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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**The activities of the European Commission
for Democracy through Law in the field of
Constitutional Case-Law**

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**Contribution to the Tenth Conference
of European Constitutional Courts**

Budapest, 5-10 May 1996

I. The European Commission for Democracy through Law

1. The European Commission for Democracy through Law, also known as the Venice Commission, was established in 1990 pursuant to a Partial Agreement of the Council of Europe. It is a consultative body which co-operates with member States of the Council of Europe and with non-member States. It is composed of independent experts in the fields of law and political science whose main tasks are the following:
 - to help new Central and Eastern European democracies to set up new political and legal systems;
 - to reinforce existing democratic structures;
 - to promote and strengthen principles and institutions which represent the bases of true democracy.
2. The activities of the Venice Commission comprise, *inter alia*, research, seminars and legal opinions on issues of constitutional reform, on draft constitutional charters, electoral laws and the protection of minorities, as well as the collection and dissemination of case-law in matters of constitutional law from Constitutional Courts and other Courts throughout Europe.
3. The idea of creating such a body had been floating already before the fall of the Berlin Wall but it was that event which made the Commission an obvious necessity. At the initiative of Antonio La Pergola, Italy's Minister for European Affairs at the time, the Venice Commission was instituted at a conference of European Ministers of Foreign Affairs meeting in Venice in January 1990. Its statute was adopted the following May under a Partial Agreement within the Council of Europe (only States parties to the Agreement contribute to the budget).
4. The Venice Commission comprises "independent experts who have achieved international reputation through their experience in democratic institutions or by their contribution to the enhancement of law and political science" (Article 3 of the Statute). They are usually university professors specialising in constitutional or international law, constitutional court judges or senior officials.
5. Members are appointed by the States Parties to the Partial Agreement. To date, all Council of Europe member States are members of the Partial Agreement except Andorra, the Former Yugoslav Republic of Macedonia and the United Kingdom. Albania, Moldova and Ukraine have been associate members until their accession to the Council of Europe. In addition,
 - Armenia, Belarus, Croatia, Georgia and Russia are associate members, and
 - Argentina, Canada, the United States, Japan, Kyrgyzstan, Uruguay and the Holy See are observers.

II. The Documentation Centre on Constitutional Justice

a) *Historical background*

6. The idea of a Documentation Centre on Constitutional Justice was first mooted at the time of the establishment of the Venice Commission itself. According to *Jacques Robert*, right from the outset the Commission was very much aware of the importance that the organisation and operation of such a centre could have not only for most Member States but also, and above all, for the countries of Central and Eastern Europe in the initial stages of the operation of their newly established democratic institutions¹.
7. As early as September 1991, at the meeting of the Working Group on Constitutional Justice, it was decided to establish a Documentation Centre to collect and disseminate constitutional case-law. Two *référéndaires* at the Arbitration Court of Belgium, conducted an initial study in late 1991 on "the establishment of a Documentation Centre on Constitutional Case-law" (CDL (92) 2) to make such case-law as widely available as possible. The documentation was to be made up of the decisions of the Courts and summaries of those decisions, a systematic thesaurus and an alphabetical index and explanatory notes on the constitutional system of each member state of the Venice Commission. They also recommended co-operation with the European Commission and Court of Human Rights, the Court of Justice of the European Communities, the United States Supreme Court and case-law research centres, but they left it to the Secretariat of the Venice Commission to deal with questions concerning the human-resources and technical aspects of establishing such a Documentation Centre.
8. The Venice Commission then decided that the Centre should collect court decisions in the original language along with summaries in English or in French and that it would be computerised.

b) *The Bulletin on Constitutional Case-Law*

9. Against this background, the Venice Commission started in January 1993 the publication of the *Bulletin on Constitutional Case-Law*, reproducing summaries of decisions and providing information on the Constitutional Courts and Courts of equivalent jurisdiction in Europe, including the European Court of Human Rights and, since 1995, the Court of Justice of the European Communities, as well as in certain other countries of the world². The *Bulletin* is published in English and French three times a year, each issue reporting the most important case-law during a four months period.
10. Its aim is to allow judges and constitutional law specialists in the academic world to be informed quickly about the most important judgments in this field. The exchange of

¹ Jacques ROBERT, *La Commission européenne pour la démocratie par le droit, dite Commission de Venise*, in: *La CSCE: dimension humaine et règlement des différends*, Paris: Montchrestien, 1993, p. 255 (264).

