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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**Report of the 16th Meeting of the
Sub-Commission on Constitutional Justice
with the Liaison Officers from
Constitutional Courts and equivalent bodies**

(Vaduz, 30 April 1999)

Upon invitation by the State Court of Liechtenstein, the Sub-Commission on Constitutional Justice of the Venice Commission held its 16th meeting with liaison officers from constitutional courts and equivalent bodies under the presidency of Mr Batliner in Vaduz on 30 April 1999. A list of participants figures in Appendix I.

1. Adoption of the Agenda

The participants adopted the agenda as set out in Appendix II.

2. Communication by the Secretariat

The Secretariat informed the participants that Mr Solyom, former President of the Hungarian Constitutional Court, had been elected President of the Sub-Commission on Constitutional Justice at the Plenary meeting of the Commission in Venice on 22-23 March 1999. Given the short time between his election and the meeting in Vaduz, Mr Solyom had been unable to preside this meeting of the Sub-Commission due to earlier commitments. Therefore, Mr Batliner who had been elected Vice-President of the Commission at the same meeting in Venice, presided this meeting.

Mr Batliner informed the participants that the following liaison officers nominated since the last meeting of the Sub-Commission with the liaison officers in Ljubljana on 14 June 1998 (in the

chronological order of their nomination: Mr Peter Krug (Supreme Court, USA), Mr Simeon Petrovski (Constitutional Court, "The Former Yugoslav Republic of Macedonia"), Mr Raouf Guliyev (Constitutional Court, Azerbaijan), Mr John Dalton (Supreme Court, Ireland), Mr Suman Barua (Constitutional Court, South Africa), Mr Søren Stig Andersen (Supreme Court, Denmark), Mr Claude Marquis (Supreme Court, Canada), Mr Hjörtur Torfason (Supreme Court, Iceland) and Mr Nikolaj Akujev (Constitutional Council, Kazakhstan).

The Secretariat informed the participants that the Council of Europe had changed its e-mail addresses. All addresses ending with "@coe.fr" are to be changed to "@coe.int" (e.g. Agnes.Reading@coe.int, Michelle.Remords@coe.int or Schnutz.Durr@coe.int). Whilst the old addresses are available in parallel for a certain time, it was recommended to use the new addresses as from now.

The Secretariat pointed out that electronic faxes sent to the liaison officers indicate the central fax number of the Council of Europe on the cover page. Replies to such electronic faxes should however be sent to the direct fax number of the Venice Commission (+33 388 41 37 38).

The Secretariat requested the liaison officers to indicate whether they would like to receive the series of public CDL-INF documents presenting the major part of the work of the Venice Commission.

The participants decided that in addition to the annual reports and the series Science and Technique of Democracy of the Venice Commission, the liaison officers should systematically receive its series of CDL-INF documents.

The Secretariat presented the revised list of liaison officers (CDL-JU (99) 1) and the list of courts (CDL-JU (99) 2). The latter list was to be made available at the 11th Conference of the European Constitutional Courts in Warsaw on 17-21 May 1999.

The participants invited the liaison officers to continue to inform the Secretariat about the modification of data contained in the lists of courts and liaison officers.

3. Publication of the Bulletin on Constitutional Case-Law

3.a. Publication of the Bulletin

The Secretariat informed the participants about the publication of regular and special Bulletins:

Bulletin 1998/2 had been published, issue 1998/3 was being processed. Some contributions to number 1999/1 had already arrived at the Secretariat.

Upon demand by the Polish Constitutional Tribunal, two working documents for the 11th Conference of the European Constitutional Courts on the leading cases in the field of Freedom of religion and beliefs and on the description of courts (update of the special Bulletin 94) had been prepared (CDL-JU (99) 3 and 15). As the Special Bulletin 94 had been translated to Russian, its update would be published in the Russian language as well.

The participants invited the liaison officers to send any amendments of the two working documents for the 11th Conference of the European Constitutional Courts on the leading cases in the field of Freedom of religion and beliefs and on the description of courts (CDL-JU (99) 3 and 15) to the Secretariat and asked the latter to publish these documents in the form of Special Bulletins as soon as possible.

