, in the field of political parties, the **Code of Good Practice in the field of Political parties** (2008). The other general documents concern such matters as electoral law and national minorities, and restrictions on the right to vote or the cancellation of electoral results, as well as on the prohibition, dissolution and financing of political parties. The Commission has adopted more than fifty studies or guidelines of a general nature in the field of elections, referendums and political parties.

The Commission has drafted more than 100 opinions on **national laws and practices relating to elections, referendums and political parties**, and these have had a significant impact on electoral legislation in the States concerned. Among the States which regularly co-operate with the Commission in the electoral sphere are Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Serbia and Ukraine.

The Council for Democratic Elections has developed **regular co-operation with election authorities in Europe and on other continents**. It organises annually the European Conference of Electoral Management Bodies, and is also in very close contact with other international organisations or bodies which work in the election field, such as ACEEEO (Association of European Election Officials), IFES (International Foundation for Electoral Systems) and, in particular, the OSCE (Organisation for Security and Co-operation in Europe). Thus, in principle, opinions on electoral matters are drafted jointly with the OSCE/ODIHR, with which there is exemplary co-operation.

The Commission also holds **seminars** on subjects such as the European electoral heritage, the preconditions for democratic elections or the supervision of the electoral process, as well as **training workshops** for those involved in the electoral process.

The Council for Democratic Elections has created the VOTA<sup>6</sup> database containing, inter alia, member States' electoral legislation. It now manages this database jointly with the Electoral Tribunal of the Judicial Power of the Mexican Federation (Tribunal electoral del poder judicial de la Federación, TEPJF).

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<sup>5</sup> These two texts were approved by the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe, and the subject of a solemn declaration by the Committee of Ministers encouraging their application.

<sup>6</sup> VOTA is accessible on line: <http://www.venice.coe.int/VOTA>.



## **2. THE COMMISSION IN 2012**

### *Member States*

#### *Accession of new member States*

On 13 March 2012 Kazakhstan became the 58<sup>th</sup> member State of the Venice Commission.

#### *Scientific Council*

The Scientific Council prepared four thematic compilations of Venice Commission opinions and studies, in the fields of freedom of assembly and freedom of association. These compilations, which contain extracts from the Commission's opinions and studies structured thematically around key words, are intended to serve as a reference to country representatives, researchers as well as experts who wish to familiarise themselves with the Venice Commission's "doctrine". They are available on the Commission's web site and will be regularly up-dated.

#### *Voluntary contributions*

In 2012 the Commission received voluntary contributions from the government of Norway for the Constitutional and Legal Assistance to the authorities in Tunisia and Morocco; from the Italian government (Regione Veneto) for the organisation of the plenary sessions and for the Commission's activities in Arab countries. The government of Finland contributed to the joint EU-Council of Europe programme "Equal before law: Access to Justice for vulnerable groups in Central Asia".<sup>7</sup>

The *Organisation Internationale de la Francophonie* continued to contribute to the translation into French of the Commission's Bulletin on Constitutional Case-Law.

#### *Main activities*

#### **Key developments and key figures**

In 2012 the Commission's co-operation with the Southern neighbourhood entered into a new phase. The Commission intensified its dialogue with the National Constituent Assembly of Tunisia, organising several exchanges of views on the draft Constitution and other legislative texts. There were frequent contacts with the Moroccan authorities on implementing legislation for the new Constitution. Co-operation with Jordan started in the area of constitutional justice and a first mission took place to Libya to discuss the process of adopting the new Constitution. The Commission continued work in the Eastern neighbourhood, mainly in Kazakhstan.

The Commission continued to be particularly active in Eastern Europe. At the request of the Parliamentary Assembly it adopted five opinions on important and politically sensitive laws of the Russian Federation. It adopted opinions on legislation on fundamental freedoms of Azerbaijan and Belarus and on the reform of the prosecution service of Ukraine and established co-operation with the Constitutional Assembly of Ukraine.

In South Eastern Europe the Commission adopted four opinions on Bosnia and Herzegovina, including a comprehensive opinion on legal certainty and the independence of the judiciary at the request of the European Commission. Moreover, it adopted an opinion on draft constitutional amendments of Montenegro and on lustration in "the former Yugoslav Republic of Macedonia."

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<sup>7</sup> Cf. chapter V.

An unusually high number of opinions concerned member states of the European Union. It adopted eight opinions on Hungary, including two opinions on the judiciary, one opinion on the situation in Romania as well as one opinion on constitutional amendments of Belgium.

Altogether, the Commission adopted 28 opinions and studies in 2012 and worked on many more. In addition, the growing popularity/visibility of the Commission's work resulted in numerous invitations to organize, participate, moderate and chair scientific, political and legal international and national forums. The Commission co-organised more than 50 activities and participated in some other 60 events.

## ***Democratic Institutions and Fundamental Freedoms***

### *Constitutional Reforms*

Constitutional reforms relating to the foundations of a democratic state remain at the core of the Venice Commission's activities. Requests for assistance and the Commission's participation in these processes bear witness to the trust and respect enjoyed by the Commission from the States concerned as well as from institutional partners.

In 2012, the Venice Commission worked on constitutional reform issues in Belgium, Montenegro, Tunisia and Ukraine. It also examined legislation enacted by Hungary as part of the implementation of the Constitution adopted in 2011 and assessed the compatibility with constitutional principles and the rule of law of actions taken by the Government and the Parliament of Romania in respect of other State institutions, as well as of government ordinances adopted during the summer 2012. Work will be pursued in the framework of an assistance process linked to the domestic process of revision of the Constitution launched by the Romanian authorities. At the end of 2012 the Commission received a request to examine the new draft Constitution of Iceland.

### *Functioning of democratic institutions and the protection of fundamental rights*

In the institutional field the Commission adopted a critical Opinion on the practice of blanket resignation of ministers in the Federation of Bosnia and Herzegovina and an opinion on the Federal Law on the Federal Security Service of the Russian Federation.

Several opinions are related to legislation on fundamental rights: freedom of assembly (Belarus, Russian Federation), freedom of religion and religious education (Azerbaijan, Bosnia and Herzegovina, Hungary) freedom of information and data protection (Bosnia and Herzegovina and Hungary), protection of minorities (Hungary). The opinion on the Federal Law on Combating Extremist Activity of the Russian Federation raises concerns with respect to a number of fundamental freedoms.

## **Constitutional and ordinary justice, ombudspersons**

### *Strengthening constitutional justice*

In 2012 the Commission had to intervene on behalf of the independence of the Constitutional Court of Romania, both through statements by its President and through an opinion establishing a serious lack of mutual respect between state organs.

The Commission also adopted opinions on the Law on the Constitutional Court of Hungary and *amicus curiae* briefs for the Constitutional Courts of the Federation of Bosnia and Herzegovina and "the former Yugoslav Republic of Macedonia".

The Venice Commission's Joint Council on Constitutional Justice continued its work in 2012 with constitutional courts and equivalent bodies using its Centre on Constitutional Justice, which publishes the Bulletin on Constitutional Case-Law (5 issues in 2012) and the CODICES database. The Commission's Venice Forum received 18 comparative law research requests

this year from constitutional courts and equivalent bodies covering questions ranging from conscientious objection outside the military service context to the use of social networks by judges (twitter, facebook).

Constitutional justice conferences and seminars took place in Albania, Armenia, the Czech Republic, Georgia, Jordan, Korea, Lithuania, Montenegro, Morocco, Romania and Tunisia. The topics covered a variety of themes in 2012, such as the standards of Europe's constitutional heritage, constitutional processes and democratic processes and preliminary requests to constitutional courts.

### *Ordinary judiciary*

The Commission's opinions on the legislation on the judiciary of Hungary attracted a lot of attention. In its first opinion on the initial legislation it concluded that the legislation posed a threat to judicial independence. In its second opinion it noted that progress had been achieved following the dialogue between the Secretary General and the Hungarian authorities. However, concerns remained. The need for such opinions shows that judicial independence cannot be taken for granted even in the centre of Europe.

The need to ensure the independence of the judiciary and the functioning of the judicial system in the interest of society continues to play an important role in the Venice Commission's activities. In 2012, the Venice Commission adopted opinions in this area for Bosnia and Herzegovina, Hungary and Romania and participated in seminars and conferences in Bosnia and Herzegovina, Kyrgyzstan, Tunisia and Turkey.

### **World Conference on Constitutional Justice**

2012 was a year of consolidating the World Conference, which had been established in 2011. By the end of 2012, 60 Constitutional Courts, Constitutional Councils and Supreme Courts had joined the World Conference on Constitutional Justice.<sup>8</sup> At its meeting in June 2012 in Venice, the bureau of the World-Conference took a number of decisions ensuring the smooth functioning of the Conference and the exchanges with its members.

After the first two congresses that took place in Cape Town (South Africa) and Rio de Janeiro (Brazil) in 2009 and 2011 respectively, a Third Congress of the World Conference on Constitutional Justice will be hosted by the Constitutional Court of the Republic of Korea in Seoul in 2014.

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<sup>8</sup> Membership status in February 2013: Albania, Constitutional Court; Algeria, Constitutional Council; Andorra, Constitutional Court; Angola, Constitutional Court; Armenia, Constitutional Court; Austria, Constitutional Court; Azerbaijan, Constitutional Court; Belarus, Constitutional Court; Belgium, Constitutional Court; Benin, Constitutional Court; Bosnia and Herzegovina; Brazil, Federal Supreme Court; Bulgaria, Constitutional Court; Burkina Faso, Constitutional Council; Chad, Constitutional Council; Chile, Constitutional Court; Congo (Brazzaville), Constitutional Court; Congo, Democratic Republic, Supreme Court of Justice; Côte d'Ivoire, Constitutional Council; Croatia, Constitutional Court; Denmark, Supreme Court; Egypt, Supreme Constitutional Court; Estonia, Supreme Court; Georgia, Constitutional Court; Germany, Federal Constitutional Court; Hungary, Constitutional Court; Israel, Supreme Court; Italy, Constitutional Court; Korea, Republic, Constitutional Court; Latvia, Constitutional Court; Lithuania, Constitutional Court; Lebanon, Constitutional Council; Macedonia, Constitutional Court; Madagascar, High Constitutional Court; Mali, Constitutional Court; Mauritania, Constitutional Council; Mauritius, Supreme Court; Mexico, Supreme Court; Moldova, Constitutional Council; Mongolia, Constitutional Council; Montenegro, Constitutional Court; Morocco, Constitutional Council; Mozambique, Constitutional Council; Netherlands, Council of State; Niger, Constitutional Council; Norway, Supreme Court; Peru, Constitutional Court; Poland, Constitutional Tribunal; Portugal, Constitutional Court; Romania, Constitutional Court; Senegal, Constitutional Council; Serbia, Constitutional Court; Slovakia, Constitutional Court; Slovenia, Constitutional Court; Spain, Constitutional Court; Sweden, Supreme Administrative Court; Switzerland, Federal Court; Tajikistan, Constitutional Court; Thailand, Constitutional Court; Togo, Constitutional Court; Ukraine, Constitutional Court; Uzbekistan, Constitutional Court (62 courts in February 2013).

## **Elections, référendums et partis politiques**

En 2012, la Commission a poursuivi ses activités en matière électorale et de partis politiques. La Commission a adopté quatre avis en matière d'élections et de partis politiques, tout en continuant la rédaction de documents de caractère général. Il existe maintenant un *corpus* important de lignes directrices en la matière ; quant à la législation, même si des améliorations sont souhaitables voire nécessaires dans un bon nombre d'Etats, les problèmes à résoudre concernent de plus en plus son application plutôt que son contenu. Dès lors, la Commission a continué de s'impliquer en 2012 dans des activités d'assistance à la mise en œuvre des normes internationales en matière d'élections, et a développé sa coopération dans ce domaine en dehors d'Europe, en Afrique du Nord, en Asie centrale et en Amérique latine.

### *Législation et pratique électorales*

La Commission a adopté des avis concernant des législations ou projets de législation en matière électorale en Hongrie, en Ouzbékistan et en Russie. A l'exception de ce dernier, elle a rédigé ces avis conjointement avec le Bureau pour les institutions démocratiques et les droits de l'homme (BIDDH) de l'OSCE. Elle a aussi adopté un avis relatif à la législation sur les partis politiques en Russie.

La Commission a également adopté plusieurs documents de caractère général en matière électorale, en particulier le rapport sur les mesures pour améliorer le caractère démocratique des élections dans les Etats membres du Conseil de l'Europe, ainsi que le rapport sur la démocratie, la limitation des mandats et l'incompatibilité des fonctions publiques.

En outre, la Commission a organisé une mission d'assistance de longue durée à la Commission électorale centrale de Géorgie.

La Commission de Venise a organisé la neuvième Conférence européenne des administrations électorales en Estonie, ainsi qu'une conférence internationale sur les « Le patrimoine électoral européen : dix ans de Code de bonne conduite en matière électorale » dans le cadre de la présidence albanaise du Comité des Ministres. Elle a aussi organisé plusieurs séminaires sur les questions électorales en Arménie, au Kazakhstan et en Ukraine, y compris un séminaire multilatéral sur les listes électorales..

Enfin, la Commission a fourni une assistance juridique à sept missions d'observation d'élections de l'Assemblée parlementaire. La Commission a également effectué une visite officielle au Mexique pour rencontrer les représentants des différents partis politiques, le Sénat, le Congrès, le Tribunal électoral, l'Institut fédéral électoral ainsi que la société civile, dans le cadre de la préparation d'un avis en cours sur le Code électoral du Mexique.

### *Partis politiques*

La Commission a adopté un avis sur la loi sur les partis politiques de la Fédération de Russie. Elle a organisé une conférence internationale sur les partis politiques à Saint-Pétersbourg.

## **Sharing European experience with non-European countries**

Being an enlarged agreement, the Venice Commission continued through 2012 to co-operate with an important number of non-European member countries. Its capacity to deal with requests for assistance in an efficient and reactive way resulted in an increased number of activities in different parts of the world. In 2012 the Commission organised or participated in more than 30 activities in countries of Central Asia, the South Mediterranean basin and Latin America.

Special mention should be made of the important increase of activities in countries of the Southern Mediterranean. Successful projects of the Venice Commission in the field of the building of democratic institutions, constitutional justice and elections attracted special

attention from the countries of the region without a history of co-operation with the Venice Commission. The need to reform state institutions in accordance with the international standards resulted in concrete projects with Morocco, Tunisia, Jordan and Libya.

In 2012 the Venice Commission was involved in fruitful co-operation with the National Constituent Assembly of Tunisia on the new Constitution of the country and its representatives held fruitful exchanges of views with the Commission in June, July, October and December 2012. Co-operation with the Moroccan authorities focused on the implementation of the new Constitution.

This involvement was possible thanks to the financial support received by the Commission from the European Union and voluntary contributions from Finland, France, Italy, Norway and Turkey.

## **II. DEMOCRATIC DEVELOPMENT OF PUBLIC INSTITUTIONS AND RESPECT FOR HUMAN RIGHTS<sup>9</sup>**

### **1. COUNTRY SPECIFIC ACTIVITIES / ACTIVITES PAR PAYS**

#### **AZERBAIJAN**

*Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan (CDL-AD(2012)022)*

Following a request of the Monitoring Committee of the Parliamentary Assembly, the Venice Commission adopted at its October session 2012, jointly with the OSCE/ODIHR, an opinion, on the compatibility with Human Rights standards of the Law on Freedom of Religious Belief in force in Azerbaijan, as last amended in 2011.

The opinion contains serious criticism as the Commission's Rapporteurs found that the Law as amended in 2011 sets a legal framework which is in several aspects contrary to international standards and would benefit from additional revisions in order to meet these standards.

The opinion emphasises that, although States benefit from a large margin of appreciation in this sphere, this should not be interpreted with a degree of latitude that would allow the undermining of the substance of human rights values, and refers to the European Court of Human Rights having underlined that freedom of thought, conscience and religion is one of the foundations of a "democratic society".

The law appeared to contain several quite restrictive provisions which were against international standards. In addition, provisions regulating central issues such as the scope of the law and of the beneficiaries of the right to freedom of religion and conscience, the registration, the autonomy and liquidation of religious communities; conscientious objection, the issue of proselytism, the publication and circulation of religious materials needed to be reviewed in order to meet international standards. The Law was moreover characterised by a too vague terminology, thus opening the door to arbitrary interpretation and implementation.

*Follow-up to the opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan (CDL-AD(2011)035)*

As a follow-up to the Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan adopted in October 2011, the Venice Commission together with the International Conference of NGOs in the Council of Europe presented their respective opinions on the legislation on non-governmental

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<sup>9</sup> The full text of all adopted opinions can be found on the web site [www.venice.coe.int](http://www.venice.coe.int).

organisations of Azerbaijan and its compatibility with human rights standards to the civil society of Azerbaijan at a conference in April 2012. Both the Conference discussions and the dialogue with civil society participants had confirmed the critical conclusions of the Venice Commission in its Opinion with regard to the legislative and practical developments affecting the situation of local and international NGOs in Azerbaijan.

The Commission was informed that an expert group had already started working, under the Ministry of Justice, on possible amendments aimed at improving the NGO related legislation in the light of the Venice Commission's recommendations.

## **BELGIQUE**

A la demande de l'Assemblée parlementaire du Conseil de l'Europe, la Commission a adopté en juin 2012 un avis sur la révision de la Constitution de la Belgique (CDL-AD(2012)010).

L'avis porte sur l'amendement de la procédure d'amendement de la Constitution. La procédure de révision constitutionnelle en Belgique est rigide, en ce sens qu'elle prévoit trois étapes : l'établissement par le Parlement d'une liste des dispositions à réviser; des élections législatives; l'adoption par le Parlement de la révision constitutionnelle à la majorité des deux tiers. L'article 195 relatif à cette procédure d'amendement a été modifié à titre temporaire ; les deux premières étapes ont été supprimées pour la révision d'un nombre déterminé de dispositions.

L'avis conclut que cette révision est conforme à la Constitution belge comme aux normes internationales. Le caractère provisoire de l'amendement ne pose pas de problème. Il n'y a pas de violation du droit à des élections libres au sens de l'article 3 du premier protocole additionnel à la Convention européenne des droits de l'homme. Le principe de la prééminence du droit est également respecté ; il est rare qu'il existe un contrôle de la conformité d'une révision constitutionnelle à la Constitution.

Compte tenu des procédures de révision constitutionnelle plus souples qui existent dans toute l'Europe et du fait qu'une constitution devrait offrir un cadre propice au bon fonctionnement d'un Etat démocratique, la disposition *transitoire* énoncée à l'article 195 - disposition transitoire apporte une réponse démocratique et juridique à la crise durable que connaît la Belgique. Le gouvernement et la vaste majorité parlementaire pourront ainsi procéder à la sixième réforme de l'Etat qui s'impose de toute urgence.

Il aurait toutefois été préférable que le parlement dise expressément dans la déclaration qu'il a faite le 7 mai 2010 pour ouvrir l'article 195 à révision que cette situation donnerait lieu, après les élections, à la possibilité de réviser la Constitution au cours d'une seule législature, y compris les dispositions qui n'ont pas été mentionnées dans cette déclaration. Plus de transparence aurait été souhaitable. En outre, la procédure parlementaire, notamment le débat précédant le vote des parlementaires, a été relativement rapide même si la question a été longuement examinée dans d'autres cadres, en dehors de la procédure parlementaire formelle. Une procédure formelle plus longue aurait pu être envisagée pour garantir un débat approprié.

## **BELARUS**

### *Opinion on the law on mass events of the Republic of Belarus (CDL-AD(2012)006)*

At the request of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, the Venice Commission, jointly with the OSCE/ODHIR, analysed the compatibility with universal Human Rights standards of the amended Law on Mass Events in the Republic of Belarus which entered into force on 27 November 2011.

This opinion, adopted by the Venice Commission in March 2012, had been prepared in the context of three previous opinions delivered by the Venice Commission in 2011, which found in

all cases the Republic of Belarus in breach of its legally binding obligations to respect and protect the fundamental civil and political rights of freedom of association and expression.

The 2011 Law on mass events raised serious concerns regarding its compliance with the relevant international standards. The law had been analysed not only from the angle of freedom of assembly, but also in conjunction with related freedoms of expression and opinion. It was also scrutinised for its potential impact on intimidating and deterring publicly voiced dissent in the Republic of Belarus.

In particular, the opinion found that the definitions and scope of protection, the prohibition of spontaneous and simultaneous assemblies, as well as counter-demonstrations, the citizenship requirement and other restrictions on the organisation of or participation in a mass event, the wide discretion offered to authorities, unlimited surveillance, blanket restrictions and the liability of organisers and participants - as provided for in the law - did not meet international standards.

Furthermore, the Law on Mass Events contained a detailed over-regulation of the procedural aspects of holding assemblies, a complicated procedure of compliance including a rigid and difficult authorisation procedure, while at the same time leaving administrative authorities with a very wide discretion on how to apply the law. This procedure did not reflect the positive obligation of the State to ensure and facilitate the exercise of freedom of peaceful assembly and freedom of expression. The Law also failed to provide adequate mechanisms and procedures to ensure that these freedoms were effectively enjoyed in practice and not subject to undue bureaucratic regulation. Such over-regulation was likely to restrict excessively the exercise of freedom of assembly and of freedom of speech.

## **BOSNIA AND HERZEGOVINA**

### *Opinion on the practice of blanket resignation of ministers in the Federation of Bosnia and Herzegovina (CDL-AD(2012)021)*

Following a request, dated 5 September 2012, by the Minister of Justice of the Federation of Bosnia and Herzegovina, the Commission examined the compatibility of the so-called “practice of blanket resignation of ministers” with the general principles of the rule of law, in particular with the principles of legal security, respect for human rights and the prohibition of discrimination. Under the practice of blanket resignation, candidates for ministerial positions sign enveloped resignation letters prior to taking up their duties, which can then be used by their political party to remove those who signed the resignations, in case they fail to follow the directives given by their party during their ministerial mandate.

In its opinion, adopted in October 2012, the Venice Commission considered that the technique of blanket resignation is an extension of the theory of imperative mandate (imperative mandate *largo sensu*) according to which holders of a political position need to follow their party directives in implementing their mandate. Such a mandate, in the Commission’s view, is not consistent with the democratic standards in a well-functioning democracy for the following reasons:

Firstly, the liberal democratic tradition is based on the principle of the free and independent political mandate. The elected representatives who represent the whole constituency and not a particular political party, should exercise their mandate freely, seeking to accomplish what they believe is in the best interest of the country. In the Commission’s view, although pre-signed resignations of ministers constituted a form of imperative mandate *largo sensu*, the specificities of the executive power may imply that criticism of blanket resignations of elected representatives, i.e. of parliamentary deputies, does not necessarily apply in the case of government members. This practice may even be acceptable in the context of the executive power if certain key requirements, such as lawfulness, openness and transparency were met.

The Commission stressed however that such a blanket resignation practice may serve to move the executive power away from the government to the headquarters of a political party.

Secondly, the practice of pre-signed resignation letters bypasses the legislative and constitutional provisions which provide specific procedures for the removal of ministers and determine the stakeholders with the initiative of the removal procedure. This practice deprives these stakeholders of the right to initiate the removal procedure as foreseen by legislative and constitutional provisions and gives the possibility to those in possession of the pre-signed resignations to perform a *de facto* removal of a minister.

The opinion stressed that this practice is a fictional, dishonest and non-transparent procedure contrary to the European principles and best practice of democracy and rule of law, with negative consequences for the functioning of the political system.

*Amicus Curiae brief on the compatibility with Human Rights standards of certain articles of the Law on Primary Education of the Sarajevo Canton of the Federation of Bosnia and Herzegovina (CDL-AD(2012)013)*

On 2 February 2012, the President of the Constitutional Court of the Federation of Bosnia and Herzegovina asked the Venice Commission to provide an *amicus curiae* brief on the compatibility of Article 8 of the Law on Primary Education with the Constitution of Bosnia-Herzegovina and with European and International standards, in particular with the European Convention on Human Rights (ECHR).