² So far, the Constitutional Court of South Africa and the Supreme Courts of Argentina, Canada and the United States of America are contributing to the *Bulletin*.

information and ideas among old and new democracies in the field of judge-made law is of vital importance. Such an exchange and such co-operation, it is hoped, will not only be of benefit to the newly established constitutional jurisdictions of Central and Eastern Europe, but will also enrich the case-law of the existing Courts in Western Europe and elsewhere. The main purpose of the *Bulletin on Constitutional Case-law* is to foster such an exchange and to assist national judges in solving critical questions of law which often arise simultaneously in different countries.

11. The 1994 activities report of the Venice Commission points out that "the *Bulletin on Constitutional Case-law* represents an important step towards the goal of a fully functioning Documentation Centre on constitutional case-law, which will collect the most important judgments of Constitutional Courts and other equivalent bodies and make them easily accessible to any interested party. The Commission is firmly convinced that constitutional jurisdictions have a primary role to play in the consolidation of the rule of law and that it is of vital importance for democracies both old and new to exchange information and ideas in the field of judge made law".
12. In addition to the European Court of Human Rights and the Court of Justice of the European Communities, the case-law of constitutional and equivalent Courts in 32 countries is regularly reported in the *Bulletin*. The Commission is particularly grateful to the liaison officers of these Courts who prepare the contributions with great diligence. It must be emphasised that, as such, the summaries of decisions and opinions published in the *Bulletin* do not constitute an official record of court decisions and should not be considered as offering or purporting to offer an authoritative interpretation of the law.
13. The first *Special Edition* of the *Bulletin* was published in 1994. It contains brief descriptions of the various Courts which participate in the preparation of the *Bulletin*. At the 7th meeting of the Sub-Commission, on 3-4 July 1995 in Lausanne, the participants decided to publish in the form of a *Special Bulletin* legal texts on Constitutional Courts and equivalent bodies (extracts of constitutions and laws, but no rules of procedure). For practical reasons, the laws will be published in several *Special Bulletins*. The first issue which will be published in the spring of 1996 will contain contributions from the following countries: Andorra, Bulgaria, Canada, Croatia, Finland, France, Germany, Portugal, Romania, Russia, United States.

c) *The database CODICES*

14. The idea of a database was already mentioned in the first study on "the establishment of a Documentation Centre on Constitutional Case-law" (CDL (92) 2) which was prepared in 1991. The *Bulletin* was always seen as a first step for the creation of a fully functioning database on constitutional case-law.
15. A first version of this database has been set up at the Secretariat in Strasbourg (see Appendix I); it has been called:

CODICES

*D*igest of
*C*onstitutional *C*as*ES*

16. At the 8th meeting of the Sub-Commission, on 22 November 1995 in Venice, a preliminary version of CODICES in English was presented and distributed to the participants on diskette for testing and comments. The database contains all the summaries that have been published so far in the *Bulletin*.
17. It is envisaged that the database will contain the full texts of judgments summarised in the *Bulletin*. The liaison officers have already been invited to transmit on diskette to the Secretariat full texts of judgments which are available on magnetic storage media, for their inclusion in CODICES.
18. CODICES will eventually consist of three parts:
 - summaries of decisions;
 - full texts of decisions;
 - the systematic thesaurus.
19. Once the database is complete, it will be distributed on diskette and CD-ROM to all participating Courts and other interested persons and institutions. The up-date of CODICES will follow the rhythm of the publication of the *Bulletin*, i.e. three times a year.
20. Another possibility to make CODICES accessible to the participating Courts and the public at large would be to connect it to the *Internet* (World-Wide-Web). An optional extension of Folio Views permits such an installation equally offering all search capabilities of the database.
21. During the 7th and 8th meetings of the Sub-Commission, the possibility to connect CODICES to the Internet was discussed. The potentials of an Internet access are enormous. It gives direct access to information which is otherwise only available in major libraries. It also allows an exchange of information about problems which are of interest for different countries. CODICES could be connected to the databases of all Constitutional Courts which have an Internet access. It would then be possible to link summaries of the *Bulletin* to the full text of these decisions (translated and/or in original language) available at Internet sites of Courts and universities thus creating a very effective research tool.
22. During the discussions, it was stressed that distribution by Internet should not interfere with the distribution of the database on diskette/CD-ROM and with the publication of the *Bulletin*. As to the opening of databases of participating Courts, it was mentioned that problems might arise with respect to data protection and copyright. Hence, it must be ensured that, by separating data direct access to databases will not be abused to gain access to confidential information and the question of copyright in the judgments of participating courts will require consideration. At the 8th meeting of the Sub-Commission, on 22 November 1995 in Venice, the Sub-Commission therefore took the decision to complete the database before further considering possibilities for linking CODICES to the Internet.