The Special Bulletin Basic Texts 5 had been published at the end of 1998 bringing the number of courts covered to 35. A sixth issue in this series could probably be published next year.

Given the importance of the case-law of the European Court of Human Rights, a Russian translation of the Special Bulletin on the leading cases of this Court had been prepared together with extracts of regular Bulletins concerning this Court. The publication of these Russian texts could intervene in 1999 or early next year.

The participants invited the Secretariat to publish as soon as possible the Russian version of the Special Bulletin on the leading case-law of the European Court of Human Rights and of extracts of regular Bulletins concerning this Court.

Mr Singer informed the participants that due to the heavy workload at the Court of Justice of the European Communities the Special Bulletin on the leading cases of this Court had not yet been finished. Work on this issue was, however, continuing.

Rather than wait for liaison officers to send their contribution to the Bulletin on their own initiative, the Secretariat proposed to send electronic faxes / e-mails to the liaison officers at the end of each reference period reminding liaison officers of the need for a contribution. In these messages the liaison officers would also be asked whether there had been any changes in the composition or address of the Court (needed for the list of courts CDL-JU (99) 1), or amendments to the Constitution or the Law on the Court (in order to update these texts in CODICES). A reply would be needed even when there was no case-law to be reported because this fact is published as a note in the Bulletin as well.

The participants invited the Secretariat to send reminder faxes to liaison officers asking for contributions to the Bulletin to the liaison officers and asked them to reply to such messages even when there was no relevant case-law during the reference period.

Given the high costs of publication and mailing of the Bulletins, the Secretariat suggested that each liaison officer should no longer automatically receive 10 copies of the Bulletin. Liaison officers should rather indicate the number of copies really needed within a range of 10 at the most per court (not per liaison officer).

For the same reasons, the Secretariat indicated that it intended to review the list of persons who received the Bulletin free of charge. Currently, the Bulletin had a circulation of 1200 copies in English and 1000 copies in French. Some 200 copies were sold, about half of them in the United States. In Central and Eastern Europe the Bulletin was mostly distributed free of charge.

Mr Vandernoot explained that the target group of the Bulletin was very limited, consisting mainly of universities doing comparative constitutional research. Unfortunately, most university libraries were severely under-funded and had difficulties even in maintaining existing subscriptions let alone subscribing to new journals. If expenses were a problem, costs had to be lowered rather than hoping to achieve more revenues. The reason for the introduction of a price

for the Bulletin had not been to produce revenues but rather to open new channels of distribution via bookshops.

Mr Joaquim Pedro Cardoso da Costa pointed out that, soon, most courts would have their own home-page on the Internet where decisions were available for free. Mr Singer informed the participants that the Court of Justice of the European Communities had a similar problem. Given the fact that its decisions were also available for free, the revenues from the sale of its Digest were negligible. He was of the opinion that such publications could not be seen from a commercial angle and that they never could cover their costs.

Mr Stig Andersen insisted that the free distribution of the Bulletin was very important for making known the case-law of participating courts in a comparative perspective. Therefore, it should not be reduced.

The participants requested the Secretariat to continue the free distribution of the Bulletin and CODICES on a large scale and to explore ways of introducing a reduced rate for subscriptions from universities.

The participants authorised the Secretariat to send a form to the liaison officers asking them about the number of copies of the Bulletin per language needed with a maximum of 10 per court.

3.b. Use of the data input mask

The Secretariat presented the data input mask which was available to the liaison officers since 1997 but was scarcely used by them. The use of the mask would, however, greatly facilitate the task of the Secretariat to prepare the contributions for publication in the Bulletin.

The document CDL-JU (99) 7 contains a list of cross-references within the alphabetical index. The Secretariat suggested that on the one hand such cross-references should be included in the alphabetical index at the end of *Bulletins* in order to help the reader find the subject he was searching for. On the other hand, these lists could be integrated into the data input mask which would inform the liaison officer that he ought to use another existing keyword from the alphabetical index or from the Systematic Thesaurus.

Even before a revised version of the data input mask were to be made available to the liaison officers, they would receive a diskette to update the existing mask with version 11 of Systematic Thesaurus.

