



Strasbourg, 20 October 2008

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English only

**CoCoSem 2008/10**

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**in co-operation with**

**MINISTRY OF JUSTICE OF THE PALESTINIAN NATIONAL AUTHORITY**

**Seminar on**

**“Models of constitutional jurisdiction”**

**“Grand Park Hotel”, Ramallah**

**25-26 October 2008**

**PROGRAM**

## **International Conference:**

### **Which Role for Constitutional Courts in Modern Democracies?**

#### **Reflecting on the Palestinian Supreme Constitutional Court**

**Ramallah, 25-26 October 2008**

### **Concept Note**

Modern Democracies reserve a prominent place for written constitution. The supremacy of its provisions over other legislations is secured by the same judge authorized to enforce the law whenever a conflict (of any kind) arises, by a Council established to effectuate a control over statutes before their endorsement, or by a Constitutional Court, established in purpose, with the main task to control the constitutionality of legislations in force.

The Basic Law (BL) for the Palestinian Authority (PA) opted for the establishment of a Supreme Constitutional Court (SCC) but left its formation and regulation for the law. Only in 2006 that a law establishing a SCC was adopted but the composition of the Court did not yet see the light. The drafting process of this law, as much as its adoption, was accompanied by vivid discussions within jurists, politicians and decision makers.

This conference intends to revive the discussion over the place, role and importance of the SCC in the current Palestinian legal and political systems. Many questions need to be frankly discussed, avoiding any political *clichés*, regarding the composition of the SCC, its functions and competences, its relationship with the judicial power, the guarantees to its independence from interference of the executive and the way it will control the acts of the legislator.

The comparison with other experiences, representative of the different ways the constitutionality of laws is secured, may help the participants to appreciate or to criticize the system that is being finally institutionalized in the Palestinian territories.

The SCC may realize its objectives and purposes only in a context of respect for the rule of law but it may also contribute to the consolidation of such a system, in which individuals and state organs are subordinated to specific rules that are necessary to the cohesion of the community composing the 'state' and to the insurance of the checks and balances between state's authorities. Those binding rules express the compromise that is necessary for the political existence of a community, often redacted in a legal text and given a superior value to other laws.

The conference needs to drop the light on the Palestinian particularity in constitutional issues, for being under occupation, with a PA jurisdiction which is theoretically limited to the interim period, and with a BL which shall be replaced

by a constitution once the state is established. The Palestinian constitutional experience remains unique and shall be treated as such.

## **Draft Agenda**

**Saturday 25/10/2008**

09:00-09:30            Registration of Participants

09:30-10:00            Opening Speeches

Dr. Ali Khashan

Minister of Justice

Mr. Gianni Buquicchio

Secretary, Venice Commission

**10:00-11:00**

**First Session**

**The Palestinian Supreme Constitutional Court**

**President:**

**Panelists:**

**Mr. Ali Mhanna**

Palestinian Bar Association

***The Law Establishing a Supreme Constitutional Court***

**Dr. Ali Sartawi**

Former Minister of Justice / University of Najah

***The Importance of the Supreme Constitutional Court***

**Mr. Arne Mavcic**

Head of the Analysis and International Cooperation  
Department, Constitutional Court of the Republic of Slovenia

***Comparative Comments to the Introduction of  
Constitutional Review in the State of Palestine***

11:00-12:00

Discussion

12:00-12:30

Coffee Break

12:30-13:30

Second Session

**The Jurisdiction of Constitutional Courts: Examples from Europe**

**President:**

**Panelists:**

**Mr. Peter Paczolay**

President of the Constitutional Court of Hungary

***The Jurisdiction of the Hungarian Constitutional Court***

**Mrs. Marie-Françoise Rigaux**

Referendar at the Constitutional Court of Belgium

***The Jurisdiction of Belgium Constitutional Court***

**Mr. Cesare Pinelli**

Professor of Constitutional Law, University of Macerata, Rome

***The Jurisdiction of the Italian Constitutional Court***

13:30-14:30

Discussion

14:30-15:30

Lunch

**Sunday 26/10/2008**

09:00-09:30

Registration of Participants

09:30-10:30

**Third Session**

**The Role of Constitutional Courts in Modern Democracies**

**President:**

**Panelists:**

**Mr. Asem Khalil**

Professor of Constitutional Law, Birzeit University

***The Role of Constitutional Courts in Enhancing the Rule of Law***

**Mr. Nils A Butenschon**

Norwegian Centre for Human Rights, Faculty of Law,  
University of Oslo, Norway

***Models of Constitutional review***

***Mr. Jamal Khateeb***

Distinguishing the role and mandate of the Palestinian  
Supreme Constitutional Court from the Palestinian  
Supreme Court

10:30-11:30

Discussion

11:30-12:00

Coffee Break

12:00-14:00

Fourth Session

**What Future for the Palestinian Supreme  
Constitutional Court?**

**President:**

*Rapporteur*

Summary of Main Points raised during the  
Conference

Discussants:

14:00-15:00

Lunch