d) *Future Goals*

23. The major goal of the Commission remains the swift completion of the database CODICES and its dissemination among the participating Courts.
24. On the other hand, the setting up of a fully operational Documentation Centre on Constitutional Justice remains on the agenda. Presently, the Centre exists in an embryonic stage. The liaison officers regularly send the full texts of the decisions which are summarised for the *Bulletin*. In addition, the Commission is very grateful to the following Courts which have made available their official digests for the Documentation Centre:
 - Constitutional Court of the Republic of Belarus;
 - Belgian Court of Arbitration;
 - Constitutional Court of the Czech Republic;
 - Lithuanian Constitutional Court;
 - Polish Constitutional Tribunal;
 - Romanian Constitutional Court;
 - Slovenian Constitutional Court.
25. In 1995, a survey of needs was conducted through interviews and questionnaires. The latter contained questions on the types of information and documents requested from the Venice Commission, the frequency of such requests, whether users are satisfied with the documents supplied and the services provided, any difficulties experienced in obtaining documents, deficiencies observed, changes in documentation requirements, other sources of information, familiarity with the resources and role of the Documentation Centre and services expected.
26. In all, 125 questionnaires were distributed (to liaison officers at the meeting of the Sub-Commission on Constitutional Justice in Lausanne, on 3-4 July 1995) or sent to the following countries: France, Poland, Italy, Austria, Belarus, Belgium, Bulgaria, Canada, Luxembourg, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, the Netherlands, Norway, Portugal, Russia, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States, Tunisia, Japan and South Africa.
27. As for the future structure of the Documentation Centre, the following opinions were expressed:
 - it will be very useful, because it will be the only Europe-wide Centre specialising in constitutional case-law; demand for comparative constitutional law continues to grow, and constitutional case-law is difficult to obtain;
 - the information will be centralised at one location, and this will simplify information requests and comparative searches.
 - access to information will be facilitated if the Centre is computerised and on the Internet;
 - available documentation should be exhaustive and comprise more decisions than those

published in the *Bulletin on Constitutional Case-law*.

28. At the 8th meeting of the Sub-Commission on Constitutional Justice, on 22 November 1995, it was decided to give priority to the *Bulletin* and the database CODICES. All participating Courts were invited to send their official digests to the Documentation Centre. The Secretariat was asked to pursue the setting up of the Documentation Centre on Constitutional Justice and, in particular, to recruit within budgetary allocations a full-time information manager for the Centre who should also give guidance for the use of the database.

III. Conclusions

Starting from rather modest beginnings, the *Bulletin* and the database CODICES are developing into a unique and most effective research tool in the field of comparative constitutional law.

The Venice Commission would like to express its gratitude for the support the Constitutional Courts have given so far. The contribution of the liaison officers who are part of the staff of the participating Courts is essential to the functioning of the *Bulletin* and database of the Documentation Centre. The liaison officers who regularly report to the *Bulletin* in addition to their usual workload for their Courts certainly merit particular recognition for their most valuable contributions. Continued support for their participation in the Venice Commission's project of an international database on constitutional case-law will be paramount.

The Documentation Centre in Strasbourg is still in an embryonic state. In order to fulfil a useful function for the participating and other Courts as well as for the public at large, the Centre's documentation resources must be increased. Such resources can only be provided by the participating Courts. In this respect, the Venice Commission would be grateful for receiving the official digest of decisions as well as – if available – full texts of decisions on magnetic storage media for inclusion into the database CODICES.

The members of the Venice Commission are confident that the fruitful co-operation between the Constitutional Courts and the Venice Commission will continue and become even closer.