Mr Stig Andersen suggested that the mask should have direct access to the Internet to enable the immediate mailing of the contributions without the need to attach them to an e-mail.

The participants encouraged the liaison officers to make more frequent use of the data input mask when sending their contributions to the Bulletin.

They endorsed the proposal by the Secretariat to update the data input mask and to include cross-references within the alphabetical index and from the alphabetical index to the Systematic Thesaurus. They also invited the Secretariat to include cross-references within the Alphabetical Index of the *Bulletin*.

4. Publication of CODICES

4.a Presentation of CODICES

The Secretariat presented version 3.0 1998/1 of CODICES which had been produced with version 4.2 of Folio Views (see user guide CDL-JU (99) 4). New elements of this version were the following:

- Links from keywords of the Systematic Thesaurus within a précis to the same keyword in other précis
- Links from the main element of keywords of the Alphabetical Index (e.g. “Constitutional Court” in the keyword “Constitutional Court, powers”) to other keywords of the alphabetical index
- The possibility to restrict the search to “selected branches” of the database (e.g. one or several specific countries)
- The possibility to print whole “partitions” at a time, e.g. the entire text of a full text of a decision where only some paragraphs were hits i.e. contained the word searched for (the lack of this feature had been a major problem in version 2.1 of CODICES)
- CODICES V3.0 is not only protected against copying and pasting but also against installations in networks. The liaison officers would receive the password to open CODICES and to use it freely. (Note: multiple installations should, in any case, be notified to the Secretariat because for each installation royalties have to be transferred to Open Market, the producer of Folio Views)

The Secretariat informed the participants that, in order to reduce the costs of production of CODICES, the members of the Venice Commission would no longer automatically receive the CD-ROM but had been invited to indicate their wish to continue to receive it. For the same reason it was suggested that courts having nominated more than one liaison officer should not receive one CD-ROM per liaison officer but rather one per court.

The participants welcomed the progress of the database CODICES and agreed to have only one CD-ROM sent to each court.

4.b. Leading cases

The participants were reminded by the Secretariat about their decision taken at their meeting in Brussels and confirmed in Ljubljana to contribute the leading case-law of their courts in the form of précis by October 1999. The working document on the Freedom of religion (CDL-JU (99) 3) in fact constituted a first part of this leading case-law. The oldest courts should not submit more than 80 – 100 précis on the most outstanding decisions of their courts.

Ms Jaeger and Mr Cattarino insisted that this represented an enormous workload for liaison officers from older constitutional courts. Ms Jaeger pointed out that the biggest problem for courts not working in one of the official languages of the Council was translation and its financing. She suggested that, for a start, only headnotes should be submitted. Once thematic bulletins were to be published, these shortened précis could be amended later.

Mr Vandernoot pointed out that this task consisted of three elements (a) the selection of cases, (b) the drafting of the précis and (c) the indexing. The selection would have to be very strict. It could be based upon the frequency of citation of decisions in national legal journals. The drafting

of the précis could be facilitated for courts whose decisions already contained headnotes. The indexing could be done in several phases first concentrating on chapter 5 of the Systematic Thesaurus concerning fundamental rights.

The Secretariat proposed that it could take over the work of indexing of shortened précis in order to alleviate the burden of the liaison officers concerned.

The participants decided to invite the liaison officers from courts with case-law prior to their participation in the *Bulletin*, to prepare a selection of not more than 80 to 100 précis for the longest existing courts by the end of October at the latest.

Instead of complete précis, the liaison officers could also draft shortened précis consisting of the identification zones a) to h), the headnotes and language zones (possibly also the supplementary information and cross-references zones). Such précis were to be indexed by the Secretariat.

Wherever possible, both long or shortened précis should be accompanied by the full text of the decision in electronic form.

4.c Inclusion of constitutions into CODICES

The Secretariat informed the Participants that 26 full texts of constitutions had been integrated into CODICES. The Secretariat had indexed the Constitutions of France, Germany, Italy, Poland and Romania article by article according to the Systematic Thesaurus. A future version of CODICES was to permit searches in the constitutions according to the Systematic Thesaurus.

The participants invited the Secretariat to continue the indexing of constitutions and to allow those to be searched within CODICES via the Systematic Thesaurus.

