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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

2nd Meeting
of the Joint Council on Constitutional Justice

(Oslo, 8-9 May 2003)

REPORT

Mr Tore Schei, President of the Supreme Court of Norway and host of the meeting, kindly opened the meeting.

1. Adoption of the Agenda

The agenda was adopted without change.

2. Communication by the Secretariat

Mr Buquicchio updated the participants on the recent activities of the Commission and informed them on the latest developments brought about by the revised statute: Israel and Kyrgyzstan submitted their requests for membership. Canada, Mexico, Japan and the Republic of Korea were also interested in becoming full members. The Secretary reminded the participants that the establishment of the Joint Council on Constitutional Justice under the revised statute was a formal recognition of the significant work done by the liaison officers.

The Secretariat further informed the participants of the appointment of the following liaison officers since the last meeting in Larnaca (in chronological order) : Mr Seung Dae Kim, replacing Mr Ha Yurl Kim; Mrs Mirjana Lesevska ("The Former Yugoslav Republic of Macedonia"), replacing Mr Simeon Petrovski; Mrs Rimma I. Filipchik and Mr Valentin Z. Shuklin (Belarus), replacing Mr Leonid L. Dedkov; Mr Antonio A. Cançado Trindade, Mr Manuel E. Ventura Robles and Ms Charlotte Brom, new nominations on behalf of the Inter-American Court of Human Rights; Ms Margareta Palmstierna (Sweden), replacing Ms Catharina Lindqvist; Mr Mireca Iuga (Moldova) replacing Mrs Mirjana Lesevska; Mr Steven Budlender (South Africa), replacing Ms Kirsty McLean; Ms Paivi Pietarinen (Finland) replacing Mr Tapio Kuosma; Ms Anne-Katrine Stig Andersen (Denmark), replacing Ms Malene Maxe Petersen; Ms Gabriela Fet'kova (Slovakia), replacing Mr Radoslav Prochazka; Mr Stanley Naismith (ECHR), replacing Mr Nicolas Sansonetis and Ms Dzintra Pededze (Latvia) replacing Ms Anita Usacka.

3. Updating of data on the participating courts

The liaison officers were invited to regularly inform the Secretariat of any changes to data contained in the list of constitutional courts (CDL-JU (2003) 2), the list of liaison officers (CDL-JU (2003) 3) and the list of web sites of constitutional courts and equivalent bodies (CDL-JU (2003) 4). Liaison officers were also invited to check the Constitutional Justice website of the Commission <http://venice.coe.int/ju> and to inform the Secretariat of changes when they came about or at least when sending contributions to the Bulletin.

The liaison officers were invited to indicate regularly to the Secretariat changes in data on the participating courts.

4. Co-operation of Constitutional Courts on the Internet: Venice Forum

The Secretariat presented document CDL-JU (2003) 5 on liaison officers' requests and replies via the Venice Forum. These exchanges, and thus this document, were confidential, i.e. not public for 10 years. The exchanges held since the last meeting were of great interest.

The main suggestions for Forum users were: when a question arose, first to look for a reply in CODICES, secondly, to give deadlines for replies, and thirdly, send the queries not only to Mr Dürr (Schnutz.Durr@coe.int) but henceforth in parallel also to the general address of the Commission at venice@coe.int.

The Joint Council took note of the exchanges held between the participating courts via the Venice Forum.

5. Co-operation activities

5.a Series of seminars with Constitutional Courts (CoCoSem)

The Secretariat informed the participants about seminars held since the last meeting as presented in document CDL-JU (2003) 6.

The programme of CoCoSems for 2003 included:

July	Azerbaijan, Baku	Role of the Constitutional Court in the Protection of Democratic Values on the occasion of the 5th anniversary of the Constitutional Court
July	Tanzania, Zanzibar	Sustaining Independence of the Judiciary and Co-operation between the judiciary of the region Forum of Chief Justices of Southern African courts
September	Lithuania, Vilnius	Constitutional Justice and the Rule of Law on the occasion of the 10 th anniversary of the Constitutional Court
September	Ukraine, Kyiv	The Constitutional Court and the Legislative Power: Current Problems of Interaction
October	Armenia, Yerevan	Basic Criteria of Limitation of Human Rights in the Practice of Constitutional Justice
October	Cyprus, Nicosia	XIIIth Conference of the European Constitutional Courts - preparatory meeting
November	Albania, Tirana	Conference in co-operation with the Constitutional Court on the occasion of the 5th anniversary of the adoption of the Constitution
December	Windhoek	2 nd meeting of the liaison officers from Southern African courts

The Joint Council took note of the CoCoSems held since the last meeting and the programme of seminars for 2003.

