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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in co-operation with

**OSCE MISSION to MONTENEGRO
AND
THE CONSTITUTIONAL COURT OF MONTENEGRO**

**SEMINAR ON
“EFFICIENT WAYS OF DEALING WITH INDIVIDUAL
COMPLAINTS – INTERNATIONAL EXPERIENCES”**

Podgorica, Montenegro 12-13 June 2009

SYNOPSIS

The OSCE mission to Montenegro, the Council of Europe in Podgorica, the Constitutional Court of Montenegro and the Venice Commission organised a seminar on the “Efficient dealing with individual complaints by the Constitutional Court – International experiences” on 12-13 June 2009 in Podgorica. The seminar was opened by the President of the Constitutional Court Mr Milan Marcovic, Deputy Head of the OSCE Mission in Montenegro Mr Waldemar Figaj, Head of the Council of Europe Office in Podgorica Mr Vladimir Philipov and the External Relations Officer of the Venice Commission Ms Tatiana Mychelova.

The participants of the seminar included judges and members of the registry of the Court, the Government Agent of Montenegro at the European Court of Human Rights (ECtHR). Two experts from the Constitutional Court of Bosnia and Herzegovina were invited by the OSCE Mission to Montenegro, two other experts - by the Venice Commission: Professor Luc Lavrysen, judge from the Constitutional Court of Belgium and Professor Markus Gonzalez Beilfuss, clerk at the Constitutional Tribunal of Spain. Representatives of the OSCE Mission to Montenegro and the CoE office in Podgorica were present throughout the seminar.

The seminar was organised upon the request by the Constitutional Court of Montenegro. The Law on the Constitutional Court, adopted on 20 October 2008, implemented the constitutional provision (art.149) on the competences of the Constitutional Court. Two new competences of the Court; i.e. compliance with the international treaties and the individual complaint, were welcomed by the Venice Commission as they improve the overall human rights protection in the country.¹ Since the adoption of the Law in October 2008, the Court has received 500 individual complaints. The Court thus felt the need to know as much as possible about efficient ways of dealing with the complaints.

Discussions firstly concentrated on the date of entry into force/applicability of the ECHR in Montenegro (the ECHR was ratified by the Union of Serbia and Montenegro in 2004; Montenegro became independent and thus a party to the ECHR in 2006). In its amicus curiae brief to the ECtHR in the case of *Bjelic v. Montenegro and Serbia*, the Venice Commission considered that it would be unreasonable to hold Serbia responsible for human rights violations allegedly committed by the courts of the Republic of Montenegro in the period between 3 March 2004 (date of the entry into force of the ECHR in respect of the State Union of Serbia and Montenegro) and 6 June 2006 (date as of which the independent State of Montenegro is a party to the ECHR). At the same time, it was noted that article 93 of the Law on the Constitutional Court suggests that the Court should deal only with the complaints concerning violations which took place after the entry into force of the present Constitution, i.e. 19 October 2007.

The participants systematically compared the four jurisdictions, i.e. of Bosnia and Herzegovina, Belgium, Spain and Montenegro as far as the access to the Court's proceedings, remedies to speed up the processing of applications and the role and the organisation of the registry of the Court were concerned. They concluded that limited access to the proceedings, as provided by Article 20 of the Law on Constitutional Court of Montenegro, is to be welcomed as it potentially limits the length of the proceedings before the Court. A certain time limit for drafting a decision is also useful in terms of reducing the length of proceedings (no limit in Spain).

Another finding of the seminar was that on average 95% of all applications to the four participating Courts were inadmissible. In this respect, special arrangements for dealing with the admissibility were to be adopted/recommended: smaller chambers, more legal staff, for manifestly ill-founded complaints a simple order, not a decision could be delivered and a detailed motivation could be omitted. In Bosnia and Herzegovina, similar applications are

¹ The Venice Commission adopted an opinion on the draft Law at its October 2008 plenary session (CDL-AD(2008)030).

grouped and one judgment is delivered; standard forms are prepared and used. The quantity and quality of the legal staff was considered crucial if they were to prepare the draft judgments. In countries with a developed human rights case-law, a selective approach to the applications could be adopted, thus, perhaps not in Montenegro.

The Representative of the Venice Commission intervened recalling a number of services that the Commission could offer to the Court such as amicus curiae opinions, the database on constitutional case-law CODICES and the Venice Forum. The participants were also informed that the Commission was preparing a study on individual access to constitutional justice upon the request of the German government. This announcement met with a lot of interest from all participants. It was also stressed that for a young Constitutional Court a balance should be found between measures of timely processing of applications and systematic individual protection, the latter being nevertheless a priority.

The Court requested the organisation of a seminar on the second new competence given by the new Law on the Court, i.e. Interpretation of /compliance with the international treaties.