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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**in co-operation with the
Constitutional Court of Georgia
and
«The Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ)»**

BLACK SEA REGIONAL CONFERENCE

ON

**“THE IMPORTANCE OF DISSENTING AND
CONCURRING OPINIONS IN THE DEVELOPMENT OF
JUDICIAL REVIEW”**

17-18.09.2010, BATUMI, GEORGIA

SYNOPSIS

The Constitutional Court of Georgia, in cooperation with the Venice Commission and the GTZ, organised a conference on the “Importance of dissenting and concurring opinions in the development of judicial review”.

The conference brought together the Constitutional Courts of the Black Sea region. Participants from the Constitutional Courts of Armenia, Azerbaijan, Bulgaria, Georgia, Moldova, Romania and Turkey attended the conference, as well as members of the Georgian Supreme Court and other regional Courts, representatives from the Parliament, from NGOs and several experts from the Venice Commission and the GTZ.

The conference was a very useful event for several reasons:

a) First, as the topic covered was quite specific and new in constitutional justice, it gave time to have different presentations and sharing the experience of different courts present at the event as well as debate and discussions.

Indeed, separate opinions, both including dissenting (in which judges disagree on the legal solution reached) and concurring (in which judges disagree on the reasoning, but not on the legal solution) is a practice frequent and originating in the common law systems. UK, USA, Canada, Australia and other courts embraced them largely and made the expression of opinions an important tool to support the independence of the judiciary, as some matters are quite controversial and constitutional judges may not always reach a common conclusion on a case. The civil law and continental countries have been traditionally based on the collegial authority of courts and therefore on the lack of dissident voices. Strong opposition exists in Italy and France, in which separate opinions are perceived as potentially delegitimising this authority, showing divided courts. However, Austria, Germany, Bulgaria, Romania, Slovenia, Spain, etc. have included the possibility for constitutional judges of expressing a dissenting opinion.

From the countries present in the conference, the possibility of expressing dissenting opinions in constitutional justice existed in all of them, but in different forms and this created quite a discussion. Bulgaria and Armenia expressed quite reluctant views towards the role that dissenting opinions have played in strengthening the judiciary, raising awareness towards the political manipulation of judges; most of the other countries presented their experience in a positive light, as dissenting opinions have reinforced the reasoning of constitutional justice and the legitimacy of the Constitutional Court.

b) Second, the conference was quite successful in bringing together for the first time of the Constitutional Courts of the Black Sea region, all participants being able to express opinions in an open environment. The participants were very active and quite discussion and debate was engaged.

c) The work of the Venice Commission and the new developments in the tools existing for the judges of Constitutional courts were also presented and shared.