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

Ms Pauti, Secretary General of ACCPUF, updated the participants on relations between ACCPUF and the Commission which were formalised by a co-operation agreement signed in Djibouti January 2002. According to Article 1 of the agreement, ACCPUF provides the case-law of its members, indexes the decisions and provides them to the Venice Commission for inclusion into CODICES (to date 60 decisions from 16 courts). Modalities for the possible inclusion of constitutions, laws and court descriptions in accordance with Article 1.2 of the Agreement would still have to be defined. ACCPUF would also provide the Secretariat with the proceedings of its meeting of correspondents (liaison officers) held in June 2002 in Paris. The Venice Commission was invited and would attend the next regular Conference of ACCPUF liaison officers in Ottawa in June this year.

The Secretariat thanked Ms Pauti for the excellent co-operation and stressed the usefulness for the Commission of its work in the Southern African region in particular.

The Joint Council took note of the developments of the relations between ACCPUF and the Venice Commission.

5.c Co-operation with Constitutional Courts and equivalent bodies in Southern Africa

The Secretariat informed participants about the new two-year programme of co-operation between the Venice Commission and constitutional and supreme courts of the Southern African Region funded by the Norwegian and Swiss governments and, in particular about the integration of the case-law of these courts into the CODICES database.

In 2003, two meetings were foreseen, one for the Chief Justices of the SADC countries in July, hosted by the Court of Appeal of Tanzania, with a view to the creation of a regional Forum of Judges. The second meeting was planned for the liaison officers of the SADC courts in December in Windhoek. These activities were aimed at re-launching the contributions of the courts to the CODICES database and supporting the independence of the judiciary in the region. In fact, the courts already took measures to support each other: earlier this year, when the Chief Justices issued a press release to support a Zimbabwean judge under undue pressure from the executive. In addition, certain funds, available from the Open Society Institute, might enable the Forum to establish a secretariat based at the Constitutional Court of South Africa. A further meeting of the Chief Justices was foreseen for the year 2004.

The Joint Council took note of the developments of the relations between the Venice Commission and Constitutional Courts and equivalent bodies in Southern Africa.

5.d Co-operation with the Conference of Constitutional Justice of Ibero-America, Spain and Portugal

As the Conference had yet to organise its next meeting, it seemed premature to envisage concrete co-operation.

5.e. Co-operation with the Conference of the Constitutional Control Organs of the Countries of Young Democracy (CCOCYD)

The Secretariat recalled the composition of CCOCYD, i.e. its founding member states Armenia, Belarus, Kyrgyzstan, Russian Federation, Tajikistan and new members Azerbaijan and Georgia. The fostering of close regional co-operation between constitutional courts was fully in the interest of the Commission which is why such agreements found the support of the Commission.

The draft agreement between and the Conference of the Constitutional Control Organs of the Countries of Young Democracy and the Venice Commission (CDL-JU (2003) 9), provided for an exchange of information and the intention of holding annual joint seminars.

Until now, there were no official contacts with the Conference. However, in the past the Commission had organised several seminars in co-operation with the Constitutional Court of Armenia, which were immediately followed by regular meetings of the Conference thus benefiting from the presence of its members at these seminars.

Mr Tchümperlin suggested to state explicitly in Article 3 of the agreement that the CCOCYD would participate in the Joint Council on Constitutional Justice as an observer. He also expressed concern with regard to future members of the Conference whose association with which could be undesirable for the Joint Council. The Secretariat pointed out that it would be difficult to impose such a restriction because the agreement was concluded with the Conference as such and not with individual courts. The Commission could not impose on the Conference any restrictions of its future membership.

The Joint Council took note of the agreement in its amended form, adding “as an observer” in Article 3.

5.f Co-operation with the Constitutional Court of Belarus

The Secretariat informed the participants on the background of the resumption of relations of the Commission with the Constitutional Court of Belarus in the light of the Conference of European Constitutional Courts request to do..