Article 8 leaves the students and their parents a choice between religious classes and an alternative course on “ethics and/or religion”.

This request was related to a submission made by the Prime Minister of the Sarajevo Canton before the Constitutional Court of the Federation of Bosnia and Herzegovina, who argued that Article 8 does not provide any other alternative course for parents and students who do not wish to have any education at all related to religion, or wish only to have a secular education.

In its opinion adopted in June 2012, the Venice Commission considered that the compatibility with international standards fundamentally depends on the content of the alternative course provided. According to the opinion, a state is not prohibited from requiring a student’s attendance, without the possibility of exemption, at a course on ethics and/or religion where the student does not attend a denominational religious course. However such compulsory attendance at a course on ethics and/or religion is only compatible with the ECHR where the course is neutral and does not seek to indoctrinate. It must be conveyed in an objective, critical and pluralistic manner.

In addition, the Commission underlined the importance of issuing some guidelines on how to interpret Article 8 in conformity with the ECHR, as well as on the conditions under which the course “on ethics and/or religion” would fulfill the neutrality and pluralistic requirements.

## **HUNGARY**

*Opinion on Act CCVI of 2011 on Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary (CDL-AD (2012) 004)*

At the request of the Minister for Foreign Affairs of Hungary, the Venice Commission adopted at its March plenary session an Opinion on Act CCVI of 2011 on Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary.

The Venice Commission took into account in its assessment that, by enacting a completely new legal regime, the authorities had mainly sought to take measures against the abuse of freedoms of conscience and association and to reduce the number of registered churches operating in the country.



The Venice Commission found that the Act was a liberal and generous framework for the freedom of religion. It stated, in its opinion that States benefit from a large margin of appreciation with regard to the relationship between the church and the state and with regard to the choice of their policies and regulation in this field. The Commission also acknowledged that there was legitimate concern in Hungary to eliminate, while guaranteeing freedom of religion the abuse of religious organisations which have operated for illicit and harmful purposes or for personal gain.

In spite of this general positive assessment, the Commission found that, although few in number, some important issues remained problematic and fell short of international standards.

The Act set out a range of requirements for the recognition of a church which were considered to be excessive and based on arbitrary criteria. These include the requirement related to the national and international duration of a religious community and the recognition procedure, based on a political decision.

The opinion also found problematic that, to some extent, the Act introduced an unequal and even discriminatory treatment of religious beliefs and communities, depending on whether they were recognised or not. In this connection, the Commission took note that the Act had led to the deregistration process of hundreds of previously lawfully recognised churches, which, in its view, could hardly be considered in line with international standards.

Following the Venice Commission's opinion, the authorities expressed their intention to introduce amendments to the Act in order to bring the concerned provisions in line with International standards.

*Opinion on Act CXII of 2011 in Informational self-determination and freedom of information of Hungary (CDL-AD(2012)023)*

This opinion, prepared by the Venice Commission at the request of the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, was adopted by the Venice Commission in October 2012.

The Venice Commission analysed Act CXII of 2011 on self-determination and freedom on information with regard to the fundamental rights protected by the Hungarian Fundamental Law as well as by the European Convention on Human Rights in its Articles 8 and 10 and Article 19 of the International Covenant on Civil and Political Rights.

In its opinion, the Venice Commission made an overall positive assessment of the Hungarian law and stressed that the law may be considered as a whole as complying with the applicable European and International standards.

However, the Commission considered that several points would need consideration and improvement, such as: the mode of designation of the President of the National Authority for Data Protection and Freedom of Information, which does not offer sufficient guarantees of independence in that the Parliament is entirely excluded from the process of designation; the protection of media sources, which although guaranteed by media related legislation, should be explicitly protected by Act CXII of 2011; the remedial mechanism provided by the Act with regard to the access to public information.

Further, the Commission recommended ensuring that the legislation dealing with data protection and access to information is clear, precise and, as far as possible, self-sufficient. More specifically, to exclude any sources of difficulty in the interpretation of the Act, improvement and clarification were needed concerning some key concepts, such as "personal data", "data subject" and "data public on grounds of public interest".

*Avis sur la loi relative aux droits des nationalités de la Hongrie (CDL-AD(2012)011)*

La Commission de Venise a adopté en juin 2012, un avis sur la loi relative aux droits des nationalités de la Hongrie, suite à une demande, en date du 1<sup>er</sup> février 2012, du Président de la Commission de suivi de l'Assemblée parlementaire du Conseil de l'Europe.

Dans cet avis, la Commission a salué les efforts déployés par les autorités hongroises pour établir un cadre juridique global pour la protection des minorités, confirmant ainsi l'engagement de la Hongrie à l'égard de la protection des minorités, et a pris note positivement des droits garantis par la nouvelle loi, dans leurs domaines d'intérêts, aux treize nationalités reconnues par la Hongrie. L'avis a cependant formulé certaines critiques concernant le caractère particulièrement complexe et parfois excessivement détaillé de la nouvelle loi. D'après la Commission, cela pourrait aboutir à des difficultés de mise en œuvre et avoir des répercussions négatives sur l'autonomie accordée par la loi aux nationalités de Hongrie.

La Commission a jugé comme étant trop détaillée la réglementation relative au système d'organes d'autogestion des nationalités, estimant qu'un tel niveau de détail pouvait avoir des effets négatifs sur l'autonomie des organes d'autogestion. La Commission a également exprimé ses préoccupations au sujet des dispositions relatives au contrôle de légalité effectué par le gouvernement sur les organes d'autogestion des nationalités, dispositions susceptibles de donner lieu à des ingérences abusives de la part de l'exécutif.

Tout en se félicitant de l'effort fait par le législateur pour répondre aux besoins particuliers des nationalités en matière d'enseignement, la Commission de Venise a estimé que des clarifications étaient nécessaires, notamment concernant la procédure prévue par la loi pour fixer le nombre d'établissements d'enseignement dans la langue de la nationalité et le financement de cet enseignement.

Finalement, en matière de droits des nationalités au développement culturel et d'accès aux médias, la Commission a estimé que des mécanismes et des procédures appropriés devaient être établis par la loi pour permettre l'accès des nationalités aux subventions publiques et éviter que la crise financière ait des effets disproportionnés sur la mise en œuvre des projets culturels des nationalités.

**LUXEMBOURG***Suivi de l'avis intérimaire sur le projet de révision constitutionnelle*

Le parlement du Luxembourg a demandé en 2009 un avis de la Commission de Venise sur la proposition de révision portant modification et nouvel ordonnancement de la Constitution. Un avis a été adopté par la Commission en décembre 2009 (CDL-AD(2009)057).

La proposition de révision a fait l'objet d'une prise de position du gouvernement du 22 juin 2011.

Le 6 juin 2012, le Conseil d'Etat luxembourgeois a rendu son avis. Celui-ci fait régulièrement référence à l'avis de la Commission de Venise. Il est suivi d'une proposition de texte constitutionnel révisée. Parmi les points fondamentaux retenus, on peut citer la nécessité d'une clause transversale en matière de limitation des droits fondamentaux. On peut aussi noter que le Conseil d'Etat fait référence à la Commission de Venise en dehors de l'avis intérimaire sur la Constitution luxembourgeoise.

Le Président de la Commission des institutions et de la révision constitutionnelle a l'intention de saisir ensuite la Commission de Venise pour un nouvel avis à un stade ultérieur de la procédure.

## **MONTENEGRO**

### *Opinion on two sets of draft amendments to the constitutional provisions relating to the judiciary of Montenegro (CDL-AD(2012)024)*

At the request of the Speaker of the Parliament of Montenegro, the Venice Commission adopted at its December 2012 session, an opinion on two sets of draft amendments to the constitutional provisions relating to the judiciary of Montenegro, prepared by the competent parliamentary committee and by an opposition party respectively.

After the legislative elections in Montenegro in October 2012, the time had come for the Montenegrin authorities to accomplish the constitutional reform with the aim of guaranteeing full independence to the judiciary and to the Constitutional Court, according to European standards and the suggestions of the 2007 Venice Commission opinion. The proposed amendments to the Constitution in the two sets of amendments contained positive proposals and attempted to improve the existing situation. They limited the role of Parliament and sought to establish a balanced composition between judges and lay members within the Judicial Council. The Venice Commission recommended including additional guarantees to ensure parity in disciplinary proceedings.

As concerns the Supreme State Prosecutor, there was a positive proposal to appoint and dismiss him or her by Parliament by a two-thirds majority, which took up previous recommendations of the Venice Commission. It was recommended to add an anti-deadlock mechanism in the Constitution. The Venice Commission also considered that the Supreme State Prosecutor should chair the Prosecutorial Council except in disciplinary proceedings.

### *Opinion on the draft Law on free access to information of Montenegro (CDL-AD(2012)017)*

Following a request from the Montenegrin authorities, the Venice Commission adopted at its June session an opinion on the draft Law on Free Access to Information.

Montenegro was one of the 12 Member States of the Council of Europe that on 18 June 2009 signed the Convention on Access to Official Documents (hereinafter CECAOD - CETS No. 205), the first international binding legal instrument that recognises a general right of access to official documents held by public authorities. On 23 January 2012 Montenegro ratified this Convention.

The Commission noted that the draft Law on Free Access to Information complied in many points with the Convention on Access to Official Documents and international standards. Many provisions of a first draft had been improved and brought into line with European standards following the visit of a delegation of the Venice Commission to Podgorica on 5-6 March 2012, and the transmission of the comments made by the Commission rapporteurs.

However, the Commission made certain recommendations to further improve the draft Law. In particular, it strongly advised the authorities to modify Article 17 of the draft Law which stated that "The public authority shall grant the access to information or part of information ... when there is prevailing public interest for disclosure of information unless it proves the existence of other prevailing public interest". Although there might be various and sometimes conflicting public interests, there is, in any case, only one prevailing public interest. The assessment of the different and possible conflicting public interest must be made at the same time in order to determine which the prevailing public interest is. The Venice Commission recommended among other things to extend some deadlines and to provide for a procedure for anonymous request for information.

**ROMANIA**

*Opinion on the compatibility with constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania (CDL-AD(2012)026)*

On 6 July 2012, the Secretary General of the Council of Europe asked the Venice Commission to provide an opinion on the compatibility with constitutional principles and the rule of law of actions taken by the Government and the Parliament of Romania in respect of other state institutions. On 9 July 2012, the Prime Minister of Romania requested an opinion from the Venice Commission on the Government Emergency Ordinance on amendment to Law No. 47/1992 regarding the Organisation and Functioning of the Constitutional Court and on the Government Emergency Ordinance on amending and completing Law No. 3/2000 regarding the Organisation of a referendum. The Commission decided to prepare a single opinion covering both requests. A delegation of the Commission visited Bucharest in September 2012. In order not to interfere with the parliamentary election on 9 December 2012 the Commission postponed the adoption of this opinion to its session in December 2012.

In early July 2012, the Romanian Government and Parliament had adopted a series of measures in quick succession, which had led to the removal from office of the Advocate of the People, the Presidents of both Houses of Parliament, a limitation on the competences of the Constitutional Court, changes to the conditions for a referendum on the suspension of the President of the Republic and the suspension of the President. The Venice Commission was of the opinion that these measures, both individually and taken as a whole were problematic from the viewpoint of constitutionality and the rule of law.

The events examined in the opinion included ordinances, decisions and procedures whose constitutionality was questionable, especially when taken together in quick succession. The Commission was worried in particular about the extensive recourse to government emergency ordinances, both by previous and present majorities, which presented a risk for democracy and the rule of law in Romania.

The Commission also found that the events and several statements made demonstrated a worrying lack of respect among representatives of State institutions for the status of other State institutions, including the Constitutional Court as the guarantor of the supremacy of the Constitution.

The Commission was of the opinion that respect for a Constitution cannot be limited to the literal execution of its operational provisions. The Commission pointed out that the very nature of a Constitution is that, in addition to guaranteeing human rights, it provides a framework for the state institutions and sets out their powers and obligations. The purpose of these provisions is to enable the smooth functioning of the institutions based on their loyal co-operation. The Head of State, Parliament, Government, the Judiciary, all serve the common purpose of furthering the interests of the country as a whole, not the narrow interests of a single institution or the political party having nominated the office holder. Even if an institution is in a situation of power, when it is able to influence other state institutions, it has to do so with the interest of the State as a whole in mind, including, as a consequence, the interests of the other institutions and those of the parliamentary minority.

The Venice Commission was of the opinion that the Romanian state institutions should engage in loyal co-operation between themselves and was pleased about statements from both sides expressing their intention to respect their obligations. The Commission warmly welcomed the fact that its interlocutors were of the opinion that constitutional and legislative reform is required to ensure that a similar situation should not arise again. This opinion referred to elements, which could become part of such reforms.

## **RUSSIAN FEDERATION**

### *Opinion on the Federal Law on the Federal Security Service (FSB) of the Russian Federation (CDL-AD (2012)015)*

At the request of the Chair of the Monitoring Committee of the Council of Europe Parliamentary Assembly on 19 December 2011, the Venice Commission adopted an Opinion on the Federal Law on the Federal Security Service (FSB) in June 2012.

In the Venice Commission's view, it was a legitimate aim to develop more efficient means and measures to safeguard the state's security and ensure the citizens' protection against extremism, terrorism and organised crime. However, the Commission stressed that the respect for fundamental rights is an essential condition for the operation of security services in a democratic society.

With regard to the legal basis of the activities of FSB organs, the Venice Commission recommended that the law contain an explicit requirement to duly respect the principles of necessity and proportionality of those activities and to provide effective remedies.

As regards the monitoring and supervision of FSB activities, the Commission stressed the necessity to establish mechanisms to prevent political abuse over security and intelligence agencies. On the other hand, as a requirement of the principle of the rule of law, the Agencies must be subject to legal control. The Commission considered that it was absolutely necessary to have external review mechanisms in order to ensure that operations are being carried out effectively and lawfully. The Commission however expressed its doubts, as concerned the control of gathering of intelligence on individuals carried out by the prosecutors, that the latter, subjected to the hierarchical control of their superiors, represent a mechanism of "external" control.

Finally, concerning the preventive measures (official warnings to physical persons and requests to legal persons), the opinion positively noted that no sanction was applicable in case of non-compliance with them. However, insofar as these preventive measures were taken at a moment when the conduct they sought to prevent was not yet illegal, they created a "grey zone" between legality and illegality which could be problematic as regards human rights standards. The compatibility with such standards depends on how those preventive measures are applied in practice.

### *Opinion on the Federal Law of the Russian Federation on Combating Extremist Activity (CDL-AD (2012)016)*

Following a request, dated 19 December 2011, by the Chair of the Parliamentary Assembly's Monitoring Committee, the Venice Commission examined the Russian Federation Federal Law on Combating Extremist Activity.

In its opinion adopted in June 2012, while acknowledging the challenges faced by the Russian authorities in countering extremism, the Commission stated that the manner in which this aim is pursued in the Extremism Law is problematic. Serious concern in the light of human rights standards as enshrined in the European Convention on Human Rights (ECHR) was expressed over the lack of precision of the definitions of "extremism", "extremist actions", "extremist organisations" or "extremist materials" provided by the law, as this could pave the way to an overly broad interpretation by the enforcement authorities.

The specific preventive and corrective instruments provided by the law for combating extremism – the written warnings and notices – and the related sanctions (liquidation and/or ban on the activities of public, religious or other organisations, closure of media outlets) were also found to be problematic. In particular, the Commission found that the preventive and corrective

measures were not defined in the law with sufficient precision having regard to the ECHR requirements of legality, necessity and proportionality.

The Venice Commission recommended that those fundamental shortcomings be addressed in relation to each of the definitions and instruments provided by the law in order to bring them in line with the European Convention on Human Rights.

*Opinion on the Federal Law no. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing of the Russian Federation (CDL-AD(2012)003)*

At the request of the President of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe on 19 December 2011, the Venice Commission prepared an opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, which was adopted in March 2012. The opinion focused specifically on “the ambiguous provisions allowing for the refusal to authorise demonstrations”.

In its opinion, the Venice Commission underlined that the effective guarantee of the right to freedom of assembly depends in primis on the quality of the legal regulation of its exercise, but also on the manner in which such legal regulations are interpreted and implemented. In this context, the Venice Commission recommended in the first place that the presumption in favour of holding assemblies and the principles of proportionality and non-discrimination be expressly included in the Assembly Law.

The Venice Commission criticised the regime of notification and the power of the executive authorities to alter the format of a public event even where there are no compelling reasons to do so. The opinion thus recommended that the executive authorities take into account the principles of proportionality and the presumption in favour of assemblies in the exercise of their discretionary powers which the legal regulations confer upon them. In a similar vein, the Commission recommended that the grounds for restrictions of assemblies should be narrowed and the reasons for suspension and termination of assemblies be limited to public safety or a danger of imminent violence. The scope of application of blanket prohibitions, that is, absolute prohibitions of assemblies that do not allow for any exception should be narrowed in order to allow the application of the principle of proportionality in line with Article 11.2 of the European Convention on Human Rights.

As far as the appeal proceedings against proposals to change the format of a public event are concerned, the Commission considered that judicial review is potentially rendered ineffective because the courts do not have the power to reverse decisions which are within the broad discretion of the executive authorities and they cannot complete review in time before the proposed date of the public event.

Finally, spontaneous assemblies and urgent assemblies as well as simultaneous and counter demonstrations should be allowed as long as they are peaceful and do not pose direct threats of violence or serious danger to public safety.

#### **“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**

*Amicus Curiae Brief on the law on determining a criterion for limiting the exercise of public office, access to documents and publishing, the co-operation with the bodies of the state security (“Lustration Law”) of “the former Yugoslav Republic of Macedonia” (CDL-AD(2012)028)*

At the request of the President of the Constitutional Court on 7 September 2012, the Venice Commission prepared an Amicus Curiae Brief on the law on determining a criterion for limiting the exercise of public office, access to documents and publishing, the co-operation with the bodies of the state security (“Lustration Law”) of “the Former Yugoslav Republic of Macedonia”, which was adopted in December 2012.

The Commission stressed from the outset that the aim of the *Amicus Curiae Brief* was not to assess the constitutionality of the Lustration Law, but to provide the Constitutional Court with information on the applicable standards and on elements of European comparative law and experience; it was the task of the Constitutional Court, and not of the Venice Commission, to consider the case and rule on the constitutionality of the lustration law.

Concerning the temporal scope of application of the law, the Commission underlined that introducing lustration measures to acts dating from a long time ago could only be justified in extreme cases. The application of lustration measures to acts committed after the end of the totalitarian regime (the lustration law would cover acts committed up to 2006) could only be justified in exceptional historic and political conditions, and not in a country with a long-established framework of democratic institutions.

Finally, the Commission stressed the duration of the lustration measures should depend on the progress in establishing a democratic state governed by the rule of law and on the capacity for a positive change of the person subject to the lustration; a fixed duration should be provided. Lustration measures may not be applied to positions in private or semi-private organisations as this goes beyond the aim of lustration which is to exclude certain persons from exercising governmental power.

The Venice Commission furthermore stressed that the procedure before the Commission on Verification of the Facts as well as the appeal procedure should be regulated in great detail and that the person subject to the lustration procedure should benefit from the equality of arms. Finally, the name of the person subjected to the lustration measures should only be published after a final decision by a court.

## **UKRAINE**

On 6 December 2012 an important delegation of the Venice Commission took part in the session of the Constitutional Assembly of Ukraine, a body established by President Yanukovich and chaired by former President Kravchuk. The session was followed by a meeting of the delegation with the Coordination Bureau of the Constitutional Assembly. In the afternoon a Round-table on the revision of the chapter on the judiciary of the Constitution of Ukraine took place. Co-operation with the Venice Commission is part of the mandate of the Constitutional Assembly and will continue in 2013.

## **2. TRANSNATIONAL ACTIVITIES/ACTIVITES TRANSNATIONALES**

### *UniDem Conferences*

#### *The Rule of Law as a practical concept (London, 2 March 2012)*

The Venice Commission organised, under the auspices of the United Kingdom Chairmanship of the Committee of Ministers of the Council of Europe, in co-operation with the Foreign and Commonwealth Office of the United Kingdom and the Bingham Centre for the Rule of Law, a Conference on “The Rule of Law as a practical concept”.

This event, which took place on 2 March 2012 at Lancaster House in London, brought together approximately 80 participants from Council of Europe and Venice Commission members States, including some 15 rapporteurs and speakers. Academics, politicians, practicing lawyers, prosecutors, judges and constitutional judges attended the Conference.

The first session, on “the Rule of Law as a Goal for the XXI Century”, included a keynote speech by Mr Ronald Dworkin, Frank Henry Sommer Professor of Law at New York University and Professor Emeritus of Jurisprudence at University College London, as well as presentations on “the common core of the Rule of Law and the Rechtsstaat” by Mr Kaarlo Tuori, Professor of Jurisprudence at University of Helsinki and Vice-President of the Venice Commission and on “the rule of law in action” by Mr Serhiy Holovaty, Professor of Jurisprudence at the Taras

Shevchenko University of Kyiv, member of the Parliamentary Assembly of the Council of Europe and former Ukrainian member of the Venice Commission.

The second session, on “The quality of the laws” included reports on “Law-making principles under the rule of law” by Mr Sergio Bartole, Professor Emeritus of Constitutional Law at the University of Trieste and Italian substitute member of the Venice Commission and on “the interaction between the parliament and the government in the law-making process” by Mr Jean-Claude Colliard, President of University Paris 1 Pantheon-Sorbonne, former member of the Constitutional Council and French member of the Venice Commission.

The third session explored the topic “Preventing arbitrariness” through reports on “The control of executive discretion in implementing laws in order to prevent arbitrariness” by Ms Slavica Banić, Judge at the Constitutional Court of Croatia and Croatian substitute member of the Venice Commission, and on “Executive Discretion in the field of freedom of assembly” by Ms Finola Flanagan, Law Reform Commissioner and Irish member of the Venice Commission.

There followed a general discussion on “the Rule of Law as a Practical Concept”. Participants agreed that the three pillars of the Council of Europe – democracy, respect for human rights and the rule of law – were closely intertwined so that none could be said to exist in the absence of the other two. While it was not necessary to reach a common definition of the Rule of Law, workable ways could be found to promote this principle in the future. It was possible to identify some core elements of the notion of the Rule of Law; the Venice Commission had listed some of them in a “checklist”, which however was neither exhaustive nor fixed in time: indeed, it could be further developed and adapted to evolving circumstances.

The important elements of the Rule of Law which had been discussed at the conference - a due process of drafting laws and due judicial control of acts of the legislative branch as well as of the executive branch – were worth exploring further and developing into practical criteria. Finally, participants agreed about the importance of including the Rule of Law in the foundation of the regimes in transition in the South Mediterranean.

*For the mini-conference on “The Rule of Law as a Practical Concept” in Brno, Czech Republic in May 2012, see chapter III.*

#### *Constitutional Design (Helsinki (21-22 May 2012))*

On 21-22 May 2012, the Venice Commission, in co-operation with the Centre of Excellence of the Helsinki Faculty of Law and with the International Association of Constitutional Lawyers (IACL), organised in Helsinki a seminar on “Constitutional Design”. The seminar provided the participants - academics, national parliaments’ members, representatives of national constitutional courts etc. - an excellent opportunity to discuss the concepts of constitution and constitutional design in democratic societies, culturally differentiated constitutional models and traditions, as well as to hold an exchange of views on specific examples of constitutional design, both in Europe and in the neighbouring countries (Armenia and Tunisia).

### **Studies and Reports**

#### *Study on the role of the extra-institutional actors in the democratic system*

The preparation of the Study was launched in 2011 at the request of the Parliamentary Assembly, in its Resolution 1744 (2010). An advanced draft study was presented and discussed at the Sub-Commission on Democratic Institutions on 13 December 2012.