4.d Updating of Constitutions, Laws on the Courts and Descriptions within CODICES

Mr Vandernoot raised the problem of links from references to Articles of the Constitution to the corresponding text in case the Article had been amended or renumbered. He also suggested to establish links not only from the references to the text of the Article but also the other way round. This would enable searching all précis which referred to a particular article of the Constitution or the ECHR.

The Secretariat replied that the problem of the amendment of single articles would be solved by keeping the old text of the article in a note beside the new text of the article. In case of a new Constitution or its renumbering, both texts would have to be kept in parallel in the database.

The participants invited liaison officers to inform the Secretariat about any changes in their constitutions and the laws on the Constitutional Court in order to have CODICES updated.

4.e. Use of CODICES

Mr Stig Andersen congratulated the Secretariat on the development of CODICES. He suggested that the Internet version should be open to users for a trial period during which they could decide whether to subscribe.

The Secretariat replied that once it would have full control over the Internet version of CODICES, an extract of CODICES containing the one before the latest issue of the Bulletin could be made available free of charge on the Internet to incite users to subscribe. A specific user's guide for the Internet version would then be produced as well.

5. Co-operation of Constitutional Courts on the Internet

Following the decision by the participants at their last meeting in Ljubljana to add a short description of the Internet sites referred to, the Secretariat will present its revised Internet page with links to participating courts (CDL-JU (99) 5).

The participants welcomed the revised form of presentation of links to participating courts and invited the liaison officers to communicate addresses of their web-sites to the Secretariat in case they were not yet included in document CDL-JU (99) 5.

The Secretariat informed the participants that the automatic distribution of messages to the Venice Forum could no longer function due to a technical change in the Internet server structure of the Council of Europe. A new system was being studied by the computer department of the Council. In the meantime, the Secretariat would manually distribute any requests from one liaison officer to the others. Only recently, requests from Georgia and Latvia which had been forwarded by the Secretariat had received a high number of replies. The Secretariat expressed its gratitude to all the liaison officers who had replied.

Shortly before the meeting, a Greek student had asked the Secretariat to pass on a questionnaire on European integration to the liaison officers. The Secretariat had replied that, most probably, liaison officers would not be in a position to reply to such request but that this issue could be discussed at the present meeting.

Mr Vandernoot pointed out that liaison officers already had an enormous workload to handle and that they could not deal with such requests.

The participants instructed the Secretariat to reply negatively to requests from students to pass on questions or questionnaires to the liaison officers.

6. Amendments to version 10 of the Systematic Thesaurus

The Working Group on the Systematic Thesaurus had met on 29 April 1999 in Vaduz. The working day available to the group had only been sufficient to discuss proposals for the modification of chapters 1 to 4 of the Systematic Thesaurus. Chapter 5 could not be dealt with.

The working group had also invited the Secretariat to prepare a guide for indexing with the help of the Thesaurus.

The working group had invited the Secretariat to produce a document containing these proposals for the current meeting of the Sub-Commission the following day. Due to a technical problem, only proposals to amend chapters 2, 3 and 4 could be included in document CDL-JU (99) 12 prov. as presented by the working group to the participants.

The participants adopted the proposals contained in document CDL-JU (99) 12 prov. as version 11 of the Systematic Thesaurus.

The participants invited the working group to study the remaining proposals for chapter 5 and to present them together with the already discussed amendments for chapter 1 at the next meeting of the Sub-Commission with the liaison officers with a view to adopting them as version 12 of the Thesaurus.

The participants endorsed the request by the working group to the Secretariat to prepare a guide for indexing with the help of the Systematic Thesaurus.

7. Harmonisation of the Alphabetical Index

See point 3.b above.

8. Co-operation activities

8.a Co-operation with the Association of Constitutional Courts using the French Language (ACCPUF)

Following the approval of co-operation by the Conference of Heads of Institutions of the ACCPUF on 10-13 September 1998 in Beirut and by the Venice Commission at its 36th Plenary Meeting in Venice on 16-17 October 1998, the co-operation agreement between these bodies (CDL-JU (99) 8) was signed by Ms Remy-Granger and Mr Giakoumopoulos. The agreement was to take effect as from its signature allowing for a mutual exchange of information between participating courts and for the use of the Systematic Thesaurus of the Sub-Commission and the liaison officers by the ACCPUF.