In 1996, following a series of decisions of the Constitutional Court of Belarus annulling decrees of the President because of a violation of the separation of powers, the latter proposed a draft constitution attributing increased powers to his office. This text was to be adopted by referendum. In reaction to this presidential draft, two major political groups in Parliament made a counter-proposal for a constitutional revision which would have abolished the office of the President of the Republic altogether. Upon request by the speaker of Parliament, the Constitutional Court decided that the existing Constitution (dating from 1994) could only be amended by Parliament and that a constitutional referendum could not have binding effects

([http://venice.coe.int/docs/1997/CDL\(1997\)009-e.html](http://venice.coe.int/docs/1997/CDL(1997)009-e.html)).

Again upon request by the Speaker of Parliament, the Venice Commission gave an opinion on both drafts (presidential and parliamentary) and came to the conclusion that “both the examined proposals fall short of the democratic minimum standards of the European constitutional heritage” and called on the “authorities of Belarus to abide by the decision of the Constitutional Court” ([http://venice.coe.int/docs/1996/CDL-INF\(1996\)008-e.html](http://venice.coe.int/docs/1996/CDL-INF(1996)008-e.html)).

Nevertheless, a referendum was held on both proposals and ended in favour of the presidential draft, which was promulgated by the President thus ignoring the decision of the Constitutional Court. Seven out of ten members of the Constitutional Court resigned in protest and the new, current Constitutional Court - recomposed according to the new Constitution -, annulled the previous decision on the constitutional referendum.

In reaction to these events, the Bureau of the Parliamentary Assembly of the Council of Europe suspended the special guest status of the Parliament of Belarus thus blocking the procedure of accession of Belarus to the Council of Europe. Given the continuation of the situation in Belarus, this special guest status remained suspended. For its part, the Venice Commission discontinued publication of the decisions of the Constitutional Court in the *Bulletin on Constitutional Case-Law*.

Already before 1996, the Constitutional Court of Belarus had become associate member of the Conference of European Constitutional Courts (<http://www.confcoconsteu.org>). At the XIIth Conference (Brussels, 13- 16 May 2002), the Constitutional Court of Belarus requested full membership with the Conference. The Circle of Presidents of the Conference decided in its Resolution IV that “the Constitutional Court of the Republic of Belarus shall not be granted full membership” but that “the European Commission for Democracy through Law”, also known as the “Venice Commission”, is invited to re-establish contact with the Constitutional Court of the Republic of Belarus and to report on that matter on the occasion of the Preparatory Meeting of the XIIIth Conference in Cyprus.” (http://www.confcoconsteu.org/en/congress/resolution_vii.html). In view of this request by the Conference, the Commission considered resuming publication of the decisions of the Constitutional Court of Belarus in the *Bulletin* with a view to familiarising not only members of the Conference but also the public with the case-law of the Court since 1997. However, a note explaining the background of this publication would be added for the benefit of the readers. In addition, for June 2003 the Commission planned a Conference in co-operation with the Constitutional Court of Belarus on the separation of powers and the possible introduction of an individual appeal to the Court..

Several liaison officers expressed their opposition to publishing the case-law of the Constitutional Court of Belarus in the *Bulletin* in the light of the situation in Belarus.

Mr. Buquicchio replied that that the activities of the Commission were also geared towards furthering the principles of the Council of Europe in places where they were not or not yet fully respected. However, it had to be made certain, that the Commission’s interlocutors were committed to reform.

<p>The Joint Council decided to present the précis of the Constitutional Court of Belarus as a special working document for the Preparatory Meeting of the XIIIth Conference of European Constitutional Courts to be held in Nicosia, October 2003. Depending on the</p>

decision of the Conference to admit the Constitutional Court of Belarus as a full member, the précis would be published in the *Bulletin*.

6. Publication of the Bulletin on Constitutional Case-Law

6.a Regular Bulletin

The liaison officers were reminded that the deadline for contributions to Bulletin 2003/1 was the end of May 2003. It was imperative to respect the word limit of 1200 for the précis and also the format requirements. Using the internet mask would eliminate many risks of formal errors. The exact reference to the publications, where the decisions appeared, was also important to indicate. Document CDL-JU (2003) 11 contained revised instructions for the sending of contributions to the Secretariat by e-mail to Ms Gorey (Ana.Gorey@coe.int).

Following the proposal of the working group, in the French version of the Bulletin the zone title "Sommaire" was changed into "Sommaire (points de droit)".