This study analysed the phenomenon of extra-institutional actors in national democratic systems in the light of democratic standards. After delimitating the notion of lobbying as commonly accepted, its modalities and the scale of the involvement of lobbying actors in the political processes, it assessed lobbying activities against democratic standards. The study further proposed a reflection on the opportunities offered by lobbying and the risks it entailed for the



functioning of democratic institutions, followed by an examination of existing legal systems of lobbying regulations. Finally, the study provided an overview of possible strategies to strengthen the democracy-supportive role of extra-institutional actors in a democratic society. It is foreseen that the study will be adopted by the Venice Commission at its plenary session of March 2013.

*Revised version of joint OSCE/ODIHR-Venice Commission Guidelines on Freedom of Religion or Belief*

Following their common decision to revise their joint Guidelines on Freedom of Religion or Belief (CDL-AD(2004)028), the Venice Commission and the OSCE/ODHIR launched, in 2012, a particularly close co-operation in relation to this process. The joint definition of the future content of the revised version of the Guidelines was of particular importance.

On 2 October 2012, the Venice Commission participated in a consultative meeting, organised by the OSCE/ODIHR in parallel to the 2012 OSCE Human Dimension Implementation Meeting (HDIM), in order to discuss the future Guidelines on the Recognition of Religious or Belief Communities. The goal of the meeting was to discuss with civil society representatives, the potential scope and content of these Guidelines, as well as ways of increasing their use.

Additionally, the Venice Commission was invited to designate Observers on ODIHR's new Advisory Panel of Experts on Freedom of Religion or Belief, to ensure close consultation between the two bodies on these matters. Mr Vermeulen, Ms Flanagan and Ms Haller were appointed as observer and substitute observers respectively to the Advisory Panel.

***Thematic Compilations of Venice Commission Opinions***

In 2012, the Venice Commission endorsed the compilations of Venice Commission opinions and studies concerning Freedom of Assembly (CDL(2012)014) and Freedom of Association (CDL(2012)080).

These thematic compilations are intended to serve as a source of reference for drafters of constitutions and of legislation relating to the various topics dealt with by the Venice Commission in its work (such as freedom of peaceful assembly and freedom of association), researchers as well as the Venice Commission's members, who are requested to prepare comments and opinions on such texts. The compilations are not static documents and will continue to be regularly updated with extracts of newly adopted opinions or reports/studies by the Venice Commission.

**III. CONSTITUTIONAL JUSTICE, ORDINARY JUSTICE AND OMBUDSMAN<sup>10</sup>**

**1. COUNTRY SPECIFIC ACTIVITIES/ACTIVITES PAR PAYS<sup>11</sup>**

**ALBANIA**

*International Conference on the "Separation and Balancing of Powers – the Role of Constitutional Review"*

This event, held on the occasion of the 20<sup>th</sup> anniversary of the Constitutional Court of Albania, gathered together, *inter alia*, the presidents of the Constitutional Courts of Albania, Armenia, Bulgaria, Italy, Hungary, Kosovo, Morocco, Romania and the President of the European Court of Human Rights to discuss the role of constitutional courts in promoting constitutionalism and the separation of powers, as well as the role of the President of the Republic in the separation and balancing of powers.

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<sup>10</sup> The full text of all adopted opinions can be found on the web site [www.venice.coe.int](http://www.venice.coe.int).

<sup>11</sup> Information on activities in the field of constitutional justice and ordinary justice concerning Bolivia, Chile and Peru can be found in Chapter V.

**ANGOLA**

On 6 March 2012 a delegation from the Constitutional Court of Angola visited Strasbourg in order to discuss electoral issues and a possible accession of the Court to the World Conference on Constitutional Justice.

**ARMENIA**

*XVII Yerevan Conference on the “Interaction between the Constitutional Court and other institutions in ensuring the execution of Constitutional Court Judgments”*

A delegation of the Commission participated in the Conference, which took place in October 2012 and gathered together the members of the Constitutional Control Organs of the Countries of New Democracy. The topic chosen - the execution of judgments of constitutional courts – was approached from various angles. While in most countries the execution of constitutional court judgements is smooth and without major problems, some Constitutional Courts at times face resistance from other state powers but occasionally even from the ordinary judiciary in the implementation of constitutional judgements. A convincing reasoning of these judgements, presented in a clear language, which is understandable also to political actors and the media is a key element for their acceptance.

**BOSNIA AND HERZEGOVINA**

*Opinion on legal certainty and the independence of the judiciary in Bosnia and Herzegovina (CDL-AD(2012)014)*

This opinion, requested by the European Commission and adopted by the Venice Commission at its June 2012 session, identified several main challenges to legal certainty and the independence of the judiciary that are a direct result of the current situation in Bosnia and Herzegovina (BiH). The main challenge was the co-existence of four legal orders in BiH that are more or less separate from each other (the State, the Federation, the RS and the Brčko District) and that lack clear rules to regulate their relationship. Other challenges included the limited competences of state-level institutions, the backlog and uneven distribution of cases between the courts which can breach the principle of the “natural judge” or the right of access to a tribunal established by law. Several issues concerning the High Judicial and Prosecutorial Council were also identified. The main one concerned its structure in respect of which the Venice Commission recommended that it create two sub-structures, one for judges and one for prosecutors.

This opinion’s main conclusion was that, in the long run, for further structural progress and development to be achieved in Bosnia and Herzegovina constitutional reform will have to be undertaken. Initial steps should be taken to reinforce the effectiveness of institutions at all levels throughout Bosnia and Herzegovina. For the judiciary, efforts are needed to strengthen all institutions and authorities throughout Bosnia and Herzegovina, including at the state level.

*Seminar on EU standards in the field of the independence and professionalism of the justice sector and the role and composition of the HJPC*

In December 2012, a delegation of the Commission participated in a targeted workshop to facilitate the on-going dialogue aimed at revising the law on the High Judicial and Prosecutorial Council (HJPC) and to bring it in line with relevant European standards. Discussions covered issues related in particular to the professionalism and the independence of the judiciary, in light of the current HJPC reform perspectives. The HJPC has a key role to play in the system, which must be preserved and consolidated.

## HUNGARY

### *Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts (CDL-AD(2012)001)*

In reply to a letter by the Secretary General of the Council of Europe, the Minister for Foreign Affairs of Hungary requested the Venice Commission by a letter of 20 January 2012 to provide *inter alia* an opinion on legislation relating to the judiciary, namely Act CLXII of 2011 on the legal status and remuneration of judges and Act CLXI of 2011 on the organisation and administration of courts. A delegation of the Commission visited Budapest in February.

The opinion, adopted in March 2012, dealt with a number of issues: the powers and accountability of the President of the National Judicial Office (together with the role of the National Judicial Council), in particular as regards appointments of judges and court leaders, probationary periods, irremovability of judges, their evaluation, disciplinary proceedings and transfer of cases and referred also to transitional issues (retirement of judges and the appointment of the president of the Curia).

The main question examined in the draft opinion was whether the powers of the President of the National Judicial Office (PNJO) who acted as a single person were too wide and whether there were sufficient means of control by the National Judicial Council. Although States enjoy a large margin of appreciation in establishing a system for the administration of justice, in no other member state of the Council of Europe were such important powers, including the power to select judges and senior office holders, vested in a single person. The PNJO was the crucial decision-maker in practically every respect regarding the organisation of the judicial system and he or she had wide discretionary powers mainly not subject to judicial control. The PNJO was elected without consultation of the members of the judiciary and not accountable in a meaningful way to anyone except in cases of violation of the law. The very long term of office (9 years) added to these concerns.

These strong powers including in the field of judicial appointments were exacerbated by the system of supervision (uniformisation procedure), taken together with the strong influence of the PNJO on the appointment of court presidents who initiate this uniformisation procedure, repetitive probationary periods, possibilities of transfer of judges against their will and the harsh consequences of a refusal and the transfer of cases by the PNJO to another court.

These issues taken together and looked at also in the light of other problems addressed in this opinion, the Commission came to the conclusion that the essential elements of the reform not only contradicted European standards of the organisation of the judiciary, especially its independence, but were also problematic as concerns the right to a fair trial under Article 6 ECHR.

### *Opinion on the Act on the Constitutional Court (CDL-AD(2012)009)*

By letter of 1 February 2012, the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe asked the Venice Commission to provide an opinion on the Act on the Constitutional Court of Hungary (Act CLI of 2011).

The opinion, adopted in June 2012 found the Act on the Constitutional Court in general well drafted and coherent. It identified a number of positive elements in the Act, *inter alia*, budgetary guarantees, the exclusion of the re-election of Constitutional Court judges, a time limit for the appointment of new judges and the extension of the mandate of the incumbent member until his or her replacement in order to ensure continuity in the membership of Court, only functional immunity for the Judges of the Court, provisions on access to the Constitutional Court out of time in exceptional circumstance, the binding force of the decisions of the Constitutional Court for ordinary courts and the attenuation of the *ex nunc* effect of Constitutional Court decisions.

Nonetheless, the Commission made a number of recommendations including: the guarantee of independence of the Court and the status of its judges on the constitutional level, procedural safeguards against the exclusion of a judge for “unworthiness”, a clarification of the individual complaint procedure without reducing its scope, the introduction of legal aid in proceedings before the Constitutional Court and the abolition of the limitation of the Constitutional Court's control powers in budgetary matters.

*Opinion on the Act on the Prosecution Service and the Act on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career (CDL-AD(2012)008)*

By letter of 1 February 2012, the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe asked the Venice Commission to provide an opinion on the Hungarian laws on the prosecution system. The opinion, adopted in June 2012, concluded that, taking into account the variety of possible models for the organisation of the prosecution system in Europe, the general principles for the operation of prosecutors were in line with applicable standards for prosecutors in a democratic society. Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career provided for an autonomous body with a hierarchical organisation, enabling non-political activity of prosecutors and contain important anti-corruption rules.

The opinion highlighted a number of positive aspects in the laws, *inter alia*: the obligation to give explanations to victims and applicants, the duty to co-operate with national and international bodies, including human rights organisations, the obligation to present all the facts, pieces of evidence and arguments in court, anti-corruption rules and financial disclosure rules; the possibility to make a request to commit an instruction in writing and the suspension of the instruction until the instruction is written, the possibility to request the issuing of a warning in writing to be able to appeal against it and the obligation to hear the accused prosecutor in disciplinary proceedings.

The main problem, which the Commission identified in the Acts was the high level of independence of the Prosecutor General, which is reinforced by his or her strong hierarchical control over all other prosecutors. Such a wide independence and a hierarchical model are not contrary to European standards. However, they need to be complemented by sufficient checks and balances, which were not yet sufficiently developed in the Hungarian system. There was no prosecutorial council, which could effectively exert an influence on the exercise of the Prosecutor General's extremely wide powers within the prosecution system. Most of the issues identified did not stem from the revision of the Acts under the new Fundamental Law but were remnants from the overarching powers, which the prosecution held before the democratic transition in Hungary. Taken on their own, most issues raised in the opinion did not threaten the rule of law.

The Venice Commission recommended that prosecutors should benefit from a functional immunity only to limit the obligation for business entities and other organisations to provide data and documents to the prosecutor, to make entry into private premises against the will of the owner of the premises dependent on a court warrant; to introduce criteria under which cases can be taken away from subordinate prosecutors; to define narrowly the supervisory powers allowing the prosecutors to interfere in lawsuits between private parties to reduce the general supervisory role of prosecution in all administrative procedures; to reduce access to public data required for the investigation of crime; to allow the Prosecutor General to override advice from the prosecutor's council only on the basis of a reasoned decision; the establishment of a prosecutors council with at least some external representation; to provide for a hearing for the Prosecutor General before his or her dismissal; to motivate the revocation of managerial appointments and finally to channel an objection against bias of the Prosecutor General to a prosecutor council.

*Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 (CDL-AD(2012)024)*

The Monitoring Committee of the Parliamentary Assembly of the Council of Europe had asked the Venice Commission to provide an opinion on the amendments to the Cardinal acts on the judiciary that were adopted by the Hungarian Parliament following the adoption of opinion CDL-AD(2012)001 by the Venice Commission. The Committee asked, in particular, whether these amendments had addressed all of the substantial concerns of the Venice Commission regarding the cardinal acts on the judiciary as voiced in opinion CDL-AD(2012)001.

Following the adoption of opinion CDL-AD(2012)001 (hereinafter, the “previous opinion”) and a visit of the Secretary General of the Council of Europe to Budapest, the Hungarian Government introduced amendments to the legislation examined in the previous opinion.

These amendments addressed many recommendations made in opinion CDL-AD(2012)001 and constituted a commendable step in the right direction. While the President of the National Judicial Office (PNJO) remained the pivotal element of the Hungarian judicial system, a number of his or her competences had been transferred to the National Judicial Council (NJC), The Venice Commission welcomed these amendments, which resulted in an improved accountability of the President of the NJO.

The Commission also welcomed that the amendments attributed the power to the NJC to express a preliminary opinion on persons nominated as PNJO, that the PNJO could not be re-elected, that the mandate of the PNJO was no longer automatically extended until the election of a successor by a two-thirds majority in Parliament, that the NJC had to determine the applicable principles, which the President of the NJO has to apply when deviating from the ranking in the appointment of judges, that the PNJO had to seek the consent of the NJC for a change in the ranking in the appointment of judges, that the PNJO had to obtain the approval of the NJC to appoint the chairs and vice-chairs of courts when the candidate has not obtained the approval of the reviewing board, that judges could turn to the administrative and labour court or to the service court against the PNJO’s decision not to appoint them; that the competences of the NJC had been widened substantially, that unsuccessful applicants for judicial office could submit an objection against the appointment of the successful candidate; court leaders who did not receive the approval of the reviewing board could only be appointed with the consent of the NJC, the NJC appointed the president and the members of the Service Court; judges had an opportunity to choose between the available judicial posts at courts at the same level if they were transferred, administrative and labour courts could review the transfer of a judge, the NJC determined the principles to be applied by the President of the NJO when appointing a proceeding (receiving) court.

Nonetheless, the powers of the President of the NJO remained very extensive to be wielded by a single person and their effective supervision remained difficult. These amendments did not fully dispel the Venice Commission’s concerns.

From the points which should be addressed, two elements were of a pressing nature. The first issue was the implementation of Constitutional Court judgment No. 33/2012 of 16 July 2012, annulling the early retirement of all judges over 62 years. The legislator should have adopted provisions re-instating the dismissed judges in their previous position without requiring them to go through a re-appointment procedure. Any additional age discrimination removing judges who are older than 62 years from leading positions should be avoided.

The second urgent topic was the procedure of the transfer of cases. While the NJC adopted criteria on the selection of the court, which was to receive the case, the most critical decision was the selection of individual cases by the president of the overburdened court (usually in Budapest). The amendments did not provide for the establishment of any criteria for this selection. The NJC should have been mandated to establish such criteria, which would have to be objective (e.g. a transparent random selection). The conformity of the selection of a case with such criteria should then be the standard for the judicial review of the transfer.

In addition, further issues were linked to the transfer of cases: the date of notification of the transfer to the parties should be the starting point for the 8 days' deadline for appeals against transfers, not the date of their publication on the web-site; in case of annulment by the *Curia* of the assignment of a case to another court, the case should be dealt with by the original court and the President of the NJO should not simply be able to assign a case to another court instead; even if the *Curia* used the NJC's principles on the transfer of cases, the President of the NJO should be explicitly bound by them (and not only "take them into account") and the judicial review of the transfer of cases should not be restricted to compliance with "legal provisions" but should explicitly include the principles established by the NJC; the competence of the Prosecutor General to give instructions that charges be brought before a court other than the court of general competence should be removed.

A solution to the problem of the transfer of cases was urgent not only because it related to structural issues but, in addition, it directly affected the right to a fair trial. For this reason, this topic had been a particular focus of the dialogue between the Secretary General of the Council of Europe and the Hungarian authorities. The progress in this issue was commendable, but insufficient. The system of the transferring of cases was not in compliance with the principle of the lawful judge, which is essential to the rule of law.

Further points which needed to be addressed were that the Vice-President of the NJO, selected by the President of the NJO, should not become the interim President of the NJO; the obligation of the President of the NJO to state the reasons for his or her decisions should be made a general rule; the limitation by the clause "where applicable" should be removed if it could be interpreted as giving discretion to the President of the NJO whether or not to state reasons for his or her decisions; the NJC's principles to be applied by the President of the NJO when deviating from the shortlist of candidate judges should explicitly be made opposable to the President of the NJO in judicial proceedings; the possibility for the President of the NJO to declare the appointment procedure unsuccessful should be removed; an unsuccessful candidate should be able to contest the ranking of candidate judges on the ground that it was not based on objective criteria based on merit and not only on procedural grounds; the supervision of judges by chairs and division heads of courts and tribunals in the uniformisation procedure should be removed; the maximum frequency of temporary transfers of judges ("one year every three years") should be reduced substantially, it should not be possible to transfer a judge so often; the NJC should not be composed exclusively of judges; the 'users of the judicial system' such as advocates, representatives of civil society and the academia should be included as full members (not upon *ad hoc* invitation and with consultative status only) and the system of continuing rotation of the presidency and the membership in the NJC for only one term, which weakens the NJC, should be reconsidered.

## **JORDAN**

In co-operation with the Parliament of Jordan, the Commission organised a workshop on the establishment of a Constitutional Court (Amman, 28 May 2012). In view of the adoption of a law on the constitutional court, various models of constitutional jurisdiction and in particular means of access of the individual to the court were discussed (see Chapter V).

## **KOREA (REPUBLIC)**

On the occasion of the Inaugural Congress of the Association of Asian Constitutional Court and Equivalent Institutions (see below), the President of the Venice Commission met with the Minister of Justice of Korea Mr Kwon Jae-jin in May 2012. The Minister expressed his satisfaction with the work of the Commission and informed the President of the Commission that his Ministry systematically translated the annual reports of the Commission into the Korean language.

## **KYRGYZSTAN**

### *Participation in the Judiciary Dialogue*

A delegation of the Commission participated in the "Judiciary Dialogue" in Kyrgyzstan and held discussions with the Parliament's judiciary working group (Bishkek, March 2012). This event was organised by the EU-UNDP Parliament project. The subject of the discussions was the definition and implementation of the judicial reform strategy. In 2011, the Commission had given three opinions on the Draft Law on the Council for the Selection of Judges (CDL-AD(2011)019), on the Constitutional Law on the Status of Judges (CDL-AD(2011)017) and on the Constitutional Law on the Constitutional Chamber of the Supreme Court (CDL-AD(2011)018). A point of particular importance in the discussions was the need to establish the Constitutional Chamber of the Supreme Court (on co-operation with Kyrgyzstan see also Chapter V).

## **LITHUANIA**

### *Conference on the occasion of the 20th Anniversary of the Constitutional of Lithuania*

On 25 October 2012, the Commission organised in co-operation with the Constitutional Court of Lithuania and Vilnius University a conference on the "Standards of Europe's constitutional heritage" on the occasion of the 20th anniversary of the Constitution of Lithuania. The discussions focused on key elements of 'historic' constitutions in Europe, which still influenced modern constitutions and how the European constitutional heritage had become a common standard (see also CDL-JU(2012)030syn).

## **MONTENEGRO**

### *Visit to the Constitutional Court*

In May 2012, the President of the Venice Commission visited the President of the Constitutional Court of Montenegro in Podgorica and discussed bilateral co-operation as well as issues linked to constitutional reform in Montenegro.

## **MOROCCO**

### *1st Intercultural Workshop on Democracy on "Constitutional Processes and Democratic Processes, Experiences and Perspectives"*

In March 2012, the Commission organised, in co-operation with the Moroccan Association of Constitutional Law, the International Association of Constitutional Law and the Constitutional Council of Morocco the 1st Intercultural Workshop on Democracy on the topic "Constitutional Processes and Democratic Processes, Experiences and Perspectives" in Rabat. Both national and international participants discussed various features of the constitutional reform in Morocco and the means of its implementation (proceedings available at [http://www.venice.coe.int/WebForms/pages/?p=02\\_02\\_01\\_2013\\_03\\_MAR](http://www.venice.coe.int/WebForms/pages/?p=02_02_01_2013_03_MAR)).

### *Seminar on Preliminary Requests to Constitutional Courts*

In co-operation with the Constitutional Council of Morocco, the Venice Commission organised a seminar on Preliminary Requests to Constitutional Courts (Rabat, November 2012). Presidents and judges of the Constitutional Courts and Councils of Belgium, Egypt, France, Italy, Romania and Spain presented their systems of preliminary requests. The numerous alternative solutions as concerns the role of the parties, of the requesting judge, various filters and the effects of preliminary judgments were discussed in detail in the view of the preparation of an organic law, which is foreseen in the new Constitution of Morocco (see Chapter V).

**ROMANIA**

*Conference on the occasion of the 20th Anniversary of the Constitutional Court and of 100 years of constitutional review in Romania*

A delegation of the Commission participated in the Conference on the occasion of the 20th Anniversary of the Constitutional Court and of 100 years of constitutional review in Romania (Bucharest, 21-22 June 2012).

On 4 July and 7 August 2012, the President of the Venice Commission made statements calling for the respect of the independence of the Constitutional Court of Romania.

**SOUTH AFRICA**

A delegation from the Constitutional Court of South Africa under its Chief Justice Mogoeng Mogoeng participated in the June 2012 plenary session and visited Strasbourg for meetings with the President of the European Court of Human Rights and the Secretariat of the Commission.

**TUNISIA**

*Workshop on “The Role of an Independent Judiciary in the Middle East and North Africa”*

In January 2012, a delegation of the Commission participated in the ABA ROLI-Arab Council for Judicial and Legal Studies (ACJLS) Workshop on “The Role of an Independent Judiciary in the Middle East and North Africa.” (Tunis, 17-18 January 2012). The delegation presented common standards on the independence of the judiciary as well as the experience of Central and Eastern European countries in judicial reforms.

*Study visit of members of the Constituent Assembly to Strasbourg and Karlsruhe*

On 29-30 March 2012, members of the Constituent Assembly of Tunisia made a study visit to Strasbourg and Karlsruhe. The 11-person delegation from the drafting group on the “justice” chapter of the new Tunisian Constitution were invited to Strasbourg by the Venice Commission for a study visit to both the Council of Europe bodies (including the European Court of Human Rights and the Parliamentary Assembly) and Karlsruhe, Germany to visit the Federal Supreme Court and the Federal Constitutional Court.

*Seminar on the Independence of the Judiciary*

The Commission organised a seminar on the independence of the Judiciary (Tunis, 21-22 March 2012, see Chapter V).

*Visit to Tunis on judicial reform*

In December 2012, a joint delegation of the Venice Commission and the OSCE/ODIHR held discussions in Tunis with the Ministry of Justice of Tunisia on the reform of the judiciary (see chapter V).

**“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**

Upon request by the Constitutional Court of “the former Yugoslav Republic of Macedonia”, the Commission adopted an *amicus curiae* brief on the so-called “Lustration Law” (see Chapter II above).



## TURKEY

### *Symposium on the occasion of the 50<sup>th</sup> Anniversary of the Constitutional Court of Turkey*

A delegation of the Venice Commission participated in the Symposium on the occasion of the 50th anniversary of the Constitutional Court of Turkey (Ankara/Istanbul, 25-26 April 2012). A key issue discussed was the introduction of the individual complaint to the Constitutional Court as of September 2012. The Venice Commission had given an opinion on this issue (CDL-AD(2011)040). It was expected that this reform would reduce the number of Turkish cases before the European Court of Human Rights.

### *Expert Seminar on “The Independence and Integrity of the Judiciary”*

A member of the Venice Commission presented a report on “External and Internal Aspects of the Independence of the Judiciary” to the Seminar which was organised by the OECD (Istanbul, 28 to 30 June 2012).

## UKRAINE

### *Opinion on the draft Law on the Public Prosecutor’s Office of Ukraine (prepared by the Ukrainian Commission on strengthening Democracy and the Rule of Law) (CDL-AD(2012)019)*

This opinion, requested by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe and adopted in October 2012, recommended that the scope of functions of the Public Prosecutor’s Office be reduced, as they exceeded the scope of functions that a prosecution service should have in a democratic society. The opinion welcomed the draft law’s stance on abandoning the supervisory role prosecutors currently hold over the administration and the fact that it took into consideration much of the criticism made by the Venice Commission in previous opinions.