8.b Co-operation with the Polish Constitutional Tribunal in view of the preparation of the XIth Conference of the European Constitutional Courts.

The Secretariat informed the participants that the Polish Constitutional Tribunal had requested the preparation of working documents on the Freedom of religion and beliefs and descriptions of courts (CDL-JU (99) 3 and 15, see point 3.a. above). The Commission had expressed its readiness to assist the Conference in the organisation of its tri-annual congresses on a permanent basis. Such co-operation would be free of charge for the Conference.

8.c Series of seminars with Constitutional Courts (CoCoSem)

The Secretariat informed the participants of seminars which had taken place in co-operation with Constitutional Courts since the last meeting: The Role of the Constitutional Court in the Implementation of International Law, (Lviv, Ukraine, 7-8 October 1998), Electoral disputes before the Constitutional Court, Yerevan, Armenia (15-16 October 1998), Round Table on Constitutional Justice in Bosnia and Herzegovina, Banja Luka, Bosnia and Herzegovina,

23-24 October.1998), The role of the Constitutional Court in the protection of private property, (Chisinau, Moldova, 30-31 March.1999).

In 1999 seminars were planned on the relations of the Constitutional Court with the Ombudsman (July, Kyiv, Ukraine), Constitutional Control in Federal and Unitary States (July, Batumi, Georgia), the Role of the Secretariat of the Constitutional Court (September, Kyiv, Ukraine), the features of jurisdictional disputes in the Constitutional Court (October, Yerevan, Armenia), the Execution of Decisions of the Constitutional Court (October, Kyiv, Ukraine).

Furthermore, the Secretariat presented document CDL-JU (99) 9 which summarises how such seminars can be organised and was intended to facilitate the organisation of seminars.

The participants welcomed the availability of document CDL-JU (99) 9 on the organisation of seminars in the CoCoSem series.

8.d Possible Co-operation with Constitutional Courts in Southern Africa

Justice Goldstone from the South African Constitutional Court informed the participants that, within the programme "Democracy - from the Law book to real life" run by the Commission and financed by Switzerland, Courts of ultimate appeal from member countries of the Southern African Development Community (SADC) had met in October 1998. About half of them were Constitutional Courts, the others, Supreme Courts. They had decided to establish institutional co-operation between them. In some of these countries the idea of constitutional control had not yet taken root. Training was therefore most important. Some courts, for example the Supreme Court of Zimbabwe, were under severe pressure from their government and urgently needed backing from abroad. While the Constitutional Court of South Africa possessed sufficient resources to carry out its functions (research assistants from the country but also from abroad doing comparative research), most of the other courts, on the other hand, lacked such resources. Co-operation was therefore paramount to assist the courts in playing their role as guardian of the Constitution.

The Secretariat underlined the importance of regional co-operation between courts. The Venice Commission could not deal directly with all Constitutional Courts in the world and it had its geographical focus in Europe. Co-operation with groupings of constitutional courts elsewhere - like the ACCPUF or the Southern African courts - was therefore a means to spread the values of the Council of Europe abroad within the resources available to the Commission. Once the co-operation between the Southern African Courts had intensified, similar co-operation to the one with ACCPUF might be established.

The participants welcomed co-operation between Courts of ultimate appeal in the Southern African region and the establishment of links between this group and the Venice Commission.

9. Centre on Constitutional Justice

The Secretariat presented document CDL-JU (99) 10 which indicates the resources available for research at the Centre of the Commission in Strasbourg. The Secretariat expressed its gratitude to Courts which had made available their digests or other documentation to the Centre, especially because the Commission had no budgetary provisions to acquire such materials.

The participants invited liaison officers to consider providing additional documentation for the Centre on Constitutional Justice.

10. Other business

None

11. Date and place of the next meeting

The participants decided to meet in Venice in March 2000.

LIST OF PARTICIPANTS /LISTE DES PARTICIPANTS

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LATVIA/LETTONIE

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