APPENDIX I

Technical description of

CODICES

Digest of Constitutional CasEs

1. The database is using Folio Views 3.1, a software package for documentation produced by the Folio Corporation (Read Elsevier, USA). It is a manager of documentary databases, a hypertext software package and a publication tool. It is able to compress the size of documents by up to 50% of the original file size. The theoretical capacity limit given in the manuals is 16 tera-bytes (16 million Megabytes). The practical limit depends on hard disk capacity. English and French versions are available. Folio software has achieved considerable success in recent years. It is used *inter alia* by the United Nations and the official journals of several countries are available on Folio Views.
2. The following functions of CODICES are available:
 - full text search for all words, including Boolean combinations of them (*and, or, not*);
 - full text search in any of the fields such as number of the decision, country, languages, title of the decision, publications, systematic thesaurus, alphabetical index, headnotes and summary;
 - hierarchical search via the branches of the systematic thesaurus;
 - search via isolated keywords of the hierarchical systematic thesaurus and alphabetical index;
 - search by date of the decisions which are the subject of the summaries including ranges (from - to);
 - search by synonyms (Folio Views provides a list of synonyms which can be modified by the user).
3. The results of the search can be formatted (font, size, etc.), explanatory notes can be added without modifying the original database itself and the result can be printed out or transferred to word processing. Dissemination of the database can be organised by diskette, CD-ROM or later on Internet.

APPENDIX II (page 1)

Council of Europe
Partial Agreements

Date : 04/08/08

Conseil de l'Europe
Accords Partiels

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT

Date of setting up/Date de création : 10/05/90

MEMBER STATES/ETATS MEMBRES	Date of accession Date d'adhésion
ALBANIA/ALBANIE (*)	
ANDORRA/ANDORRE	
AUSTRIA/AUTRICHE	10/05/90
BELGIUM/BELGIQUE	10/05/90
BULGARIA/BULGARIE	29/05/92
CYPRUS/CHYPRE	10/05/90
CZECH REPUBLIC/REPUBLIQUE TCHEQUE	01/11/94
DENMARK/DANEMARK	10/05/90
ESTONIA/ESTONIE	03/04/95
FINLAND/FINLAND	10/05/90
FRANCE	10/05/90
GERMANY/ALLEMAGNE	03/07/90
GREECE/GRECE	10/05/90
HUNGARY/HONGRIE	28/11/90
ICELAND/ISLANDE	05/07/93
IRELAND/IRLANDE	10/05/90
ITALY/ITALIE	10/05/90
LATVIA/LETTONIE	11/09/95
LIECHTENSTEIN	26/08/91
LITHUANIA/LITUANIE	27/04/94
LUXEMBOURG	10/05/90
MALTA/MALTE	10/05/90
MOLDOVA (*)	
NETHERLANDS/PAYS-BAS	01/08/92
NORWAY/NORVEGE	10/05/90
POLAND/POLOGNE	30/04/92
PORTUGAL	10/05/90
ROMANIA/ROUMANIE	24/05/94

(*) Associate members until their accession to the Council of Europe.
Membres associés jusqu'à leur adhésion au Conseil de l'Europe.

APPENDIX II (page 2)

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Date : 04/08/08

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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT

Date of setting up/Date de création : 10/05/90

MEMBER STATES/ETATS MEMBRES cont'd/suite	Date of accession Date d'adhésion
SAN MARINO/SAINT-MARIN	10/05/90
SLOVAKIA/SLOVAQUIE	08/07/93
SLOVENIA/SLOVENIE	02/03/94
SPAIN/ESPAGNE	10/05/90
SWEDEN/SUEDE	10/05/90
SWITZERLAND/SUISSE	10/05/90
"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"/"L'EX-REPUBLIQUE YUGOSLAVE DE MACEDOINE"	
TURKEY/TURQUIE	10/05/90
UKRAINE (*)	
UNITED KINGDOM/ROYAUME-UNI	

NON-MEMBER STATES/ETATS NON MEMBRES	Associate Members Membres associés	Observers Observateurs
ARGENTINA/ARGENTINE		20/04/95
ARMENIA/ARMENIE	19/10/95	
BELARUS	24/11/94	
CANADA		23/05/91
CROATIA/CROATIE	11/12/92	
GEORGIA/GEORGIE	05/09/94	
HOLY SEE/SAINT SIEGE		13/01/92
JAPAN/JAPON		18/06/93
KYRGYZSTAN/KYRGHYZSTAN		20/01/93
RUSSIA/RUSSIE	10/10/91	
UNITED STATES/ETATS-UNIS		10/10/91
URUGUAY		19/10/95

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Membres associés jusqu'à leur adhésion au Conseil de l'Europe.