While this opinion was being prepared, the Secretariat of the Venice Commission received a letter from the Minister for Justice of Ukraine informing it that another draft law on the same topic was being prepared by a different working group and that it would be submitted to the Venice Commission for an opinion in due course.

The draft law would represent an important step if it were to be adopted. However, while the Venice Commission was looking at this draft law, the Ukrainian authorities appeared to have gone in the opposite direction, adopting amendments which seemed to have made the supervisory role of the administration permanent.

## **2. TRANSNATIONAL ACTIVITIES/ACTIVITES TRANSNATIONALES**

### **5<sup>th</sup> Conference of Secretaries General of Constitutional Courts and Equivalent Bodies, Yerevan, 13-14 April 2012**

In co-operation with the Constitutional Court of Armenia, the Venice Commission organised the 5<sup>th</sup> Conference of Secretaries General of Constitutional Courts and Courts with Equivalent Jurisdiction on the topic “Procedural time-limits and Reactions to negative criticism of Court judgments” (Yerevan, 13-14 April 2012). The Conference gathered together 22 secretaries general of constitutional courts from all over Europe as well as from the Constitutional Council of Morocco and the Constitutional Tribunal of Peru.

The reports and discussions focused on two themes: (1) procedural time-limits (time-limits for litigants/time-limits for the court) in which the role of time-limits, ranging from stemming the flow of cases heading to the Constitutional Court and avoiding overburdening it, to taking into consideration the decision-making time allocated to the Court, were discussed; (2) reactions to negative criticism of court judgments, in which the importance that courts are open to criticism

was discussed and how they should deal with the points raised in the criticism they received, including how to deal with the source of the criticism, which can emanate from individual letters of complaint addressed to the President of the Court to criticism received from the legal community or from the media. Participants agreed that the interaction of the court with the public was important and that events such as “open house days”, which open the doors to the public to visit the court, are important to create trust and transparency. They also agreed that ensuring judgments are written clearly and that an abstract is provided which explains the decision in layman’s terms can clear up misunderstandings.

### **11<sup>th</sup> meeting of the Joint Council on Constitutional Justice, Brno, Czech Republic, 31 May-1 June 2012**

The 11<sup>th</sup> meeting of the Joint Council on Constitutional Justice was hosted by the Constitutional Court of the Czech Republic and opened by its President. The meeting focussed on the publication of the Bulletin on Constitutional Case-Law and the CODICES database, on the improvement of the classic Venice Forum, which is open to courts participating in the Joint Council and of the Venice Forum Newsgroup, which is also open to constitutional courts, which are in partnership with the Venice Commission on the basis of an agreement with a regional or language based group of Constitutional Courts or equivalent bodies (see below Section 3).

The Joint Council also held a mini-conference on the theme of “The Rule of Law as a Practical Concept”. This choice of topic of the mini-conference was made as a follow up to the Unidem seminar on the Rule of Law in London in March 2012 (see above chapter II). The liaison officers presented the case-law of their courts on the rule of law and frequently made reference to the Venice Commission’s Report on the Rule of Law (CDL-AD(2011)003rev).

### **3. REGIONAL CO-OPERATION/COOPERATION RÉGIONALE**

The Venice Commission co-operates closely with constitutional courts and equivalent bodies in its member, associate member and observer states. These courts meet with the Commission in the framework of the Joint Council on Constitutional Justice. The publication of case-law in English and in French in the printed Bulletin on Constitutional Case-Law, access to the classic Venice Forum (quick on-line requests to other constitutional courts on cases relevant for pending cases) are reserved to courts represented in the Joint Council.

On the basis of various co-operation agreements, constitutional courts united in regional or language based groups can contribute to the CODICES database and the Venice Forum Newsgroup (various on-line announcements and requests).

### **Conference of European Constitutional Courts (CECC)<sup>12</sup>**

Since 1999, a tradition had developed for the Joint Council to produce working documents upon request by the Presidencies of the CECC on the topics of the CECC congresses. These working documents consist of extracts from the CODICES database complemented by additional information provided by the liaison officers. Following the congresses, the working documents are published as special editions of the *Bulletin on Constitutional Case-Law*.

At its 6<sup>th</sup> meeting in Brno on 30 May-1 June 2012, the Venice Commission’s Joint Council on Constitutional Justice decided to prepare a working document, followed by a Special Bulletin on the topic of the XVI<sup>th</sup> Congress of the Conference of European Constitutional Courts (Vienna, 2014) on “Co-operation of Constitutional Courts in Europe – current situation and perspectives, 1) Constitutional Courts between constitutional law and European law, 2) Interaction between Constitutional Courts and 3) Interaction between European Courts.” This topic of the XVI<sup>th</sup> Congress covered very well the Joint Council’s purpose to promote co-operation between the Courts.

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<sup>12</sup> See the co-operation page: <http://www.venice.coe.int/CECC/>.

In July 2012, the Special Bulletin on “State Powers”, prepared as a working document for the XV<sup>th</sup> Congress of the CECC was published.

### **Association of Constitutional Courts using the French Language (ACCPUF)<sup>13</sup>**

On the basis of the Vaduz Agreement and its Djibouti Protocol with ACCPUF, the Venice Commission continued to include the case-law of ACCPUF Courts into the CODICES database.

The Commission’s Secretariat presented the Commission’s report on “Individual Access to Constitutional Justice” (CDL-AD(2010)039rev) at the 6<sup>th</sup> Congress of ACCPUF in Marrakech, Morocco, on the “Citizen and the Constitutional Judge” on 3-5 July 2012.

### **Southern African Chief Justices Forum (SACJF)<sup>14</sup>**

The Secretariat attended the Annual Workshop and the General Assembly of the SACJF in Maputo, Mozambique on 27-28 July 2012.

### **Conference of the Constitutional Control Organs of the Countries of New Democracy (CCCOCND)<sup>15</sup>**

In co-operation with the Conference of the Constitutional Control Organs of the Countries of New Democracy and the Constitutional Court of Armenia, the Venice Commission organised a conference on the topic "Interaction between the constitutional court and other institutions in ensuring the execution of constitutional judgments" (Yerevan, 5-6 October 2012).

### **Association of Asian Constitutional Courts and Equivalent Institutions (AACC)<sup>16</sup>**

A delegation of the Commission participated in the Founding Congress of the Association of Asian Constitutional Courts and Equivalent Institutions in Seoul, Korea in May 2012. This new Association (11 members from Indonesia, Korea, Malaysia, Mongolia, Pakistan, Philippines, Russia, Tajikistan, Thailand, Turkey and Uzbekistan) was born out of the Conference of Asian Constitutional Judges, which co-operated with the Venice Commission since 2005. On the occasion of the Inaugural Congress, a co-operation agreement was concluded, which provides for access of the AACC members to the CODICES database and Venice Forum Newsgroup.

### **Ibero-American Conference of Constitutional Justice (CIJC)<sup>17</sup>**

A delegation of the Commission participated in the IX<sup>th</sup> Ibero-American Conference of Constitutional Justice on "Presidentialism and parliamentarism in constitutional jurisprudence" that was held in Cadiz, Spain on 16-19 May 2012, at the occasion of the bicentenary of the Constitution of Cadiz.

### **Union of Arab Constitutional Courts and Councils (UACCC)<sup>18</sup>**

A delegation of the Commission participated in the 7th Colloquium of the Union of Arab Constitutional Courts and Councils on "Constitutional Justice and the Separation of Powers", hosted by the Constitutional Council of Lebanon (Beirut, Lebanon 24-25 October 2011). The co-operation with the UACCC, based on a co-operation agreement, was further strengthened by the Arab Spring (for co-operation with Arab countries in general, see Chapter V).

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<sup>13</sup> See the co-operation page: <http://www.venice.coe.int/ACCPUF/>.

<sup>14</sup> See the co-operation page: <http://www.venice.coe.int/SACJF/>

<sup>15</sup> See the co-operation page: <http://www/venice.coe.int/CCCOCND>

<sup>16</sup> See the co-operation page: <http://www.venice.coe.int/AACC/>

<sup>17</sup> See the co-operation page: <http://www.venice.coe.int/CIJC/>

<sup>18</sup> See the co-operation page: <http://www.venice.coe.int/UACCC>

### **Conference of Constitutional Courts of Portuguese Speaking Countries (CJCPLP)<sup>19</sup>**

A delegation of the Commission participated in the Conference of Constitutional Courts of Portuguese-Speaking Countries (Maputo, 15-16 May 2012). On this occasion a co-operation agreement was signed, which provides for contributions of the member courts of the CJCPLP to the CODICES database and access to the Venice Forum Newsgroup.

### **Conference of Constitutional Jurisdictions of Africa (CCJA)<sup>20</sup>**

In discussions with the Presidency and Secretariat of the Conference of Constitutional Jurisdictions of Africa the conclusion of a co-operation agreement has been prepared for conclusion in 2013.

## **4. WORLD CONFERENCE ON CONSTITUTIONAL JUSTICE**

The World Conference on Constitutional Justice unites 62 Constitutional Courts and Councils and Supreme Courts in Africa, the Americas, Asia and Europe. It promotes constitutional justice – understood as constitutional review including human rights case-law – as a key element for democracy, the protection of human rights and the rule of law (Article 1.2 of the Statute attached as Appendix I).

The World Conference pursues its objectives through the organisation of regular congresses, by participating in regional conferences and seminars, by promoting experiences and case-law and by offering good services to members on their request (Article 1.2 of the Statute).

The main purpose of the World Conference is to facilitate judicial dialogue between constitutional judges on a global scale. Due to the obligation of judicial restraint, constitutional judges sometimes have little occasion to conduct a constructive dialogue on constitutional principles in their countries. The exchanges that take place between judges in the World Conference further reflection on arguments which promote the basic goals inherent in the national constitutions. Even if these texts often differ substantially, discussion on the underlying constitutional concepts unites constitutional judges from various parts of the world who are committed to promoting constitutionality in their own country.

The Bureau of the World Conference met on 16 June 2012 in Venice to discuss, *inter alia*, the preparation of the 3rd Congress of the WCCJ in Seoul, the report on the membership of the WCCJ, the financial report regarding contributions to the WCCJ, the relationship between the WCCJ and bilateral agreements concluded between regional and linguistic groups and the Venice Commission and the choice of a logo. The Bureau appointed the Head of the Constitutional Justice Division of the Venice Commission as Secretary of the World Conference.

By the end of 2012, 60 Constitutional Courts and equivalent bodies had joined the World Conference as full members (membership at time of publication of this report: 62).

The 3<sup>rd</sup> Congress of the World Conference on Constitutional Justice will be hosted by the Constitutional Court of the Republic of Korea in Seoul on 28 September-1 October 2014. This congress will be open only to courts, which are member of the World Conference.

## **5. PUBLICATION OF THE BULLETIN ON CONSTITUTIONAL CASE-LAW AND THE CODICES DATABASE**

The Bulletin on Constitutional Case-Law, first published in January 1993, contains summaries of the most important decisions sent in by the constitutional courts or their equivalents of more than 60 countries, the European Court of Human Rights and the Court of Justice of the

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<sup>19</sup> See the co-operation page: <http://www.venice.coe.int/CJCPLP>

<sup>20</sup> See the co-operation page: <http://www.venice.coe.int/CJCA>

European Communities. The contributions to the Bulletin are supplied by liaison officers appointed by the courts themselves.

The regular issues are supplemented by a series of special bulletins on specific topics or containing descriptions of the courts and basic material, such as extracts from constitutions and legislation on the courts, thus enabling readers to put the different courts' case-law into context. The Bulletin's main purpose is to encourage an exchange of information between courts and help judges to settle sensitive legal issues, which often arise simultaneously in several countries. It is also a useful tool for academics and all those with an interest in this field. The newly established constitutional courts in Central and Eastern Europe benefit from such co-operation and exchanges of information as well as from the judgments of their counterparts in other countries.

In July 2012, the Special Bulletin on "State Powers", prepared as a working document for the XVth Congress of the CECC was published. In 2012, four regular issues of the Bulletin were published.

The Commission is grateful to the *Organisation Internationale de la Francophonie* for its support for the publication of the Bulletin in the French language (see also Chapter VI.6).

## **6. VENICE FORUM**

The Venice Forum is a restricted platform where liaison officers appointed by Constitutional Courts or Courts with equivalent jurisdiction can share information about pending cases that should not be made public. In 2012, the Forum received 18 questions on topics that covered such issues as conscientious objection outside the military service context to the use of social networks by judges (twitter, facebook).

The Venice Forum Newsgroup is also open to Courts working with the Venice Commission in the framework of regional agreements (see section 3 above). The restricted Newsgroup enables the Courts to make on-line announcements on changes in their composition, on key judgements handed down and to make various requests to other Courts.

## **IV. ELECTIONS, REFERENDUMS ET PARTIS POLITIQUES**

Avant d'aborder les activités de la Commission de Venise dans le domaine électoral, il convient de souligner le rôle du Conseil des élections démocratiques, qui est l'organe chargé d'examiner les avis et études de la Commission de Venise en matière électorale avant leur soumission à la session plénière.

Le but du Conseil des élections démocratiques est d'assurer la coopération dans le domaine électoral entre la Commission de Venise, en tant qu'organe juridique, et l'Assemblée parlementaire et le Congrès des pouvoirs locaux et régionaux du Conseil de l'Europe, en tant qu'organes politiques responsables de l'observation des élections. Le Conseil des élections démocratiques promeut ainsi des valeurs européennes communes, les principes du patrimoine électoral européen.

Le Conseil des élections démocratiques (CED) est composé de représentants de la Commission de Venise, de l'Assemblée parlementaire et du Congrès des Pouvoirs Locaux et Régionaux du Conseil de l'Europe. Il a également invité le Parlement européen, la Commission européenne, le Bureau des institutions démocratiques et des droits de l'homme (BIDDH) et l'Assemblée parlementaire de l'Organisation pour la sécurité et la coopération en Europe (OSCE) à se joindre à ses travaux à titre d'observateurs. L'OSCE/BIDDH participe régulièrement à ceux-ci.

## 1. COUNTRY SPECIFIC ACTIVITIES/ACTIVITES PAR PAYS

### ALBANIE

#### *Table ronde sur l'administration électorale*

Les 26 et 27 mars 2012, la Commission de Venise a participé à une table ronde sur l'administration électorale organisée par la Commission spéciale sur les réformes électorales de l'Assemblée nationale d'Albanie, qui a traité des deux questions suivantes : les nouvelles technologies électorales et l'administration des élections.

### ARMENIE

#### *Table ronde avec l'école judiciaire sur le contentieux électoral*

A la demande de l'Ecole de la Magistrature d'Arménie, la Commission de Venise a co-organisé les 29 février et 1<sup>er</sup> mars 2012 à Erevan une table ronde avec des juges des cours administratives sur le thème du contentieux électoral ayant pu advenir à l'occasion des élections législatives de mai 2012. Pour cette occasion, deux experts de la Commission de Venise ont rencontré une vingtaine de juges durant deux sessions de travail.

#### *Assistance juridique à une mission d'observation électorale*

A la demande de l'Assemblée parlementaire du Conseil de l'Europe (APCE), la Commission de Venise a assuré une assistance juridique à la mission d'observation de l'APCE dans le cadre des élections législatives du 6 mai 2012.

La délégation a rencontré à cette occasion des responsables de partis politiques en lice, ou leurs représentants, le président de la Commission électorale centrale, la société civile et des représentants des médias, avant d'observer le scrutin le 6 mai.

### BOSNIE-HERZEGOVINE

#### *Atelier sur les amendements à la loi sur les conflits d'intérêt, à la loi sur le financement des partis politiques et à la loi électorale*

Du 2 au 4 avril 2012, la Commission a participé à Jahorina (Bosnie-Herzégovine) à un atelier sur les amendements à la loi sur les conflits d'intérêt, à la loi sur le financement des partis politiques et à la loi électorale, à la demande du groupe de travail interdépartemental chargé de ces amendements. Compte tenu de la volonté des autorités d'adopter très rapidement les lois révisées, une demande formelle d'avis n'a pas été formulée.

### GEORGIA

#### *Participation of women in public life*

On 7 and 8 February 2012, the Venice Commission took part in a meeting on the participation of women in public life held in Tbilisi. This activity was organised under the Council of Europe Eastern Partnership Facility programme financed by the European Union. The representative of the Venice Commission addressed "Gender issues in elections and political parties".

#### *Assistance to the Central Election Commission*

At the request of the Central Election Commission of Georgia (the CEC) in the context of the parliamentary elections held on 1 October 2012, a Venice Commission assisted the CEC in preparing the elections, by sending an expert from 6 September to 17 October 2012. The expert advised the CEC on legal and technical issues, notably for the preparation of CEC instructions.

*Legal assistance to an election observation mission*

At the request of the Parliamentary Assembly of the Council of Europe (PACE), the Venice Commission ensured legal assistance to the Election Observation Mission of PACE in the context of the parliamentary elections of 1 October 2012.

The delegation met with heads of political parties taking part in the elections or their representatives, the Chairman of the Central Electoral Commission, civil society and media representatives, before observing the ballot on 1 October.

*Follow-up to opinions in the field of elections and political parties*

At its March 2012 session, the Venice Commission was informed about the follow-up to:

- The joint opinion by the Venice Commission and the OSCE/ODIHR on the draft election code of Georgia (CDL-AD(2011)043). The version of the Code adopted by the Georgian Parliament on 27 December 2011 showed some improvement in particular concerning complaints and appeals and, to a certain extent, the reduction of the residency requirement for running for parliamentary elections; the introduction of the possibility to film and to take photographs of the electoral process was less positive; the main problem, the very unequal representation of voters of the various constituencies, remained unaddressed. The Georgian authorities however had announced their intention to address this issue after the next elections.

- The Joint opinion by the Venice Commission and the OSCE/ODIHR on the draft law on amendments and additions to the organic law of Georgia on political unions of citizens (CDL-AD(2011)044rev). The revised law, adopted on 28 December 2011, included numerous amendments which had not been submitted to the Venice Commission. Therefore, the Venice Commission could not be said to have analysed or approved the revised law. Substantial amendments, which added restrictions to the financing of political parties, had been introduced into the final version of the text. In particular, they extended the scope of the law to people with links to political parties. Discussions on the interpretation of these provisions were taking place with NGOs and it was likely that amendments would be made to the text in response to certain concerns.

**HONGRIE**

*Avis sur la loi sur les élections des membres du Parlement (CDL-AD(2012)012)*

A la demande du ministre hongrois des Affaires étrangères, le Conseil des élections démocratiques et la Commission de Venise ont adopté, à la session de juin 2012, un avis conjoint avec l'OSCE/BIDDH sur la loi sur l'élection des membres du Parlement de Hongrie.

L'avis conclut que la Loi CCIII modifiant les règles d'élection des membres du Parlement hongrois à compter de 2014, qui est une loi cardinale, est une base satisfaisante pour l'organisation d'élections législatives authentiques et démocratiques. La Commission de Venise et l'OSCE/BIDDH soulignent certaines évolutions positives telles que l'adoption de dispositions spécifiques visant à favoriser une meilleure participation des minorités nationales au Parlement.

Néanmoins, la Commission de Venise et l'OSCE/BIDDH recommandent certaines modifications de la loi, surtout pour veiller à ce que les électeurs d'une minorité nationale ne soient pas limités dans leur choix et pour inclure des lignes directrices procédurales plus claires, ainsi que des formules permettant de délimiter les circonscriptions électorales sans définir les contours géographiques de celles-ci dans la loi cardinale. C'est à une commission indépendante que devrait revenir la tâche de tracer concrètement la carte des circonscriptions.

La Commission de Venise et l'OSCE/BIDDH regrettent que de nouvelles dispositions législatives visant certains aspects fondamentaux du processus électoral – comme le choix du

système électoral et de la méthode de répartition des sièges ou le découpage des circonscriptions – n'aient pas fait l'objet d'un large débat entre les parties prenantes (et, en particulier, les partis politiques) avant leur adoption. Comme c'est le cas avec d'autres systèmes électoraux, le système choisi pourrait provoquer des effets aléatoires indésirables. La Commission de Venise et l'OSCE/BIDDH recommandent que toute future modification, notamment sous l'angle de la révision des dispositions fondamentales du texte, soit décidée sur la base d'un large consensus politique obtenu à l'issue d'un débat ouvert, transparent et participatif.

La Commission de Venise et l'OSCE/BIDDH recommandent que la loi sur la procédure électorale soit modifiée en temps utile, de manière à harmoniser et à détailler certaines procédures prévues par la nouvelle loi sur les élections, y compris celles visant l'organisation du vote depuis l'étranger, la collecte des parrainages et la garantie du caractère secret du vote. Il est en outre recommandé que l'adoption de ces modifications soit le fruit d'un large consensus obtenu à l'issue d'un débat ouvert, transparent et participatif.

## **KAZAKHSTAN**

*Assistance juridique à une mission d'observation électorale et avis informels*

Voir le chapitre V.

## **MEXIQUE**

*Visite dans le cadre de la préparation d'un avis sur le Code électoral du Mexique*

Voir le chapitre V.

## **MONTENEGRO**

*Assistance juridique à une mission d'observation électorale*

A la demande de l'Assemblée parlementaire du Conseil de l'Europe (APCE), la Commission de Venise a assuré une assistance juridique à la mission d'observation de l'APCE dans le cadre des élections législatives anticipées du 14 octobre 2012.

## **OUZBEKISTAN**

*Avis sur la loi électorale*

Voir le chapitre V.

## **FEDERATION DE RUSSIE**

*Avis de la Commission de Venise*

A la demande de la Commission de suivi de l'Assemblée parlementaire, le Conseil des élections démocratiques et la Commission de Venise ont adopté, à la session de mars 2012, un avis sur la loi fédérale sur l'élection des députés à la Douma d'Etat de la Fédération de Russie et un avis sur la loi sur les partis politiques.

Dans le cadre de la préparation de ces avis, une délégation de la Commission de Venise s'est rendue à Moscou les 16 et 17 février 2012, et a rencontré les différentes autorités concernées, de même que des membres de la société civile, des partis politiques non représentés à la Douma et des associations qui ont tenté de s'enregistrer sans succès comme partis politiques.



*Avis sur la législation électorale (CDL-AD(2012)002)*

Le principal problème est l'écart entre le texte de la loi et sa mise en œuvre. La conduite d'élections véritablement démocratiques dépend non seulement d'un Code électoral bien conçu et détaillé, mais aussi d'une mise en œuvre appropriée et complète de la législation. Cela dit, la législation devrait également être révisée sur un certain nombre de points.

La principale question de fond à traiter est l'impartialité de l'administration électorale. Il est indispensable de disposer de commissions indépendantes et impartiales pour faire en sorte que les élections soient organisées comme il convient. La réglementation actuelle n'est pas suffisante pour garantir l'impartialité de cette administration. La Commission de Venise recommande donc de modifier les règles concernant la composition des commissions électorales et en particulier, leur procédure de désignation pour assurer véritablement l'indépendance et l'impartialité des commissions.

Les principales autres questions qui demanderaient des améliorations sont les suivantes :

- La loi sur les élections à la Douma comprend des règles détaillées sur les observateurs électoraux. Ces règles devraient être modifiées pour qu'elles ne puissent pas être interprétées de façon trop restrictive et pour éviter toute discrimination entre les observateurs nationaux et internationaux. De plus, les observateurs nationaux non partisans devraient être autorisés et l'observation des élections, être étendue au processus postélectoral conformément aux normes internationales.
- La neutralité des autorités au cours de la campagne électorale est essentielle pour assurer l'égalité des chances entre les candidats. Il faudrait en particulier garantir la séparation effective entre l'Etat et les partis, et l'égalité d'accès aux médias. Les règles destinées à assurer ce libre accès devraient être réexaminées pour prévenir les restrictions excessives à la liberté d'expression.
- Pour assurer une égalité des chances effective, il serait souhaitable de reconsidérer les règles de financement des campagnes électorales et d'envisager une forme de financement public.
- La loi sur les élections à la Douma, combinée à la loi sur les garanties fondamentales prévoit un système de recours assez complet, mais complexe. Ce système devrait être simplifié, mais aussi clarifié pour combler les lacunes éventuelles et empêcher le rejet de recours sans motivation juridique.

*Avis sur la loi sur les partis politiques (CDL-AD(2012)003)*

L'avis a souligné que la loi sur les partis politiques, dans la version au moment de sa soumission à la Commission de Venise, rendait très difficile leur existence même. La réduction sensible du nombre des partis enregistrés et le petit nombre de ceux qui ont participé aux élections à la *Douma* en décembre 2011 (sept) illustraient les répercussions négatives de cette loi sur l'existence et le fonctionnement des partis politiques dans la Fédération de Russie. Cela n'était pas conforme aux normes européennes, en particulier aux articles 10 et 11 de la Convention européenne des droits de l'homme.

Les principaux problèmes posés par la loi sur les partis politiques restant à régler concernaient:

- L'enregistrement des partis politiques : en soi, l'obligation d'enregistrement n'est pas contraire aux normes européennes. Pour autant, la loi sur les partis politiques ne répondait pas aux normes européennes applicables découlant de l'article 11 de la CEDH et de la jurisprudence la Cour européenne des droits de l'homme, ni aux lignes directrices adoptées par la Commission de Venise et l'OSCE/BIDDH. Plus particulièrement,

- La condition relative au nombre d'adhérents requis devrait être considérablement assouplie et le contrôle intrusif exercé pendant la phase initiale d'enregistrement atténué.
  - La condition générale relative à la représentation géographique devrait être assouplie, voire supprimée.
  - Les restrictions concernant les adhésions individuelles aux partis politiques posaient également problème et devraient être modifiées pour que les normes européennes soient respectées.
- Le contrôle des affaires internes des partis politiques par les autorités de l'Etat
- Les partis devaient être en mesure de contrôler leurs propres procédures internes et, le cas échéant, de saisir les tribunaux. L'Etat ne devrait pas avoir pour mission de contrôler tous les aspects de la vie d'un parti politique et, contrairement à ce qui était prévu par la loi, se voir régulièrement transmettre la liste des adhérents d'un parti.
  - La Commission de Venise recommandait l'attribution de l'ensemble des pouvoirs de supervision et de contrôle des partis politiques à une autorité indépendante ne relevant pas du pouvoir exécutif, de façon à assurer la transparence et à favoriser la confiance dans les institutions.

#### *Suivi de l'avis*

En juin 2012, la Commission a été informée de l'adoption d'amendements à la loi sur les partis politiques. Ces amendements concernaient : le nombre de membres nécessaires pour enregistrer un parti politique (réduit à 500) ; les exigences de représentation territoriale des partis politiques (nécessité d'être représenté non pas dans « plus de la moitié des sujets », mais dans « pas moins de la moitié des sujets ») ; la périodicité des rapports à la Commission électorale centrale (nécessité de faire rapport tous les trois ans au lieu de tous les ans). Ces amendements respectent certaines recommandations de la Commission et il convient de s'en féliciter.

#### *Assistance juridique à une mission d'observation électorale*

A la demande de l'Assemblée parlementaire du Conseil de l'Europe (APCE), la Commission de Venise a assuré une assistance juridique à la Mission d'observation de l'APCE dans le cadre des élections présidentielles du 4 mars 2012.

La délégation a rencontré les candidats à l'élection ou leurs représentants, la Commission électorale centrale et des représentants d'ONG et des médias, avant d'observer le scrutin le 4 mars.

### **SERBIE**

#### *Assistance juridique à une mission d'observation électorale*

A la demande de l'Assemblée parlementaire du Conseil de l'Europe (APCE), la Commission de Venise a assuré une assistance juridique à la mission d'observation de l'APCE dans le cadre des élections législatives et présidentielles du 6 mai 2012.

### **« L'EX-REPUBLIQUE YUGOSLAVE DE MACEDOINE »**

#### *Avis sur le code électoral*

En août 2012, à la demande du ministre des affaires étrangères de « l'ex-République yougoslave de Macédoine », la Commission de Venise a préparé un avis conjoint avec l'OSCE/BIDDH sur les projets d'amendements au code électoral et à la loi sur le financement des partis politiques de ce pays. La Commission de suivi de l'Assemblée parlementaire a ensuite demandé un avis sur le code électoral, qui devrait être adopté en 2013.

## TUNISIE

### *Questions électorales*

Voir le chapitre V.

## UKRAINE

### *Cadre juridique électoral en vue des élections législatives de 2012*

Le 14 mars 2012, à l'invitation de la Fondation internationale pour les systèmes électoraux (IFES), la Commission de Venise a participé à Kyiv à une réunion sur le cadre juridique électoral en vue des élections législatives de 2012 en Ukraine.

Cette activité a permis de présenter le dernier avis de la Commission de Venise et de l'OSCE/BIDDH sur le projet de loi relative à l'élection des députés du peuple de l'Ukraine (CDL-AD(2011)037), dans le cadre de révision de cette loi. L'importance d'une mise en œuvre sincère par l'ensemble des parties prenantes aux élections (autorités et partis politiques en particulier) ainsi que la nécessité d'éviter des changements fondamentaux à proximité des élections ont été soulignés.

### *Table ronde sur la loi sur les élections parlementaires de 2012*

Les 19-20 mars 2012 s'est tenue à Kyiv une table ronde sur la mise en œuvre de la nouvelle loi sur les élections parlementaires de l'Ukraine. Cette activité a traité de la création des commissions électorales, des circonscriptions, de la campagne électorale et du contentieux électoral. Elle a été organisée en coopération avec la Verkhovna Rada (le parlement) de l'Ukraine et la Commission électorale centrale.

### *Séminaire sur les listes électorales et l'enregistrement des électeurs*

Les 26 et 27 mars 2012, dans le cadre du Partenariat oriental de l'Union européenne, la Commission a organisé à Kyiv un séminaire sur les listes électorales et l'enregistrement des électeurs, en coopération avec la Commission électorale centrale de l'Ukraine. Les participants ont discuté des nouvelles possibilités technologiques pour maintenir les listes électorales à jour. La Commission électorale centrale de l'Ukraine a partagé son expérience dans le domaine de la création et du maintien du registre électronique des électeurs.

### *Séminaire de formation sur le contentieux électoral*

Le 19 octobre 2012, la Commission de Venise a participé à Kyiv à un séminaire de formation sur le contentieux électoral co-organisé par le Conseil de l'Europe et la Haute cour administrative d'Ukraine. Ce séminaire visait à présenter les normes et pratiques européens en la matière aux juges en charge du contentieux électoral.

### *Assistance juridique à une mission d'observation électorale*

A la demande de l'Assemblée parlementaire du Conseil de l'Europe (l'APCE), la Commission de Venise a assuré une assistance juridique à la mission d'observation électorale de l'APCE dans le cadre des élections législatives du 28 octobre 2012.

### *Follow-up to an opinion on the electoral legislation*

At its December 2012 session, the Venice Commission was informed about the follow-up to the Joint Opinion on the Draft Law on Election of People's Deputies of Ukraine (CDL-AD(2011)037).

The last parliamentary elections confirmed what was said in this opinion: the electoral system had to be changed by consensus - such a change took place; on the basis of past experience, it had been underlined that mixed systems led to abuses in their plurality part, and this was confirmed; the absence of criteria for drawing constituencies led to some of them being drawn up arbitrarily; the fear that lower-level election commissions would not be pluralistic enough was confirmed.

## **2. TRANSNATIONAL ACTIVITIES/ACTIVITES TRANSNATIONALES**

### *Etudes et rapports*

#### *Mesures pour améliorer le caractère démocratique des élections dans les Etats membres du Conseil de l'Europe*

Suite à la demande de la Commission des questions politiques de l'Assemblée parlementaire, le Conseil des élections démocratiques et la Commission de Venise ont adopté, à la session de mars 2012, un rapport sur les mesures pour améliorer le caractère démocratique des élections dans les Etats membres du Conseil de l'Europe (CDL-AD(2012)005). Ce rapport vise en premier lieu à présenter brièvement l'acquis en la matière, souvent appelé aussi « patrimoine électoral européen » et, en deuxième lieu, à dégager les pistes sur lesquelles des développements sont encore possibles prochainement.

En octobre 2012, le Conseil a décidé que les points suivants seraient prioritaires dans ses travaux futurs :

- la méthode de désignation des candidats au sein des partis politiques (y compris par des élections primaires);
- la question des listes ouvertes; cette étude devrait aussi traiter des conséquences sur la représentation des femmes.

#### *Observation et surveillance impartiales des élections*

Lors de la session de juin 2012, le Conseil des élections démocratiques et la Commission de Venise ont entériné la Déclaration des principes internationaux pour l'observation et la surveillance impartiales des élections par les organisations citoyennes et le Code de conduite à l'usage des citoyens observateurs et superviseurs impartiaux des élections, préparés par le Réseau mondial d'observateurs nationaux des élections (GNDEM) (CDL-AD(2012)018). Ce document, qui s'applique uniquement aux observateurs non partisans, fait suite à la Déclaration des principes pour l'observation internationale des élections de 2005 (CDL-AD(2005)036), entérinée par le Conseil et la Commission en octobre 2005.

#### *L'image des migrants et des réfugiés véhiculée pendant les campagnes électorales*

Lors de sa troisième partie de session de 2012, l'Assemblée parlementaire du Conseil de l'Europe a adopté la résolution 1889(2012) sur l'image des migrants et des réfugiés véhiculée pendant les campagnes électorales. Elle a demandé à la Commission de Venise d'étudier la question et le cas échéant d'amender le Code de bonne conduite en matière électorale afin de refléter cette problématique.

Après avoir examiné les documents existants du Conseil de l'Europe et de la Commission de Venise traitant de la question des migrants et des réfugiés, la Commission a considéré, lors de sa session d'octobre 2012, et sous réserve des éléments figurant déjà dans ses travaux antérieurs, qu'il s'agit d'une question politique qui ne relève pas de la Commission de Venise.

*Limitation of mandates and incompatibility of political functions*

The Venice Commission received a request from the Parliamentary Assembly's Political Affairs Committee on the limitation of terms of political office, covering two aspects: the limitation of the duration of terms of office of elected representatives and concurrent offices.

Further to this request, a report on "Limitation of mandates and incompatibility of political functions" was submitted to the Council for Democratic Elections and adopted by the Venice Commission in December 2012 (CDL-AD(2012)027).

The report first examined the theoretical references to the limitation of the mandates and the right to re-election of the holders of political mandates, and then dealt with the legal practice in Europe from a comparative point of view. For example, there is a general trend in Europe to allow presidents to be re-elected only once, whereas limitations in time for other public (political) functions are quite rare.

The report underlined that a democratic political system can only function with or through the limitations that it has set for itself as being legitimate and reasonable. The democratic character of the political system cannot be threatened by limitations in time of the mandates of the highest officials of the executive branch; such measures reinforce on the contrary the democratic system against authoritarian trends. The Venice Commission reiterated its critical approach towards constitutional provisions allowing for more than one re-election of the head of state in presidential or semi-presidential systems. The situation is different for members of the legislature: prohibiting re-election of parliamentarians involves the risk of the legislative branch of power being dominated by inexperienced politicians. This may lead to increase the imbalance in favour of the executive.

Incompatibilities – and possibly ineligibility for holders of an elected mandate to be elected to another function - do not go either against democratic principles because they are based on the principle of separation of powers. Incompatibility between ministerial and parliamentary duties is applied in a number of states, but not so much in parliamentary regimes, which are based on close collaboration between the legislature and the executive. On the contrary, in bicameral systems, no one should be simultaneously member of both houses. A member of the legislative or executive branch of government cannot belong to a judicial body. Private occupations are in principle compatible with parliamentary mandates, but specific provisions often deal with the issue of conflict of interest.

*Conférences et séminaires*

*Conférence UniDem sur « Le patrimoine électoral européen : dix ans de code de bonne conduite en matière électorale »*

Les 2 et 3 juillet 2012, la Commission de Venise a organisé à Tirana, en coopération avec l'Assemblée nationale de l'Albanie et la Commission électorale centrale d'Albanie, et dans le cadre de la présidence albanaise du Comité des Ministres du Conseil de l'Europe, une conférence sur « Le patrimoine électoral européen : dix ans de code de bonne conduite en matière électorale ».

La conférence a réuni une cinquantaine de personnes, notamment des universitaires, des représentants d'administrations électorales, des hommes et femmes politiques, ainsi que d'autres spécialistes des questions électorales.

Dix ans après l'adoption par la Commission de Venise du Code de bonne conduite en matière électorale, qui est le document de référence du Conseil de l'Europe en la matière, la conférence a mis l'accent sur sa mise en œuvre. Ont ainsi été présentés l'expérience du Congrès des pouvoirs locaux et régionaux dans ce domaine, tout comme le rôle du Code dans les réformes albanaises et la participation de la société albanaise dans le processus

électoral et ses relations avec le Code de bonne conduite en matière électorale. Les défis et problèmes récurrents du droit électoral – et donc les obstacles à l'application du Code – ont fait l'objet d'un rapport spécifique.

Trois thèmes spécifiques ont ensuite été traités : l'administration des élections, la représentativité des organes élus – notamment en ce qui concerne les femmes et les minorités - et le rôle du Code de bonne conduite en matière électorale dans la jurisprudence de la Cour européenne des droits de l'homme.

Les conclusions ont souligné l'importance de l'application effective du Code de bonne conduite en matière électorale, aussi bien dans la loi que dans la pratique.

*9th European Conference of Electoral Management Bodies: "Innovative solutions for elections" (Tallinn, 4-5 June 2012)*

The ninth European Conference of Electoral Management Bodies entitled "Innovative solutions for elections" was organised by the Venice Commission in co-operation with the Estonian National Electoral Committee on 4-5 June 2012 in Tallinn. The issues which were addressed during the conference included electronic voters' lists and registers of voters, new technologies used for training of electoral officials and observers as well as fighting electoral fraud and securing e-enabled voting.

Around 80 participants from the national electoral management bodies of the following countries attended the conference: Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Estonia, Georgia, Germany, Kazakhstan, Latvia, Moldova, Netherlands, Norway, Russian Federation, Slovenia, Spain, Sweden, Switzerland, Tunisia, Ukraine, United Kingdom, as well as members of the Venice Commission and representatives of the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe as well as representatives of other Council of Europe directorates.

Also represented were the Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights, International IDEA and several international NGOs active in the electoral field.

The conference addressed the following issues: electronic voters' lists and registers of voters – new technologies facilitating registration – advantages and challenges; using new technologies for training officials of electoral management bodies and election observers; fighting electoral fraud and securing e-enabled voting – the role of the electoral administration and observation of voting. In particular, the conference took note of the importance of the proper management of new technologies in maintaining the accuracy of voters' lists and registers, in providing high quality training programmes for electoral officials, observers and voters; underlined that new technologies can contribute to providing training for electoral officials, observers and voters; and recalled that new technologies should be developed taking into account international standards and good practices aimed at fighting electoral fraud.

*Vote électronique - conférence internationale (Bregenz, 11-14 juillet 2012)*

La Commission de Venise a participé à la 5e conférence internationale sur le vote électronique (EVOTE2012), qui était précédée par la 4e réunion du Conseil de l'Europe afin d'examiner les évolutions intervenues dans le domaine du vote électronique. Cette conférence était suivie par un atelier organisé par IFES et dédié au développement d'un manuel sur le vote électronique.

*21<sup>e</sup> conférence de l'ACEEEO (Association des administrateurs d'élections européens) sur « la participation des groupes vulnérables au processus électoral : minorités et personnes handicapées » (Sarajevo, 13-15 septembre 2012)*

La participation de la Commission de Venise à cette conférence a permis de présenter les principaux documents de la Commission de Venise en la matière. Les débats ont porté en particulier sur la possibilité des personnes handicapées physiquement de participer aux élections.

*Conference on "Political Parties in a democratic society: legal basis of organisation and activities" (St Petersburg, 27-28 September 2012).*

This conference was co-organised by the Venice Commission and the Constitutional Court of the Russian Federation. It was aimed at discussing the challenges and the crises in political parties in Europe, and more particularly the internal party democracy. In addition to several members of the Venice Commission, as well as representatives of the European Court of Human Rights, of the Parliamentary Assembly of the Council of Europe, as well as of the Group of States against Corruption (GRECO), the conference brought together members of the Russian Constitutional Court, of the Central Electoral Commission, representatives of the State *Duma*, State Council of the Russian Federation, the Ministry of Justice, the Court of Accounts, the Institute of Legislation and Comparative Law as well as the Committee of Civil initiatives. It was organised in the aftermath of the adoption of substantial changes to the Law on Political Parties in April 2012, further to the opinion on this law which the Venice Commission adopted in March 2012 (CDL-AD(2002)003).

The debates addressed the action of political parties in public life; balancing external and internal regulations of political parties; and the issue of financing political parties. There was a consensus concerning the need to respect European standards and a progressive approach towards the Council of Europe shared values, based on a mutual knowledge.

*Séminaire régional sur la participation des personnes handicapées à la vie publique (Zagreb, 15-16 novembre 2012)*

La Commission de Venise a participé au Séminaire régional sur la participation des personnes handicapées à la vie publique organisé par le Conseil de l'Europe et le ministère croate de la Politique sociale et de la Jeunesse, en présentant une intervention sur « le rôle du Conseil de l'Europe dans la promotion de la participation de tous les citoyens aux processus démocratiques en Europe : le droit de vote des personnes handicapées ».

*VOTA, the Venice Commission's electoral database*

The VOTA database was set up as part of the joint Venice Commission and European Commission programme "Democracy through Free and Fair Elections" in 2004. It contains the electoral legislation of the Venice Commission's member states and other states involved in the Commission's work. Over 100 laws and statutes from about 50 states, as well as Venice Commission opinions in the field of elections, are already available in the database, in English, French, as well as in Spanish (<http://www.venice.coe.int/VOTA>). This database is now jointly managed with the Electoral Tribunal of the Judicial Power of the Mexican Federation (*Tribunal electoral del poder judicial de la Federación, TEPJF*), which has given support to the database technically, adding new features, as well as indexing and adding documents. The new database will be fully operative and up to date by the end of 2013.

### **3. INTERNATIONAL CO-OPERATION IN THE ELECTORAL FIELD AND POLITICAL PARTIES/ CO-OPERATION INTERNATIONALE DANS LE DOMAINE DES ELECTIONS ET DES PARTIS POLITIQUES**

***Les activités en matière électorale dans le voisinage et en dehors d'Europe sont traitées dans le chapitre V.***

***La coopération avec l'Union européenne et les autres organisations internationales est traitée dans le chapitre VI.***

## **V. CO-OPERATION IN THE COUNCIL OF EUROPE NEIGHBOURHOOD AND OUTSIDE EUROPE<sup>21</sup>**

In 2012 the Venice Commission continued its fruitful co-operation with its partners outside Europe, notably in South Mediterranean and in Central Asia.

### **1. MEDITERRANEAN BASIN**

The Arab Spring gave new impetus to the co-operation between the Venice Commission and the countries of the Mediterranean basin and in 2012 successful projects of the Venice Commission in the field of building of democratic institutions, constitutional justice and elections in Tunisia and Morocco attracted special attention from the countries of the region without a history of co-operation with the Venice Commission, such as Jordan and Libya.

#### **JORDAN**

Following preliminary contacts between Jordan and the Council of Europe, the Venice Commission engaged in a constructive dialogue with the authorities on possible co-operation in the field of constitutional justice. The new Constitution of Jordan foresees the creation of a Constitutional court.

After these first contacts the Commission organised a workshop for members of parliament and other officials at the Constitutional Court in Amman on 28 May 2012. The participants had an opportunity to hold an exchange of views on different models of constitutional justice. This workshop was organised in the framework of the programme funded by the EU "Strengthening democratic reform in the Southern Neighbourhood".

One of the important outcomes of this first activity was a request by the authorities to have a specific co-operation programme in the field of constitutional justice. The Delegation of the European Union in Jordan welcomed this initiative and decided to provide financial support to this programme, which should start in 2013.

#### **LYBIA**

On 27 September 2012, the Vice President of the General National Congress of Libya Dr Saleh Mohammed Almkhozom asked for the Venice Commission's support to the Congress in its work of developing a constitution for a new democratic Libya.

Following this request a delegation of the Venice Commission travelled to Tripoli in November 2012 and had meetings with the National Congress of Libya and with the Presidency of the country on the process of preparing and adopting the new Constitution. The Commission plans to continue its dialogue with the authorities in 2013.

This activity was carried out jointly with the International Management Group (IMG) and within the framework of the co-operation of the country with the European Union. IMG and

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<sup>21</sup> Some activities in the field of constitutional justice are dealt with in chapter III.



the EU Delegation suggested to the Libyan authorities to ask for the assistance of the Venice Commission.

## **MOROCCO<sup>22</sup>**

Co-operation with the Moroccan authorities focused on the implementation of the new Constitution. A constructive dialogue engaged by the Commission with Morocco resulted in several exchanges of views and activities in such fields as institutional reform, constitutional justice and human rights.

### *High level contacts with the authorities*

In 2012 the Venice Commission pursued its constructive dialogue with the authorities. In April 2012 the President of the Venice Commission went on an official visit to Rabat. Mr Buquicchio met with the Secretary General of the Ministry of Foreign Affairs and several high officials and discussed future co-operation activities with Morocco. These contacts contributed to the successful development of co-operation between the Commission and different institutions in Morocco.

### *Intercultural Workshop on Democracy*

On 29-30 March 2012 the Venice Commission in co-operation with the Moroccan Association of Constitutional Law, the International Association of Constitutional Law and the Constitutional Council of Morocco co-organised the 1st Intercultural Workshop on Democracy on "Constitutional Processes and Democratic Processes, Experiences and Perspectives" in Marrakech. The discussions focussed on a number of important issues of the constitutional reform such as different ways of conducting a constitutional reform, institutional design, choice of electoral system, relations between the parliament and the government and other issues. Such exchange of views gave an opportunity to study recent constitutional reforms in different countries, including Morocco, and to define possible areas where additional changes were needed.

### *Co-operation with the Mediator/Ombudsman Institution*

The Commission contributed to the 9th training session for collaborators of members of the Association of Ombudsmen and Mediators of the Mediterranean which took place in Rabat on 22-24 May 2012. This activity contributed to the establishment of permanent exchange of information with the Office of Mediator of Morocco. The authorities asked for the continued support for activities in this area in 2013.

This activity was financed by the EU/Council of Europe Southern Neighbourhood Programme.

### *Request for assistance in setting up the Authority for Parity and Fight against Discrimination as well as the Consultative Council for Family*

In October 2012, Mrs Hakkaoui, Minister for Solidarity, Women, Family and Social Development, requested the assistance of the Venice Commission in order to set up the Authority for Parity and Fight against Discrimination as well as the Consultative Council for Family and Childhood.

Since both bodies are foreseen by the specific provisions of the Constitution, the Ministry for Solidarity, Women, Family and Social Development took a decision to ask for the assistance of the Venice Commission. A delegation of the Venice Commission travelled to Rabat on 7 –

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<sup>22</sup> Activities in Morocco were financed by a voluntary contribution from the Government of Norway unless otherwise stated.

8 November to discuss with the Minister the modalities of co-operation between the Venice Commission and the Moroccan authorities. It was agreed that after the concrete work plan of such co-operation is drafted, experts of the Ministry would meet representatives of the Venice Commission in Strasbourg in early 2013.

*Seminar on preliminary requests to Constitutional Courts*

On 29-30 November, the Commission organised in co-operation with the Constitutional Council of the Kingdom of Morocco a seminar on preliminary requests to the Constitutional Court. The exchanges of views that took place during this event could help the drafters of the corresponding legislation to benefit from the experience of other countries.

*Co-operation with the Parliament of Morocco*

In 2012, the Venice Commission joined the Parliamentary Assembly of the Council of Europe in its effort to engage in a constructive dialogue with both Chambers of the Moroccan parliament. As a result it participated in several exchanges of views with the representatives of the Moroccan parliament, notably, in such important events as a workshop on responsibility of the Government before the parliament and in exchanges of views organised by the Chamber of Councillors of Morocco in the context of the preparation of the future organic law on the protection of the Amazigh language.

**TUNISIA<sup>23</sup>**

2012 was marked by the on-going work of the Constituent National Assembly on the text of the new constitution of Tunisia. The Venice Commission was involved in a number of exchanges of views with the constitution drafters and established very constructive working relations with the constitutional commissions of the Assembly. However, the co-operation was not limited only to the constitutional co-operation. A substantial contribution was made to the process of reforming the judiciary and improving the electoral legislation and practice.

*Co-operation with the National Constituent Assembly*

Representatives of the Constituent National Assembly of Tunisia, notably from its different constitutional commissions, held fruitful exchanges of views with the Commission in June, July, October and December 2012.

On 16 and 17 January 2012, the President of the Venice Commission Gianni Buquicchio and the Deputy Secretary of the Commission Simona Granata-Menghini participated in the visit of a delegation from the Parliamentary Assembly of the Council of Europe (PACE) to Tunisia. This visit followed the observation mission by the PACE of the elections of the Constituent Assembly on 23 October 2011. The Venice Commission had participated in the observation mission in its capacity as legal adviser for PACE.

This visit contributed to the establishment of excellent working relations with the new Constituent National Assembly and strengthened the Venice Commission's relations with other Tunisian institutions and partners.

As a result of these contacts a delegation of 12 members from the National Constituent Assembly came to Strasbourg for discussions at the Council of Europe, followed by meetings in Karlsruhe, Germany, at the Federal Supreme Court and the Federal Constitutional Court in March 2012.

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<sup>23</sup> Activities in Tunisia were financed by voluntary contributions from the Government of France and Norway unless otherwise stated.

This first successful exchange of views on the constitutional chapter on the judiciary was followed by discussion of other chapters of the future constitution.

Other Commissions of the Assembly got involved in a constructive dialogue with the Venice Commission to the extent that it was decided to organise a meeting between a delegation of Chairpersons of Constitutional Committees and Members of the Venice Commission on the side lines of the 91st plenary session of the Venice Commission in June 2012.

During a working visit to France, a delegation of the Committee on Regional and Local self-government bodies of the National Constituent Assembly and of the Ministry of the Interior of Tunisia held an exchange of views with the Venice Commission and the Congress of Local and Regional Authorities of Europe. The questions of the manner of election of representatives at the local and governorate levels, the control of the acts of the local self-government bodies and the respect of the principle of autonomy of self-government bodies were discussed among others.

The visit was organised at the initiative of the International Association of Francophone Mayors and the Embassy of France in Tunis, who also funded the visit. The programme was developed by the French Ministry of Foreign Affairs, with support from the Embassy in Tunis, the Association internationale des maires francophones (AIMF), the Centre national de la fonction publique territoriale (Paris) (CNFPT) and the French Ministry of the Interior.

This dialogue was pursued in July and the Commission received an invitation to participate in a hearing at the Assembly on 26 July 2012. A delegation of the Venice Commission held exchanges of views with the National Constituent Assembly of Tunisia in the hemicycle of the Palais Bardo in Tunis. The discussion focused on the advantages and disadvantages of different constitutional systems. This activity was possible thanks to the voluntary contribution of France.

In addition, representatives of the Venice Commission and of the Congress of Local and Regional Authorities of the Council of Europe had a working meeting with the Committee on Regional and Local Self-Government of the National Constituent Assembly.

During the October plenary session of the Commission a new round of exchanges of views between representatives of the National Constituent Assembly of Tunisia and members of the Venice Commission took place. The delegation of the National Constituent Assembly included:

- Mr Larbi Abid, Vice-President;
- Mr Habib Khedher, General Rapporteur on the Constitution;
- Mr Najjar Abdelmajid, Rapporteur, Committee on the Preamble, the fundamental principles and the revision of the Constitution;
- Mr Amor Chetoui, President of the Constitutional Committee on Legislative and Executive powers and the relations between the two;
- Mr Imed Hammami, President of the Constitutional Committee on local and regional self-government bodies;
- Ms Farida Labidi, President of the Constitutional Committee on Rights and Liberties;
- Mr Mohamed Elarbi Fadhel Moussa, President of the Constitutional Committee on Ordinary, Administrative, Financial and Constitutional Justice;
- Mr Jamel Tourir, President of the Constitutional Committee on Constitutional Bodies.

At this meeting, the six chapters of the draft new constitution prepared by the six constitutional committees were analysed thoroughly.

The President of the National Constituent Assembly, Mr Mustapha Ben Jaafar, addressed the Commission at the December 2012 session.

### *Judiciary*

On 21-22 March 2012 the Venice Commission and the Department for the independence and efficiency of Justice of the Council of Europe organised in co-operation with the Trade union of the Tunisian judges and the Union of the administrative judges, a seminar on the independence of the judiciary.

The participants had an opportunity to hold in-depth discussions, in particular about the constitutional guarantees of the independence of the judiciary, the judiciary councils, the judges' career and statutory guarantees.

This seminar was organised in the framework of the European Union programme "Strengthening democratic reform in the Southern Neighbourhood".

The reform of the judiciary is one of the top priorities of the authorities of Tunisia; however, co-operation with the Venice Commission was relatively slow in 2012 because of the on-going process of drafting of the new constitution of the country. However, through different exchanges of views between the Commission and the authorities it was clear that the Commission might play an important role in this area of co-operation in 2013-2014.

In December 2012, a joint delegation of the Venice Commission and the OSCE/ODIHR held discussions in Tunis with the Ministry of Justice of Tunisia on the reform of the judiciary following the revolution. The subject of the discussions was the existing legislation in the court system and ways for its improvement.

### *Electoral issues*

On 12-13 March 2012, representatives of the Venice Commission participated in a conference organised by IFES on "the Legal Framework for Elections in Tunisia: National and International Perspectives". The discussion focussed on the results of the 2011 elections to the National Constituent Assembly and on possible ways to improve the electoral legislation and practice in the country.

Following this general discussion in Tunis, the Venice Commission got an opportunity to open a more focussed dialogue with the Assembly. On 18-19 December 2012, a delegation of the Commission of general legislation of the Tunisian Constituent Assembly visited the Council of Europe and met experts of the Venice Commission to discuss the issue of electoral systems. These exchanges of views would continue in 2013.

## **2. CENTRAL ASIA**

In 2012 the Venice Commission continued its fruitful co-operation with countries of Central Asia. Different activities were carried out mainly through two programmes: a joint programme between the European Commission and the Council of Europe "support to electoral process in Kazakhstan" and "Equal before the law: access to justice for vulnerable groups" supported by the Ministry of Foreign Affairs of Finland.

*Kazakhstan: Programme conjoint entre la Commission européenne et le Conseil de l'Europe "Soutien au processus électoral au Kazakhstan"*

Suite à la signature du programme conjoint entre la Commission européenne et le Conseil de l'Europe « Soutien au processus électoral au Kazakhstan » en 2011, la Commission de Venise, en coopération avec la Commission électorale centrale du Kazakhstan, a organisé plusieurs activités dans l'objectif de former les membres des commissions électorales de différents niveaux ainsi que les représentants d'autres institutions impliquées dans le processus électoral.

En mars 2012, les représentants de la Commission de Venise et de la Commission électorale centrale se sont réunis à Astana et ont développé un plan d'activités pour l'année 2012 qui prévoyait quatre types d'activités : des séminaires sur les problèmes d'organisation de l'administration électorale et sur le contentieux électoral, des ateliers de formation pour les membres des commissions électorales, des études comparatives de la législation et de la pratique électorale et des visites d'études dans les institutions européennes et dans les administrations électorales des pays européens.

#### *Assistance juridique à une mission d'observation électorale*

A la demande de l'Assemblée parlementaire du Conseil de l'Europe, la Commission de Venise a assuré une assistance juridique à la commission *ad hoc* pour l'observation des élections législatives anticipées au Kazakhstan le 15 janvier 2012.

La délégation a rencontré des partis politiques, qu'ils participent ou non aux élections, ainsi que des représentants d'ONG et des médias, avant d'observer le scrutin le 15 janvier.

#### *Conférences et ateliers de formation*

Les 26 et 28 juin 2012 la Commission a organisé une conférence sur "Les recours électoraux. Une analyse comparative des normes européennes et des pratiques nationales" à Almaty.

Cette activité s'adressait aux juges, procureurs, avocats de la défense et membres des commissions électorales d'Astana et Almaty. Pendant trois jours, les participants à la conférence ont travaillé principalement sur les questions touchant aux normes dans le domaine du contentieux électoral, les modèles de contentieux électoral, les sanctions et les recours pendant la campagne électorale. Les échanges de vues pendant l'activité ont permis d'évaluer le système du contentieux existant au Kazakhstan et de suggérer les possibilités d'amélioration.

Une deuxième conférence sur «Les listes électorales, l'établissement des commissions électorales et la participation des partis politiques aux élections » a eu lieu à Astana, du 4 au 6 décembre 2012. Au cours de cette manifestation les juges, les procureurs, les avocats de la défense et les membres des commissions électorales de différents niveaux ont examiné les problèmes tels que :

- Les normes relatives aux listes électorales, à la composition et au fonctionnement des organismes de gestion des élections
- Les normes dans le domaine de la participation des partis politiques aux élections
- Les différents modèles de listes électorales ainsi que les registres électroniques
- Les différents modèles de composition des commissions électorales
- La participation des représentants des partis politiques dans les commissions

Les interventions sur ces sujets spécifiques ont été suivies par des ateliers qui ont permis d'avoir des discussions animées et des échanges informels entre les participants et les conférenciers.

Les conférences ont été complétées par les ateliers de formation destinés aux membres des commissions électorales territoriales. Un premier atelier de formation des formateurs pour les commissions électorales du Kazakhstan a eu lieu les 1er et 2 juin 2012 à Astana.

Cette session de formation visait les professionnels de quatre commissions électorales régionales du Kazakhstan avec l'objectif global d'améliorer leurs connaissances dans la formation des autres, en renforçant leurs capacités à parler en public, en augmentant leurs connaissances des techniques et méthodes principales, ainsi que les règles principales relatives à la visibilité du matériel.

En novembre-décembre 2012, des ateliers similaires ont été organisés dans les villes d'Aktobe, d'Uralsk et d'Ust-Kamenogorsk.

*Visites d'études de collaborateurs des Commissions électorales centrale et régionales du Kazakhstan*

Le programme conjoint entre la Commission européenne et la Commission de Venise a permis d'organiser plusieurs visites d'études pour les représentants de l'administration électorale du Kazakhstan dans les institutions européennes et les administrations électorales d'autres pays.

Une première visite d'étude de collaborateurs des Commissions électorales centrale et régionales du Kazakhstan portant sur « Les normes du Conseil de l'Europe dans le domaine des élections et les développements récents de la jurisprudence de la Cour européenne des Droits de l'Homme en matière d'élections », a été organisée par la Commission de Venise à Strasbourg les 3 et 4 avril 2012.

Les participants ont eu la possibilité de suivre de près les travaux de la Commission de Venise, de l'Assemblée parlementaire, du Congrès des pouvoirs locaux et régionaux, ainsi que d'autres organes et services du Conseil de l'Europe dans le domaine des standards électoraux.

Suite à cette première expérience positive, la deuxième visite d'étude de membres de l'administration électorale a eu lieu en Autriche entre les 3 et 5 juillet. La délégation comprenait les représentants de la Commission électorale centrale et des commissions régionales du Kazakhstan. Cette activité a été organisée en collaboration avec le service des affaires électorales du ministère fédéral de l'Intérieur de la République d'Autriche.

Les participants ont eu la possibilité de se familiariser avec le travail des autorités autrichiennes dans le domaine électoral. Ils ont aussi rendu visite à l'autorité électorale municipale de Vienne et au Parlement autrichien.

La troisième et dernière visite a été effectuée auprès de l'organisme de gestion électorale des Pays-Bas à la Haye les 21 et 22 novembre 2012.

*Etudes comparatives sur le contentieux électoral et sur la sélection et la nomination des membres des commissions électorales.*

Suite à la demande de la Commission électorale centrale du Kazakhstan, les experts de la Commission de Venise ont préparé deux études comparatives sur le contentieux électoral et sur la sélection et la nomination des membres des commissions électorales.

Le premier document compare les différents systèmes qui existent dans les pays membres de la Commission de Venise dans la matière du contentieux électoral. Le rapport fait état non seulement de la législation et de la pratique nationales, mais examine également l'influence des recommandations des différentes organisations internationales, notamment de la Commission de Venise, sur l'évolution des normes et leur application par les Etats concernés. La dernière partie du rapport compare la législation du Kazakhstan et sa mise en œuvre avec l'expérience des autres pays et suggère quelques possibles améliorations.

Le rapport sur la sélection et la nomination des membres des commissions donne une description assez complète des modèles de sélection des membres des commissions. Il compare les avantages et les inconvénients des commissions composées de représentants des partis politiques et de celles qui sont formées sur la base de l'indépendance des membres de l'administration électorale, tout en insistant que le choix appartient aux pays et que le principal critère doit être la confiance des différentes forces politiques et des électeurs dans l'organe chargé de l'organisation des élections.

Les deux rapports ont été très bien reçus par la Commission électorale centrale du Kazakhstan qui a exprimé son souhait de demander à la Commission de continuer ce type de coopération en 2013-2014.

### ***Autres activités en Asie centrale***

En dehors du programme d'assistance électorale au Kazakhstan, la Commission a poursuivi sa coopération avec les pays de l'Asie centrale dans les autres domaines. Une partie de ses activités a été financée grâce au programme commun entre la Commission de Venise et le Ministère des Affaires Etrangères de la Finlande « Egal devant le droit : accès à la justice pour les groupes vulnérables »

#### *Activités multilatérales*

Les 18 et 20 juin, la Commission a organisé une visite d'études au Conseil de l'Europe portant sur « Les standards du Conseil de l'Europe et les développements récents relatifs à la jurisprudence de la Cour européenne des Droits de l'Homme sur les droits de la femme » pour les juges, magistrats, avocats ainsi que les représentantes des ONG des cinq pays d'Asie centrale : Kazakhstan, Kirghizistan, Tadjikistan, Turkménistan, Ouzbékistan.

Les participants ont eu la possibilité de suivre de près les travaux de la Commission de Venise et des autres organes et services du Conseil de l'Europe dans le domaine des droits de la femme.

Cette activité a été organisée dans le cadre du projet "Egal devant le droit : accès à la justice pour les groupes vulnérables», financée par le Ministère des affaires étrangères de la Finlande et mise en œuvre par la Commission de Venise du Conseil de l'Europe.

### **KIRGHIZISTAN**

En 2012, la Commission a poursuivi ses activités d'assistance aux autorités kirghizes en coopération avec les autres partenaires internationaux. Les 19-20 mars 2012, un membre de la Commission Venise a participé au dialogue judiciaire et aux discussions avec le Groupe de travail judiciaire du Parlement, organisés par le projet parlementaire de l'UE-PNUD à Bichkek.

En mai, la Commission de Venise a participé à une table ronde sur contentieux électoral organisée par le BIDDH en coordination avec le centre OSCE à Bichkek. Cette activité a été destinée à tous les acteurs impliqués dans l'arbitrage des litiges électoraux. Cette activité a fourni une plate-forme pour la discussion entre les autorités kirghizes et la société civile en vue de recommandations pour améliorer le système du contentieux électoral sur la base des standards internationaux dans ce domaine.

### **OUZBEKISTAN**

A l'invitation du Centre National des droits de l'homme de l'Ouzbékistan, les représentants de la Commission de Venise ont participé à la conférence « Expérience constitutionnelle de l'Ouzbékistan et pratique internationale » organisée à Tachkent les 27 et 28 septembre 2012. Cette activité a permis d'avoir un échange d'expériences sur les réformes constitutionnelles entre les parlementaires, les juges des Cour constitutionnelle et suprême, le monde académique d'Ouzbékistan et les experts internationaux.

Les 20 et 21 novembre, les représentants de la Commission de Venise ont participé à la conférence sur «L'Etat de droit, la protection forte des intérêts de l'individu : l'objectif le plus important de la démocratisation et de la libéralisation du système judiciaire» organisée par la Cour suprême et la Cour constitutionnelle de l'Ouzbékistan.

*Opinion on the electoral law (CDL-AD(2012)025)*

Further to a request by the Deputy Speaker of the Oliy Majlis of the Republic of Uzbekistan, the Venice Commission adopted at its December 2012 session a joint opinion with the OSCE/ODIHR on the draft amendments and addenda to the law "on elections to the Oliy Majlis of the Republic of Uzbekistan" and "on elections to the regional, district and city councils (Kengesh) of people's deputies of Uzbekistan".

The draft amendments introduced certain improvements. Notably, the draft amendments provide for voting and voter registration in penitentiary facilities. They also regulated early voting in more detail and introduced certain safeguards to protect the integrity of votes cast early. Likewise, admission of international observers to the election of the Ecological Movement of Uzbekistan representatives was now provided for.

However, numerous recommendations contained in previous OSCE/ODIHR reports and assessments remained unaddressed by the draft amendments. Additionally, some of the draft amendments were overly complex and could be improved by being stated in a more clear and concise manner so that they were easily understandable to all electoral stakeholders. Progress was needed in particular concerning: the *ex officio* representation of the ecological movement in the lower chamber, whereas the upper chamber was indirectly elected or appointed; denial of voting rights to prisoners; election campaign regulations; early voting; the exclusion of non-partisan observers; the prohibition of election polls less than three days before election day.

**TADJIKISTAN**

La conférence internationale sur "Garantir les droits des femmes et améliorer les mécanismes de l'accès à la justice pour les groupes vulnérables» a été organisé à Douchanbé les 13-14 Novembre 2012.

Cette conférence s'adressait aussi bien aux professionnels du droit et de la justice, qu'aux représentants de la société civile des cinq États d'Asie centrale – le Kazakhstan, le Kirghizistan, le Tadjikistan, le Turkménistan et l'Ouzbékistan. Elle a été organisée à la suite des discussions qui avaient eu lieu lors de la visite des représentants des pays intéressés à Strasbourg en juin 2012. Les participants ont abordé les enjeux de l'accès à la justice pour les femmes et les autres groupes vulnérables, notamment les victimes de violence domestique. Ils ont également parlé des droits socio-économiques des femmes, ainsi que des mécanismes juridiques et sociaux pour assurer les droits des femmes à travers des mécanismes de médiation et une aide juridique gratuite.

Cette activité est organisée dans le cadre du projet «Egalité devant la loi: accès à la justice pour les groupes vulnérables», financée par le Ministère des affaires étrangères de la Finlande et mise en œuvre par la Commission de Venise du Conseil de l'Europe.

**3. LATIN AMERICA****BOLIVIA**

On 8-9 February 2012 the Venice Commission and the Public Prosecution Office of Bolivia, co-organised an international seminar on "Human Rights in the Work of the Public Prosecution Office in Bolivia". The activity was aimed at prosecutors and judges from all different levels in order to discuss the application of international and constitutional human rights in the work of prosecutors.

The Venice Commission experts were actively involved in the discussion, including the explanation of the Inter-American Human Rights system obligations for Bolivia, the standards of proof and the respect for human rights inside and outside the criminal procedures. The participants had an opportunity to learn about the different experiences of European countries in integrating international standards.



Over 100 participants from different regions of Bolivia attended this event.

This seminar was organised in the framework of the Joint Programme with the European Union on the implementation of the new Constitution in Bolivia.

## **MEXIQUE**

### *Visite dans le cadre de la préparation d'un avis sur le Code électoral du Mexique*

A la demande des autorités mexicaines et, en particulier, de l'Institut Fédéral électoral mexicain (IFE), des représentants de la Commission de Venise se sont rendus au Mexique les 12 et 13 novembre 2012 et ont rencontré des députés et sénateurs du parti politique au pouvoir ainsi que des principaux partis politiques de l'opposition, l'IFE (Institut fédéral électoral), le Tribunal électoral du pouvoir judiciaire de la Fédération, des représentants des médias et la société civile. L'avis sera adopté dans le courant de l'année 2013.

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

### **1. COUNCIL OF EUROPE**

#### *Committee of Ministers*

Representatives of the Committee of Ministers participated in all the Commission's plenary sessions during 2012. The following ambassadors, Permanent Representatives to the Council of Europe, attended the sessions in 2012 (in order of attendance):

- Ambassador Julius Georg LUY, Germany,
- Ambassador Tatiana PÂRVU, the Republic of Moldova,
- Ambassador Ellen BERENDS, the Netherlands,
- Ambassador Josep DALLERES, Andorra,
- Ambassador Armen PAPIKYAN, Armenia,
- Observer ad interim Lydia MADERO, Mexico,
- Ambassador Petter WILLE, Norway,
- Ambassador Urszula GACEK, Poland,
- Ambassador Pekka HYVÖNEN, Finland,
- Ambassador Ana VUKADINOVIĆ, Montenegro,
- Ambassador Berglind ÁSGEIRSDÓTTIR, Iceland.

Under the United Kingdom Chairmanship of the Committee of Ministers of the Council of Europe, the Venice Commission organised in co-operation with the Foreign and Commonwealth Office of the United Kingdom and with the Bingham Centre for the Rule of Law an International Conference on "the Rule of Law as a Practical Concept" ( 2 March 2012, London).<sup>24</sup>

In the framework of the Albanian Chairmanship of the Committee of Ministers of the Council of Europe, the Commission organised in co-operation with the National Assembly and the Central Election Commission of Albania a Conference on "European Electoral Heritage - Ten Years of the Code of Good Practice in Electoral Matters " (2-3 July 2012, Tirana). The Conference called the member states to implement the Code of Good Practice in Electoral Matters.<sup>25</sup>

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<sup>24</sup> See chapter II above.

<sup>25</sup> See chapter IV above.

*Parliamentary Assembly*

During 2012 the following members of the Parliamentary Assembly attended the plenary sessions of the Venice Commission:

- Jean-Claude MIGNON, President of the Parliamentary Assembly
- Mevlüt ÇAVUŞOĞLU, Former President of the Parliamentary Assembly;
- Andreas GROSS, Chair of the Socialist Group;
- Tiny KOX, Chair of the United European Left Group
- Robert WALTER, Chair of the European Democrat Group
- Serhiy HOLOVATY, Member of the Committee on Legal Affairs and Human Rights.

A number of texts were adopted at the request of the Parliamentary Assembly in 2012, including the opinions on:

- the Federal Laws of the Russian Federation on:
  - Political Parties
  - the Deputies of the State Duma;
  - meetings, rallies, marches and pickets and on the June 2012 amendments;
  - the Federal Security Service (FSB),
  - Combating Extremist Activity
- the laws of Hungary on:
  - the Status and Remuneration of Judges and on the Organisation and Administration of Courts and on the amendments to these laws,
  - Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities,
  - the Rights of Nationalities,
  - the Prosecution Service of Hungary and on the Act on the Status of the Prosecutor General, Prosecutors and other Prosecution employees and the Prosecution career;
  - the Constitutional Court of Hungary;
- the law on freedom of religious faith of Azerbaijan;
- the revision of the Constitution of Belgium; and on
- the draft law on the Public prosecutor's office of Ukraine

The request for an opinion on the transitional provisions of the Constitution of Hungary was put aside by the Commission as the provisions were pending before the Constitutional Court of Hungary. For the same reason, the Commission postponed the adoption of an opinion on the amendments of June 2012 to the law on rallies of the Russian Federation.

In addition, the reports on **measures to improve the democratic character of elections** in the Council of Europe member states and on the **limitation of mandates and incompatibility of political functions** were adopted at the request of the PACE.

In 2012 the Commission received requests from the PACE to give opinions on

- the Constitution of Monaco,
- the Electoral Code of "the former Yugoslav Republic of Macedonia",
- the Law on referendum of Ukraine and
- on keeping political and criminal ministerial responsibility separate from a comparative constitutional perspective;
- the issue of the prohibition of so-called propaganda of homosexuality in the light of recent legislation in some Council of Europe member states, including Moldova, the Russian Federation and Ukraine.

The Assembly asked for an update of the study on the democratic oversight of the security services adopted by the Commission in 2007.

These requests will be dealt with by the Commission in 2013.

The Parliamentary Assembly continued to participate actively in the Council for Democratic Elections created in 2002 as a tripartite organ of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. During 2012 a member of the Parliamentary Assembly, M. Andreas Gross chaired the Council for Democratic Elections, and several of its activities were launched at the initiative of the Parliamentary Assembly representatives.

In November 2012 the Commission's President Mr Buquicchio joined the Committee of Ministers Chair Minister Panariti and the Assembly's President Mr Mignon for their official visit to **Tunisia**.

In accordance with the co-operation agreement concluded between the Venice Commission and the Parliamentary Assembly, representatives of the Commission participated in PACE **election observation missions** in Armenia, Georgia, Kazakhstan, Montenegro, the Russian Federation, Serbia and Ukraine.

The Enlarged Bureau of the Commission and the Presidential Committee of PACE met on 15 December in Venice. The situation in a number of member States and co-operation with Central Asia and North Africa were discussed. The complementarity between the Parliamentary Assembly and the Venice Commission's work was again noted as an important aspect of the co-operation between the two institutions.

#### *Congress of Local and Regional Authorities*

Mr Lars O. Molin, Chair of the Monitoring Committee of the Congress represented the Congress at the plenary sessions of the Commission in 2012.

The Congress also continued to participate in the Council for 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.

#### *European Court of Human Rights*

In 2012, the European Court of Human Rights continued to refer to the work of the Venice Commission in its judgments. Among the eleven recent cases where the documents of the Commission are mentioned two concern Italy and two Ukraine; there are also cases against France, Greece, Hungary, Romania, Russia, Slovakia and "the former Yugoslav Republic of Macedonia".

As is the case since 2002, the Code of Good Practice in the Electoral Matters and its explanatory report is cited most frequently. In 2012 this concerned the cases of *Scoppola v. Italy* (No. 3), (*Application no. 126/05*) of 22 May 2012<sup>26</sup>, *Sitaropoulos and Giakoumopoulos v. Greece* (*Application no. 42202/07*) of 15 March 2012<sup>27</sup>, the case of *the Communist Party of Russia and Others v. Russia* (*application no. 29400/05*) of 19/09/2012.

The 2006 report on electoral law and electoral administration in Europe and 2010 report on out-of-country voting were also referred to in the case of *Sitaropoulos and Giakoumopoulos v. Greece* (*Application no. 42202/07*) of 15 March 2012.

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<sup>26</sup> Provisions concerning the circumstances in which people may be deprived of the right to vote or to stand for election were evoked.

<sup>27</sup> The right to vote and to be elected accorded to citizens residing abroad was referred to.

As for other texts where the Commission identified and developed European standards and constitutional heritage, the following are now in the case-law of the Court:

- the 2011 rule of law report in the case of *Albu and others v. Romania*, (Applications nos. 34796/09 and 63 other cases) of 10/08/2012<sup>28</sup>.
- the 2005 Opinion on the compatibility of the “Gasparri” and “Frattini” laws of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media in the Grand Chamber case of *Centro Europa 7 S.R.L. and Di Stefano v. Italy* (Application no. 38433/09) of 7 June 2012;
- the 2006 opinion on the international legal obligations of Council of Europe Member States in respect of secret detention facilities and inter-state transport of prisoners in the Grand Chamber judgment in the case of *El-Masri v. "the Former Yugoslav Republic of Macedonia"* (39630/09) of 13/12/2012;
- the 2010 independence of the judiciary report was evoked by the applicant in the case of *Harabin v. Slovakia* (58688/11) of 20/11/2012;
- the 2010 Guidelines on Freedom of Peaceful Assembly, evoked by the applicant government and interpreted by the Court in the case *Tatár and Fáber v. Hungary* (application Nos. 26005/08 and 6160/08) of 12/09/2012<sup>29</sup>;
- the 2002 report on the implementation of the judgments of the European Court of Human Rights was referred to in the case of *Fabris v. France* (16574/08, Grand Chamber) of 07/02/2013.

Country specific texts were mentioned in the case of *Lutsenko v. Ukraine* (application No. 6492/11) of 19/11/2012<sup>30</sup> and in the case of *Oleksandr Volkov v. Ukraine* (21722/11) of 09/01/2013.<sup>31</sup>

## 2. EUROPEAN UNION

In 2012 the co-operation between the Venice Commission and the European Union further intensified. The Venice Commission participated in meetings organised by the European Parliament on Hungary, Turkey and the Arab countries. In its Resolution of 12 December 2012 on the situation of fundamental rights in the EU (2010-2011) the European Parliament “Calls for closer cooperation between Union institutions and other international bodies,

<sup>28</sup> The report states in its relevant parts that, “in order for the principle of legal certainty, essential for maintaining confidence in the judicial system and the rule of law, to be achieved, the State must make the law easily accessible and must also apply the laws it has enacted in a foreseeable and consistent manner. As the existence of conflicting decisions within the highest courts may be contrary to this principle, it is therefore necessary for these courts to establish mechanisms to avoid conflicts and ensure the coherence of their case-law.”

<sup>29</sup> The Government also pointed out that to regulate a gathering of at least two persons in a public place for a common expressive purpose as an assembly is not contrary to European standards (cf. paragraph 16 of the Explanatory Notes to the Guidelines on Freedom of Peaceful Assembly adopted by the Venice Commission on 4 June 2010).

As regards the Government’s suggestion concerning the Guidelines on Freedom of Peaceful Assembly adopted by the Venice Commission, the Court would take the view that the Explanatory Notes to those Guidelines specify the minimum number of participants required for the constitution of an assembly; however, those Guidelines can by no means be interpreted as stipulating that any common expressive action of two individuals necessarily amounts to an assembly, especially in the absence of intentional presence of further participants, as in the present case.

<sup>30</sup> 2010 Joint opinion on the law on the judicial system and the status of judges of Ukraine by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe (CDL-AD(2010)026) and Joint opinion on the draft law amending the law on the judiciary and the status of judges and other legislative acts of Ukraine by the Venice Commission and the Directorate of Justice and Human Dignity within the Directorate General of Human Rights and Rule of Law of the Council of Europe (CDL-AD(2011)033).

<sup>31</sup> The 2010 Joint Opinion on the Law Amending Certain Legislative Acts of Ukraine in Relation to the Prevention of Abuse of the Right to Appeal

*particularly with the Council of Europe and its European Commission for Democracy through Law (Venice Commission), and to make use of their expertise in upholding the principles of democracy, human rights and the rule of law;”*

The Venice Commission maintained close co-operation with the European Union in particular with respect to constitutional issues in Ukraine and judicial reforms in Bosnia and Herzegovina and Serbia. In 2012 the European Commission requested the Opinion on legal certainty and the independence of the judiciary in Bosnia and Herzegovina (see Chapter III above). Technical consultations with the European Commission were held on the developments in the Balkans, Moldova, and Turkey as well as in Central Asia and North Africa. The European Union repeatedly invited States to follow the Venice Commission’s recommendations.

The President and the Deputy Secretary of the Venice Commission participated in the activities concerning the Arab spring organised by the European Parliament (19 January 2012, Strasbourg and 24 January 2012 in Brussels). The Secretary and the Deputy Secretary exchanged views with the Monitoring Group on the situation in the Southern Mediterranean of the EP in Strasbourg on 25 October 2012.

The Venice Commission was represented at a seminar organised by the Ministry of Foreign Affairs of the Netherlands on “EU Mechanisms to Monitor Rule of Law and Justice in Member states” (The Hague, 28 June 2012).

On 28 June 2012, the Venice Commission participated in the **RELIGARE** Policy Dialogue Meeting on “Negotiating Religious Pluralism in Europe: Between the EU and the ECHR”. The Venice Commission’s representative contributed to the debates on the impact of the Council of Europe on national and EU policy.

**Representatives of the European Union** (from the Legal Service of the Commission, EEAS as well as the President of the Committee for citizenship, governance, institutional and external affairs of the Committee of the Regions) participated in the plenary sessions of the Venice Commission in 2012.

#### *Joint European Union - Council of Europe Programmes<sup>32</sup>*

Following its successful co-operation with different countries of Central Asia in the framework of a Joint programme with the European Commission “Rule of Law in Central Asia” in 2010-2011, the Venice Commission has started to implement country-specific programmes in the region.

In 2012, the Commission developed a successful co-operation programme in the electoral field with the Central Electoral Commission of Kazakhstan (see chapter V above).

The Arab Spring gave new impetus to the co-operation between the Venice Commission and the countries of the Mediterranean basin. From 2012, the Commission conducted several activities in Tunisia and Morocco in the framework of the Joint programme between the European Commission and the Council of Europe “Strengthening democratic reform in the Southern Neighbourhood” (South Programme).

In 2012 the Venice Commission officially concluded a joint programme concerning the implementation of the new Constitution in Bolivia.

#### *Eastern Partnership Facility*

Under the Council of Europe Eastern Partnership Facility programme which aims to provide support to the reform processes in the six partner countries - Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine -, in 2012, the Venice Commission continued implementing

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<sup>32</sup> Further information on this Joint Programme can be found in Chapter V.

one of the specific objectives of the programme, namely facilitating the co-operation regarding the administration of elections and in particular taking concrete action aimed at the further integration of Council of Europe electoral standards into the legislation and practice of the six beneficiary countries. The Programme covers core areas under the EU Eastern Partnership Platform 1 “Democracy, good governance and stability” and is financed by the European Commission.

The following activities took place in the framework of this programme (see chapter IV above):

- On 7 and 8 February 2012, the Venice Commission took part in a meeting to the participation of women in public life held in Tbilisi.
- On 26 and 27 March 2012, the Venice Commission organised in Kyiv a seminar devoted to voters' lists and registers management.

### **3. OSCE**

#### *Human Dimension Meetings*

On 12 and 13 July 2012 the Venice Commission participated in the OSCE Human Dimension meeting on the elections observation. The Venice Commission was also represented at the OSCE Human Dimension Implementation Meeting (HDIM)'s Working session specifically devoted to Freedom of thought, conscience, religion or belief (Warsaw, 1 October 2012), and in the OSCE Supplementary Human Dimension Meeting on Freedom of Assembly and Association (Vienna, 9 November 2012).

#### *OSCE Mission in Bosnia and Herzegovina*

On 29-30 October 2012 in Sarajevo, the Constitutional and Legal Committees of the BiH Parliamentary Assembly, with the support of the OSCE Mission in BiH and the Konrad-Adenauer-Stiftung, organised the Conference of Constitutional and Legal Committees, and the Committees for European Integration, from the countries of the former Yugoslavia and Albania. The topic of the conference was “The Role of Parliaments in the European Integration Process: Constitutional and Legislative Changes”. The Secretary of the Venice Commission participated in the 2nd panel entitled “Constitutional and Legislative changes - A necessity or a goodwill gesture?”

#### *OSCE/BIDDH*

#### *Fundamental rights and freedoms*

Venice Commission representatives attended two meetings of the OSCE/ODIHR Expert Panel on Freedom of Peaceful Assembly (8-9 May 2012, Warsaw, and 8 November 2012, Vienna).

In 2012, following a common decision to revise their joint Guidelines on Freedom of Religion or Belief (CDL-AD (2004) 028), the Venice Commission and OSCE/ODHIR launched a particularly close co-operation. The joint definition of the future content of the revised version of the Guidelines was of particular importance. On 2 October 2012, the Venice Commission participated in a consultative meeting, organised by the OSCE/ODHIR in parallel to the 2012 OSCE Human Dimension Implementation Meeting (HDIM), in order to discuss with civil society representatives the potential scope and content of these Guidelines, as well as ways of increasing their use<sup>33</sup>.

Additionally, the Venice Commission was invited to designate Observers on ODIHR's new Advisory Panel of Experts on Freedom of Religion or Belief, to ensure close consultation between the two bodies on these matters. Mr Vermeulen, Ms Flanagan and Ms Haller were appointed as observer and substitute observers respectively to the Advisory Panel.

<sup>33</sup> For more information on the work on the Revised version of the joint OSCE/ODHIR-Venice Commission Guidelines on Freedom of Religion or Belief please see also Chapter II. 2

### *Elections, référendums et partis politiques*

During the year 2012, the Venice Commission continued its close cooperation with the OSCE/ODIHR in the area of elections and political parties. Opinions on the electoral legislation of Hungary and Uzbekistan were written jointly. The OSCE/ODIHR regularly attended meetings of the Council for Democratic Elections.

On 17 May 2012, the Venice Commission took part in the Meeting of the OSCE/ODIHR Core Group of Experts on Political Parties in Warsaw. During the meeting the participants discussed the latest developments in the OSCE/ODIHR Member States in the field of political parties' regulation. Among other issues discussed were the impact of new technologies on operation of political parties and gender issues.

#### *OSCE/ODIHR Core Group of Experts on Political Parties*

On 17 May 2012, the Venice Commission took part in the Meeting of the OSCE/ODIHR Core Group of Experts on Political Parties in Warsaw. During the meeting the participants discussed the latest developments in OSCE/ODIHR Member States in the field of political parties' regulations. Among other issues discussed were the impact of new technologies on operation of political parties and gender issues.

#### *OSCE High Commissioner on National Minorities*

At its October plenary session the Commission held an exchange of views with Mr Knut Vollebæk, OSCE High Commissioner for National Minorities, on past and future co-operation.

## **4. UNITED NATIONS**

The European Commission for Democracy through Law (Venice Commission) at its 91<sup>st</sup> Plenary Session (Venice, 15-16 June 2012) endorsed the Declaration of Global Principles for non-partisan election observation and monitoring by citizen organizations and Code of Conduct for non-partisan citizen election observers and monitors (CDL-AD(2012)018). The Declaration, establishing for the first time global standards for citizen election observation, was initiated by the Global Network of Domestic Election Monitors (GNDEM) and launched on 3 April 2012 at the United Nations.

In addition, at the request of the UN Office of the High Commissioner for Human Rights (OHCHR) the Commission contributed to the 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> sessions of the Universal Periodic Review (UPR) on the human rights situation with information on the documents adopted, since 2009, with regard to specific countries (Azerbaijan, Luxemburg, Montenegro and Serbia, the Russian federation, Ukraine).

## **5. NATO**

On 21 March 2012 the Secretary of the Venice Commission presented the Commission's activities to the NATO Deputy Permanent Representatives' Committee.

## **6. OTHER INTERNATIONAL BODIES**

### *Constitutional Justice, Ordinary Justice and Ombudsman*

#### **6.1 Organisation internationale de la francophonie**

La coopération entre la Commission de Venise et l'OIF est basée sur la Déclaration commune sur le renforcement de la coopération entre le Conseil de l'Europe et l'OIF signé en mai 2008 et sur des protocoles d'accord renouvelé régulièrement pour le financement de la traduction en langue française du Bulletin de jurisprudence constitutionnelle. Ce soutien financier permet à la

Commission de Venise de faire traduire vers le français les contributions reçues en anglais provenant des pays faisant partie de la Francophonie.

## **6.2 International Association of Constitutional Law (IACL)**

On 4 May 2012, the President of the Venice Commission took part in a Round table on "main developments in constitutionalism and constitutional law between 1981 and 2011, held in Belgrade on the occasion of the 30<sup>th</sup> anniversary of the IACL.

**Coopération avec les autres organisations internationales : voir Chapitre III.**

*Elections, référendums et partis politiques*

## **6.3 Association des administrateurs d'élections d'Europe centrale et orientale (ACEEEO)**

*21<sup>e</sup> conférence de l'ACEEEO sur « la participation des groupes vulnérables au processus électoral : minorités et personnes handicapées » (Sarajevo, 13-15 septembre 2012)*

*voir Chapitre IV.*

## **6.4 International Foundation for Electoral Systems (IFES)**

Representatives of the Venice Commission participated in a conference organised by IFES on "the Legal Framework for Elections in Tunisia: National and International Perspectives", which took place in Tunis on 12-13 March 2012. The participants discussed the perspectives of the electoral reform in Tunisia. In addition, the Venice Commission was represented at a round table "A Public Dialogue: the Outlook for the 2012 Parliamentary Elections" organised by IFES in co-operation with several Ukrainian NGOs on 14 March 2012 in Kiev.

## **6.5 International Management Group (IMG)**

On 27 September 2012, the Vice President of the General National Congress of Libya Dr Saleh Mohammed Almkhozom asked for the Venice Commission's support to the Congress in its work of developing a constitution for a new democratic Libya. Following this request a delegation of the Venice Commission, travelled to Tripoli in November 2012 and had meetings with the National Congress of Libya and with the Presidency of the country on the process of preparing and adopting the new Constitution.

This activity was carried out jointly with the International Management Group (IMG) and within the framework of the co-operation of the country with the European Union. IMG and the EU Delegation suggested to the Libyan authorities to ask for the assistance of the Venice Commission.

## **6.6 World Forum for Democracy**

The President of the Venice Commission participated in the first edition of the World Forum for Democracy, which took place from 5 to 11 October 2012 at the Council of Europe in Strasbourg, and brought together more than 1500 participants and speakers from hundred and twenty countries. Mr Buquicchio chaired the Forum's thematic Conference "One size fits all? Democracy and globalisation" on 8 October.



## APPENDIX I

### LIST OF MEMBER COUNTRIES

#### MEMBERS

Albania (14.10.1996)  
Algeria (01.12.2007)  
Andorra (01.02.2000)  
Armenia (27.03.2001)  
Austria (10.05.1990)  
Azerbaijan (01.03.2001)  
Belgium (10.05.1990)  
Bosnia and Herzegovina (24.04.2002)  
Brazil (01.04.2009)  
Bulgaria (29.05.1992)  
Chile (01.10.2005)  
Croatia (01.01.1997)  
Cyprus (10.05.1990)  
Czech Republic (01.11.1994)  
Denmark (10.05.1990)  
Estonia (03.04.1995)  
Finland (10.05.1990)  
France (10.05.1990)  
Georgia (01.10.1999)  
Germany (03.07.1990)  
Greece (10.05.1990)  
Hungary (28.11.1990)  
Iceland (05.07.1993)  
Ireland (10.05.1990)  
Israel (01.05.2008)  
Italy (10.05.1990)  
Kazakhstan (13.03.2012)  
Republic of Korea (01.06.2006)  
Kyrgyzstan (01.01.2004)  
Latvia (11.09.1995)  
Liechtenstein (26.08.1991)  
Lithuania (27.04.1994)  
Luxembourg (10.05.1990)  
Malta (10.05.1990)  
Mexico (03.02.2010)  
Moldova (25.06.1996)  
Monaco (05.10.2004)  
Montenegro (20.06.2006)  
Morocco (01.06.2007)  
Netherlands (01.08.1992)  
Norway (10.05.1990)  
Peru (11.02.2009)  
Poland (30.04.1992)

Portugal (10.05.1990)  
Romania (26.05.1994)  
Russian Federation (01.01.2002)  
San Marino (10.05.1990)  
Serbia (03.04.2003).  
Slovakia (08.07.1993)  
Slovenia (02.03.1994)  
Spain (10.05.1990)  
Sweden (10.05.1990)  
Switzerland (10.05.1990)  
“the former Yugoslav Republic of  
Macedonia” (19.02.1996)  
Tunisia (01.04.2010)  
Turkey (10.05.1990)  
Ukraine (03.02.1997)  
United Kingdom (01.06.1999)

#### ASSOCIATE MEMBER

Belarus (24.11.1994)

#### OBSERVERS

Argentina (20.04.1995)  
Canada (23.05.1991)  
Holy See (13.01.1992)  
Japan (18.06.1993)  
United States (10.10.1991)  
Uruguay (19.10.1995)

#### PARTICIPANTS

European Union  
OSCE/ODIHR  
IACL

#### SPECIAL CO-OPERATION STATUS

Palestinian National Authority  
South Africa

**APPENDIX II****LIST OF MEMBERS<sup>1</sup>**

Mr Gianni BUQUICCHIO (Italy), President, Former Director, Council of Europe  
(Substitutes: Mr Sergio BARTOLE, Former Professor, University of Trieste  
Mr Guido NEPPI MODONA, Professor, University of Turin)

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Mr Jan HELGESEN (Norway), First Vice-President, Professor, University of Oslo  
(Substitute: Mr Fredrik SEJERSTED, Professor, University of Oslo)

Ms Hanna SUCHOCKA (Poland), Vice-President, Ambassador of Poland to the Holy See  
(Substitute: Krzysztof DRZEWICKI, Associate Professor, University of Gdansk)

Mr Kaarlo TUORI (Finland), Vice-President, Professor of Jurisprudence, University of Helsinki  
(Substitute: Ms Tuula MAJURI, Counsellor on Legislation, Ministry of Justice)

\* \* \*

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

Mr Aivars ENDZINS (Latvia), Head of Department of Public Law, Turība School of Business  
Administration, Former President, Constitutional Court

Mr Gagik HARUTUNIAN (Armenia), President, Constitutional Court  
(Substitute: Mr Grigor MURADYAN, First Deputy Minister of Justice)

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

Ms Lydie ERR (Luxembourg), Ombudsman  
(Substitute: Mr Marc FISCHBACH, Former Ombudsman)

Ms Finola FLANAGAN (Ireland), Law Reform Commissioner, Law Reform Commission of Ireland  
(Substitute: Mr James HAMILTON, Former Director of Public Prosecutions, President, International  
Association of Prosecutors)

Mr Ugo MIFSUD BONNICI (Malta), President Emeritus

Mr Vojin DIMITRIJEVIC<sup>2</sup>, (Serbia), Professor of Public International Law, Union University School of Law,  
Director, Belgrade Human Rights Centre  
(Substitute: Mr Vladimir DJERIC, Lawyer)

Mr Lätif HÜSEYNOV (Azerbaijan), Professor of Public International Law, Baku State University

Mr Dominique CHAGNOLLAUD (Monaco), Member of the Supreme Court, Professor, University of Law,  
Economics and Social Science Paris II  
(Substitute: Mr Christophe SOSSO, Defence Lawyer, Court of Appeal)

Mr Peter PACZOLAY (Hungary), President, Constitutional Court  
(Substitute: Mr Laszlo TROCSANY, Ambassador of Hungary to France, Judge, Constitutional Court,  
Professor of Constitutional Law, University of Szeged)

Mr Nicolae ESANU (Moldova), Lecturer, Law faculty, Moldova State University, Former Deputy Minister of  
Justice

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<sup>1</sup> By order of seniority.

<sup>2</sup> Deceased on 5 October 2012.

(Substitute: Ms Rodica SECRIERU, Acting Chief of Secretariat, Constitutional Court of Moldova)

Mr Oliver KASK (Estonia), Judge, Tallinn Court of Appeal  
(Substitute: Ms Berit AAVIKSOO, Lecturer in Constitutional Law, University of Tartu)

Mr Valeriy ZORKIN (Russia), President of the Constitutional Court  
(Substitute: Mr Sergey MAVRIN, Vice President, Constitutional Court)

Mr Jean-Claude COLLIARD (France), President of PREF-HESAM- Panthéon-Sorbonne, former member of the Constitutional Council  
(Substitutes: Ms Jacqueline DE GUILLENCHMIDT, Member, Constitutional Council, Former State Councillor  
Mr Hubert HAENEL, Member, Constitutional Council)

Mr Christoph GRABENWARTER (Austria), Judge, Constitutional Court  
(Substitutes: Mme Gabriele KUCSKO-STADLMAYER, Professor, University of Vienna)  
Mr Kurt HELLER, Honorary Professor of the University of Linz, Former Justice of the Constitutional Court

Ms Gret HALLER (Switzerland), Former Speaker of the Swiss Parliament  
(Substitute: Ms Monique JAMETTI GREINER, Vice Director, Head of the international relations Department, Federal Office of Justice)

Ms Kalliopi KOUFA (Greece), Former Professor of International Law, Aristote University, Thessaloniki  
(Substitute: Ms Fani DASKALOPOULOU-LIVADA, Director, International Law Department, Ministry of Foreign Affairs)

Mr Frixos NICOLAIDES (Cyprus), Supreme Court Judge  
(Substitute: Mr Myron NICOLATOS, Supreme Court Judge)

Mr Jan VELAERS (Belgium), Professor, University of Antwerp  
(Substitute: Mr Jean-Claude SCHOLSEM (Belgium), Professor Emeritus, University of Liège)

Mr Lucian MIHAL (Romania), Professor, Faculty of Law, University of Bucharest, Former President of the Constitutional Court  
(Substitute: Mr Bogdan AURESCU, Secretary of State for Strategic Affairs, Ministry of Foreign Affairs)

Mr Srdjan DARMANOVIC (Montenegro), Ambassador of Montenegro to the United States of America  
(Substitute: Mr Zoran PAZIN, Lawyer)

Mr Harry GSTÖHL (Liechtenstein), Former President of the Constitutional Court, Princely Justice Counsellor, Attorney at Law  
(Substitute: Mr Wilfried HOOP, Partner, Hoop and Hoop)

Ms Maria Fernanda PALMA (Portugal), Professor, University of Lisbon, former Judge, Constitutional Court  
(Substitute: Mr Pedro BACELAR de VASCONCELOS, Professor of Constitutional Law, Minho University)

Mr Jorgen Steen SORENSEN (Denmark), Parliamentary Ombudsman,  
(Substitute: Mr Michael Hansen JENSEN, Professor, University of Aarhus)

Ms Ivetta MACEJKOVA (Slovakia), President, Constitutional Court  
(Substitute: Ms Jana BARICOVA, Judge, Supreme Court)

Mr Wolfgang HOFFMANN-RIEM (Germany), Former Judge, Federal Constitutional Court  
(Substitute: Ms Anne PETERS, Chair of public international law and Swiss constitutional law, Basel University)

Mr George PAPUASHVILI (Georgia), President, Constitutional Court  
(Substitute: Mr Konstantin VARDZELASHVILI, Deputy President, Constitutional Court)

Mr Viktor GUMI (Albania), General Director of Codification, Ministry of Justice

Mr Abdellatif MENOUNI (Morocco), Adviser to His Majesty the King, Professor, Law Faculty, Rabat University

(Substitute: Mr Abdelaziz LAMGHARI, Professor, Public Law Department, Rabat)

Ms Gordana SILJANOVSKA-DAVKOVA ("the former Yugoslav Republic of Macedonia"), Professor of law, University "Ss Cyril and Methodius"

(Substitutes: Mr Abdula ALIU, Professor, South East European University

Mr Adnan JASHARI, Professor, Member of Assembly)

Mr Eugeni TANCHEV (Bulgaria), Former President, Constitutional Court

(Substitute: Mr Plamen KIROV, Judge, Constitutional Court)

Mr Dan MERIDOR (Israel), Deputy Prime Minister, Minister of Intelligence and Atomic Energy

(Substitute: Mr Barak MEDINA Dean, Faculty of Law, The Hebrew University of Jerusalem)

Ms Marina STAVNIYCHUK (Ukraine), Deputy Head of the Presidential Secretariat

(Substitute: Mr Sergii KIVALOV, Chairman, Committee on Justice, Verkhovna Rada of Ukraine)

Mr Iain CAMERON (Sweden), Professor, University of Uppsala

(Substitute: Mr Johan HIRSCHFELDT, Former President, Svea Court of Appeal)

Mr Carlos MESIA RAMIREZ (Peru), Member, Constitutional Tribunal

(Substitute: Mr Gerardo ETO CRUZ Judge, Constitutional Tribunal)

Mr Gilmar Ferreira MENDES (Brazil), Justice, Former President, Federal Supreme Court

(Substitute: Mr Antonio PELUSO, President, Federal Supreme Court)

M. Boualem BESSAÏH (Algeria), Former President, Constitutional Council

(Substitute M. Mohamed HABCHI, Former Member, Constitutional Council

Mr Hachemi ADALA, Member, Constitutional Council)

Ms Maria del Carmen ALANIS FIGUEROA (Mexico), Justice, Federal Electoral Tribunal

(Substitutes: Mr Manuel GONZALEZ OROPEZA, Magistrate, Federal Electoral Tribunal

Mr Arturo ZALDIVAR LELO DE LARREA, Justice, Supreme Court of the Nation)

Mr Fathi ABDENNADHER (Tunisia), Former President, Constitutional Council

(Substitute: Mr Rafea BEN ACHOUR, Ambassador of Tunisia to Morocco, Professor of Law)

Mr Kestutis JANKAUSKAS (Lithuania), Director of Law Department, Constitutional Court

(Substitute: Ms Vygante MILASIUTE, Head of International Agreement Law Division, Ministry of Justice)

Mr Miquel Àngel CANTURRI MONTANYA (Andorra), Ambassador of Andorra to the Holy See

Ms Herdis THORGEIRSDOTTIR (Iceland), Professor, President European Women Lawyers' Association, Faculty of Law, Bifrost University

(Substitutes: Mr Hjörtur TORFASON, Former Judge, Supreme Court of Iceland

Mr Pall HREINSSON, Supreme Court Judge)

N.N. (Kyrgyzstan)<sup>3</sup>.

Ms Jasna OMEJEC (Croatia), President, Constitutional Court

Substitute: Ms Slavica BANIC, Judge, Constitutional Court)

Ms Paloma BIGLINO CAMPOS (Spain), Full Professor of Constitutional Law, Valladolid University

(Substitutes: Mr Miguel Angel AZPITARTE, Professor of Constitutional Law, University of Granada

Mr Angel SANCHEZ NAVARRO, Professor of Constitutional Law, Complutense University, Deputy Director, Centre for Political and Constitutional Studies)

Ms Veronika BILKOVA (Czech Republic), Lecturer, Law Faculty, Charles University

(Substitute: Ms Katerina SIMACKOVA, Judge, Supreme Administrative Court)

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<sup>3</sup> Member resigned on 7 July 2010. A new member has not yet been appointed.

Mr Francesco MAIANI (San Marino), Assistant Professor, Swiss Graduate School of Public Administration  
(Substitute: Ms Barbara REFFI, State Attorney)

Mr Hernan VODANOVIC SCHNAKE (Chile), Judge, Constitutional Court

Mr Richard CLAYTON QC, (United Kingdom), Barrister at Law  
(Substitute: Mr Paul CRAIG, Professor of Law, University of Oxford)

Mr Ciril RIBICIC (Slovenia), Professor of Constitutional Law, University of Ljubljana, Former Justice and  
Vice President of the Constitutional Court  
(Substitute: Ms Dragica WEDAM LUKIC, Professor, Faculty of Law, University of Ljubljana, Former  
Justice and President of the Constitutional Court)

Mr Ben VERMEULEN (The Netherlands), State Councillor, Former Judge at the European Court of  
Human Rights  
(Substitute: Wilhelmina THOMASSEN, Justice, former judge at the European Court of Human Rights,  
Supreme Court)

Mr Igor Ivanovich ROGOV (Kazakhstan), Chairman, Constitutional Council  
(Substitute: Talgat DONAKOV, Deputy Head, Presidential Administration)

Mr Han-Chul PARK, (Republic of Korea), Justice, Constitutional Court  
(Substitute: Mr Boohwan HAN, Attorney at Law, former Vice Minister of Justice)

#### **ASSOCIATE MEMBERS**

Mr Alexander V. MARYSKIN. (Belarus), Judge, Constitutional Court

#### **OBSERVERS**

N.N. (Argentina)

N.N. (Canada)

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

Mr Hideaki GUNJI (Japan), Consul, Consulate General of Japan, Strasbourg

Ms Sarah CLEVELAND (United States of America), Professor, Columbia Law School

Mr Alvaro MOERZINGER (Uruguay), Ambassador, Embassy of Uruguay in the Hague

#### **Special Status**

European Commission  
Mr Lucio GUSSETTI, Director, Legal Department  
Mr Esa PAASIVIRTA, Legal Adviser

Palestinian National Authority  
Mr Ali KHASHAN, Minister of Justice, Ministry of Justice

South Africa  
N. N.

#### **SECRETARIAT**

Mr Thomas MARKERT, Director, Secretary of the Commission  
Ms Simona GRANATA-MENGHINI, Deputy Secretary of the Commission  
Mr Pierre GARRONE, Head of the Division on Elections and Referendums  
Mr Rudolf DÜRR, Head of the Division on Constitutional Justice  
Ms Artemiza-Tatiana CHISCA, Head of the Division on Democratic Institutions and Fundamental Rights  
Mr Serguei KOUZNETSOV, Legal Officer  
Ms Charlotte de BROUDELLES, Legal Officer  
Ms Caroline MARTIN, Legal Officer  
Ms Tanja GERWIEN, Legal Officer

Mr Gaël MARTIN-MICALLEF, Legal Officer  
Ms Amaya UBEDA DE TORRES, Legal Officer  
Ms Tatiana MYCHELOVA, Public Relations Officer  
Ms Svetlana ANISIMOVA  
Ms Helen MONKS  
Ms Brigitte AUBRY  
Ms Marian JORDAN  
Mrs Brigitte RALL  
Ms Ana GOREY  
Mrs Caroline GODARD  
Mrs Marie-Louise WIGISHOFF  
Ms Valérie SCHAEFFER  
Ms Théa CHUBINIZE  
Ms Rosy DI POL  
Ms Tetiana KUDRIA  
Ms Nato CHIKOVANI  
Ms Isabelle SUDRES

## APPENDIX III

### OFFICES AND SUB-COMMISSIONS

- President: Mr Buquicchio
- First Vice-President and Chair of the Scientific Council: Mr Helgesen
- Vice-Presidents: Ms Suchocka, Mr Tuori
- Bureau: Mr Endzins, Mr Mendes, Mr Tanchev and Mr Zorkin
- Conseil scientifique: Mr Helgesen (Chair), Mr Buquicchio, Ms Flanagan, Mr Paczolay, Mr Esanu, Mr Hoffmann-Riem
- **Council for Democratic Elections:**  
President: Mr Gross (Parliamentary Assembly)  
Vice-President: Mr Colliard
- Venice Commission - Members: Mr Kask, Mr Mifsud Bonnici, Mr Paczolay  
(Substitutes: Ms Alanis Figueroa, Ms Biglino Campos, Mr Craig, Mr Darmanovic,)
- Parliamentary Assembly – Members: Ms Josette Durrieu, Mr Andreas Gross, Ms Karin Woldseth  
(Substitute: Ms Marietta de Pourbaix-Lundin)
- Congress of local and regional authorities – Members: Mr Lars O. Molin, Ms Gudrun Mosler-Törnström  
(Substitutes: Mr Nigel Mermagen, Ms Valentina Rossi)
- **Joint Council on Constitutional Justice:**  
Chair: Mr Grabenwarter,  
Co-Chair (Liaison Officers): Ms Anne Rasson:  
Members : Ms. Aaviksoo, Ms Alanis Figueroa, Ms Banic, Mr Gonzalez Oropeza, Ms de Guillenchmidt, Mr Gumi, Mr Harutunian, Mr Jankauskas, Mr Kask, Ms Macejkova, Mr Mendes, Mr Mihai, Mr Neppi Modona, Ms Omejec, Ms Palma, Mr Papuashvili, Mr Pazin, Mr Ribicic, Ms Siljanovska-Davkova, Ms Simackova, Ms Stavnychuk, Ms Thorgeirsdottir, Mr Torfason, as well as 90 liaison officers from 65 Constitutional Courts or Courts with equivalent jurisdiction
- **Federal State and Regional State:**  
Chair: Mr Hoffmann-Riem: Members: Mr Scholsem, Mr Velaers
- **International Law:**  
Chair: Mr Dimitrijevic<sup>1</sup>.; Members: Mr Aurescu, Mr Cameron, Mr Hüseyinov, Ms Koufa, Mr Mifsud Bonnici, Ms Milasiute, Ms Peters, Ms Simackova
- **Protection of Minorities:**  
Chair: Mr Velaers : Members: Mr Aurescu, Mr Bartole, Mr Bessaïh, Mr Habchi, Mr Hamilton, Ms Koufa, Mr Mifsud Bonnici, Ms Peters, Mr Scholsem, Ms Siljanovska-Davkova, Mr Tuori
- **Fundamental Rights:**  
Chair: Ms Thorgeirsdottir: Members: Ms Aaviksoo, Ms Alanis Figueroa, Mr Aurescu, Ms Banic, Mr Cameron, Ms Err, Mr Esanu, Mr Gonzalez Oropeza, Mr Gstöhl, Mr Haenel, Ms Haller, Mr Heller, Mr Hirschfeldt, Mr Huseynov, Mr Kask, Ms Koufa, Mr Mesia Ramirez, Mr Mifsud Bonnici, Ms Milasiute, Ms Omejec, Mr Papuashvili, Mr Pazin, Mr Torfason, Mr Tuori, Mr Velaers, Ms Wedam Lukic, Mr Zorkin
- **Democratic Institutions:**  
Chair: Mr Paczolay: Members: Mr Bartole, Mr Cameron, Mr Darmanovic, Ms Err, Mr Esanu, Mr Gstöhl, Ms Haller, Mr Hamilton, Mr Hirschfeldt, Mr Jensen, Mr Kask,

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<sup>1</sup> Deceased on 5 October 2012.

Mr Mendes, Mr Nicolatos, Mr Özbudun, Mr Papuashvili, Mr Ribicic Mr Scholsem, Mr Sejersted, Ms Siljanovska-Davkova, Ms Thorgeirsdottir, Mr Torfason, Mr Tuori

- **Judiciary:**

Chair: Ms Flanagan: Members: Mr Bartole, Mr Bessaih, Mr Canturri Montanya, Ms Err, Mr Esanu, Mr Gstöhl, Ms de Guillenchmidt, Mr Habchi, Mr Hamilton, Mr Hirschfeldt, Mr Hoffmann-Riem, Mr Kask, Mr Kivalov, Mr Mendes, Mr Mihai, Mr Neppi Modona, Mr Nicolatos, Mr Papuashvili, Mr Pazin, Ms Siljanovska-Davkova, Ms Simackova, Mr Torfason, Ms Wedam Lukic,

- **External Relations:**

Chair: Mr Mifsud Bonnici

- **Working Methods**

Chair: Mr Sorensen: Members: Mr Dimitrijevic, Ms Haller, Mr Hoffmann-Riem, Mr Mifsud Bonnici, Mr Sejersted

- **Latin America**

Chair: Ms Alanis Figueroa: Members: Mr Buquicchio, Mr Darmanovic, Ms Flanagan, Mr Gonzalez Oropeza, Hirschfeldt, Ms Palma, Mr Paczolay, Mr Mendez, Mr Mesia Ramirez and Ms Siljanovska-Davkova

- **Mediterranean Basin**

Chair: Mr Menouni



## APPENDIX IV

### LIST OF PUBLICATIONS OF THE VENICE COMMISSION

- **SERIES - SCIENCE AND TECHNIQUE OF DEMOCRACY<sup>1</sup>**
- No.1 Meeting with the presidents of constitutional courts and other equivalent bodies<sup>2</sup> (1993)
- No.2 Models of constitutional jurisdiction\*<sup>3</sup> (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\* (1993)
- No.7 Rule of law and transition to a market economy<sup>2</sup>(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\* (1995)
- No.13 Implementation of constitutional provisions regarding mass media in a pluralist democracy<sup>2</sup>(1995)
- No.14 Constitutional justice and democracy by referendum (1996)
- No.15 The protection of fundamental rights by the Constitutional Court\* (1996)
- 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 21<sup>st</sup> 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)

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<sup>1</sup> Publications are also available in French unless otherwise indicated.

<sup>2</sup> Speeches in the original language (English or French).

<sup>3</sup> Publications marked with \* are also available in Russian.

- No.28 The right to a fair trial (2000)
- No.29 Societies in conflict: the contribution of law and democracy to conflict resolution<sup>22</sup>(2000)
- No.30 European Integration and Constitutional Law (2001)
- No.31 Constitutional implications of accession to the European Union<sup>2</sup>(2002)
- No.32 The protection of national minorities by their kin-State<sup>2</sup>(2002)
- No.33 Democracy, Rule of Law and Foreign Policy<sup>2</sup>(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 Court<sup>2</sup>(2003)
- No.36 Constitutional Courts and European Integration<sup>4</sup> (2004)
- No.37 European and U.S. Constitutionalism<sup>4</sup>(2005)
- No.38 State Consolidation and National Identity<sup>4</sup> (2005)
- No.39 European Standards of Electoral Law in Contemporary Constitutionalism<sup>1</sup> (2005)
- No.40 Evaluation of fifteen years of constitutional practice in Central and Eastern Europe\* (2005)
- No.41 Organisation of elections by an impartial body<sup>4</sup> (2006)
- No.42 The status of international treaties on human rights<sup>4</sup> (2006)
- No.43 The preconditions for a democratic election<sup>4</sup> (2006)
- No.44 Can excessive length of proceedings be remedied?<sup>4</sup> (2007)
- No.45 The participation of Minorities in public life<sup>4</sup> (2008)
- No.46 The cancellation of election results<sup>4</sup> (2010)
- No.47 Blasphemy, insult and hatred<sup>4</sup> (2010)
- No.48 Supervising electoral processes<sup>4</sup> (2010)
- No.49 Definition of and development of human rights and popular sovereignty in Europe<sup>4</sup> (2011)

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<sup>4</sup> Available in English only.

• **OTHER PUBLICATIONS**

**Collection “Points of view - points of law”**

- *Guantanamo - violation of human rights and international law? (2007)*
- *The CIA above the laws? Secret detentions and illegal transfers of detainees in Europe (2008)*
- *Armed forces and security services: what democratic control? (2009)*

**Collection “Europeans and their rights “**

- *The right to life (2005)*
- *Freedom of religion (2007)*
- *Child rights in Europe (2008)*
- *Freedom of expression (2009)*

**Other titles**

- *Tackling blasphemy, insult and hatred in a democratic society (2008)*
- *Electoral Law (2008)*
- *European Conferences of Electoral Management Bodies*
  - *2<sup>nd</sup> Conference (Strasbourg 2005)*
  - *3<sup>rd</sup> Conference (Moscow, 2006)*
  - *4<sup>th</sup> Conference (Strasbourg, 2007)*
  - *5<sup>th</sup> Conference (Brussels, 2008)*
  - *6<sup>th</sup> and 7<sup>th</sup> Conference (The Hague, 2009 and London 2010<sup>5</sup>)*

**Bulletin on Constitutional Case-Law  
Special Bulletins -**

- 1993 - 2011 (three issues per year)
- *Description of Courts (1999)\**
  - *Basic texts - extracts from Constitutions and laws on Constitutional Courts - issues Nos 1-2 (1996), Nos 3-4 (1997), No.5 (1998), No.6 (2001), No.7 (2007), No.8 (2011)*
  - *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)*
  - *Special Edition Leading cases 2 - Belgium, France, Hungary, Luxembourg, Romania, USA (2008)*
  - *Inter-Court Relations (2003)*
  - *Statute and functions of Secretary Generals of Constitutional courts (2006)*
  - *Criteria for Human Rights Limitations by the Constitutional Court (2006)*
  - *Legislative Omission (2008)*
  - *State Powers (2012)*

**Annual Reports  
Brochures**

- 1993 - 2012
- *10th anniversary of the Venice Commission (2001)*
  - *Revised Statute of the European Commission for Democracy through Law (2002)*
  - *UniDem Campus - Legal training for civil servants (2003)<sup>6</sup>*
  - *20<sup>th</sup> Anniversary - Publications (2010)*

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<sup>5</sup> Available only in electronic form.

<sup>6</sup> Also available in Italian.

*Selected studies and reports (2010)*

- *Key Facts (2011)*<sup>7</sup>
- *Services provided by the Venice Commission to Constitutional Courts and equivalent bodies (2011)*
- *Code of Good Practice in Electoral Matters (2011)*<sup>8</sup>

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<sup>7</sup> Also available in Russian and Spanish.

<sup>8</sup> Also available in Arabic, Russian and Spanish.

## APPENDIX V

### LIST OF DOCUMENTS ADOPTED IN 2012

#### 90<sup>th</sup> plenary session (Venice, 16-17 March 2012)

- CDL-AD(2012)001 Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary
- CDL-AD(2012)002 Opinion on the Federal Law on the election of the Deputies of the State Duma of the Russian Federation
- CDL-AD(2012)003 Opinion on the law on political parties of the Russian Federation
- CDL-AD(2012)004 Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary
- CDL-AD(2012)005 Report on measures to improve the democratic nature of elections in Council of Europe member states
- CDL-AD(2012)006 Joint opinion<sup>1</sup> on the law on mass events of the Republic of Belarus
- CDL-AD(2012)007 Opinion on the Federal Law no. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing of the Russian Federation

#### 91<sup>st</sup> plenary session (Venice, 15-16 June 2012)

- CDL-AD(2012)008 Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary
- CDL-AD(2012)009 Opinion on Act CLI of 2011 on the Constitutional Court of Hungary
- CDL-AD(2012)010 Opinion on the Revision of the Constitution of Belgium
- CDL-AD(2012)011 Opinion on the Act on the Rights of Nationalities of Hungary
- CDL-AD(2012)012 Joint Opinion on the Act on the Elections of Members of Parliament of Hungary
- CDL-AD(2012)013 Amicus Curiae Brief on the Compatibility with Human Rights Standards of certain articles of the Law on Primary Education of the Sarajevo Canton of the Federation of Bosnia and Herzegovina
- CDL-AD(2012)014 Opinion on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina
- CDL-AD(2012)015 Opinion on the Federal Law on the Federal Security Service (FSB) of the Russian Federation
- CDL-AD(2012)016 Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation
- CDL-AD(2012)017 Opinion on the Draft Law on Free Access to Information of Montenegro
- CDL-AD(2012)018 Declaration of Global Principles for non-partisan election observation and monitoring by citizen organizations and Code of Conduct for non-partisan citizen election observers and monitors - Commemorated 3 April 2012 at the United Nations, New York - Initiated by the Global Network of Domestic Election Monitors (GNDEM)

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<sup>1</sup> "Joint Opinion" refers to opinions drafted jointly by the Venice Commission and the OSCE/ODIHR unless specified otherwise.

**92<sup>nd</sup> plenary session (Venice, 12-13 October 2012)**

- CDL-AD(2012)019 Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine (prepared by the Ukrainian Commission on Strengthening Democracy and the Rule of Law)
- CDL-AD(2012)020 Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary
- CDL-AD(2012)021 Opinion on the practice on blanket resignation of Ministers in the Federation of Bosnia and Herzegovina
- CDL-AD(2012)022 Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan
- CDL-AD(2012)023 Opinion on Act CXII of 2011 on informational Self-determination and Freedom of Information of Hungary

**93<sup>rd</sup> plenary session (Venice, 14-15 December 2012)**

- CDL-AD(2012)024 Opinion on two Sets of draft Amendments to the Constitutional Provisions relating to the Judiciary of Montenegro
- CDL-AD(2012)025 Joint Opinion on the Draft amendments and addenda to the law "on elections to the Oliy Majlis of the Republic of Uzbekistan" and "on elections to the regional, district and city councils (Kengesh) of people's deputies of Uzbekistan"
- CDL-AD(2012)026 Opinion on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania
- CDL-AD(2012)027 Report on Democracy, Limitation of Mandates and Incompatibility of Political Functions
- CDL-AD(2012)028 Amicus Curiae Brief on the Law on determining a criterion for limiting the exercise of public office, access to documents and publishing, the co-operation with the bodies of the state security ("Lustration Law") of "the former Yugoslav Republic of Macedonia"