The Secretariat further introduced the idea of including an editorial by an external comparative researcher which could be discussed at a future meeting of the Joint Council.

Following staff changes, the Secretariat informed the participants about the persons responsible in the Secretariat dealing with the Bulletin: Ms Gorey is responsible for the reception of contributions, checking the length, English corrections, Bulletin production via macros and the inclusion of the Bulletins into CODICES. Ms Wigishoff co-ordinates the circulation of contributions; sends texts to translation and does French corrections. Ms Bojic checks headnotes, summary and indexing for their compliance with the guidelines. English proofreading is done by Ms. Burton, and soon to be passed on to Ms Schirmer, a Canadian lawyer. French proofreading is Mr Garrone's and Ms Martin's responsibility. Mr Dürr is responsible for the final check, and in future, Ms Bojic will also take over this task. Ms Jordan continues to update lists of liaison officers, secretaries general and courts; she also does the general correspondence with courts. Updating of constitutions, laws, court descriptions and the library was now Ms Tatyana Mychelova's responsibility. CoCoSems are organised by Ms Caroline Martin, Ms Mychelova and Mr Dürr. The Venice Forum is dealt with by Mr Dürr and in his absence by Ms Martin. The production of CODICES is Ms Gorey's responsibility and database development is done by Mr Dürr.

6.b Special Bulletins

The Special Bulletins on "Leading Cases 1" and "The relations between the constitutional courts and the other national courts, including the interference in this area of the action of the European courts" were presented. The Secretariat also informed the participants on the progress of the Special Bulletin "Leading Cases 2". Hungarian and French cases were available along with some case law from the United States Supreme Court including the famous Marbury vs. Madison case. These decisions do not yet suffice for a complete issue. Therefore, they will first be published in CODICES and later as a special Bulletin. Liaison officers mainly from Western Europe were invited to contribute as most of the decisions by the Eastern Europe courts had been already covered in regular Bulletins since 1993.

The Joint Council took note of the advancement of the publication of the regular and special issues of the Bulletin.

7. Publication of CODICES

7.a Presentation of a new version of CODICES

The Secretariat presented the current version 4.3 2002/1 of CODICES (<http://codices.coe.int> and CD-ROM). This version contained links between the English and French versions of the précis or the zone title “Languages”.

A provisional version of CODICES using the Live Publish software was presented, which still created certain difficulties that the Secretariat hoped to overcome. For the CD-ROM version, “Folio Views” would continue to be used.

The Secretariat presented an intermediate version 2002/2 of CODICES, which contained a provisional version with précis from the current Bulletin in their state before translation. Such CD-ROMs could be sent to liaison officers only in between the regular versions and would allow quicker - though monolingual - information for the liaison officers.

Mr. Rykboer welcome this proposal as it would allow for having the necessary information available earlier in time.

The participants invited the Secretariat to regularly produce an intermediary version of the CODICES CD-ROM available only to the liaison officers and reflecting the state of the Bulletin in production before contributions are being sent to translation.

7.b Inclusion of full texts of decisions into the CODICES database

The liaison officers were invited to provide or to continue to provide full texts of decisions in electronic form (e-mail, diskette) and in the original language. Document CDL-JU (2003) 12 showed updated statistics on available full texts in CODICES sorted by language and by country. The Secretariat was preparing a letter to liaison officers pointing out the decisions where précis were available but the full texts missing.

Ms Herdt, suggested including the African Charter of Human Rights and the Council of Europe’s Framework Convention for the Protection of National Minorities into CODICES. The Secretariat agreed and suggested adding the American Convention on Human Rights.

7.c Indexing of constitutions in CODICES

The Secretariat informed the participants that the project of indexation of the constitutions article by article (see document CDL-JU (2003) 7), was practically completed. Indexing was done by trainees and the Secretariat checked their work on samples' basis; errors were possible and liaison officers were kindly asked to signal those as well as any other mistakes in CODICES to Mr Dürr.

At the same time, to remedy the existing imbalance between the number of English and French versions of the constitutions, liaison officers were asked to provide as far as possible the French versions of the constitutions.

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

The Secretariat informed the participants that Ms Mychelova was in charge of updating the constitutions, laws on the courts and descriptions as compared to the texts contained in CODICES. The liaison officers were invited to inform the Secretariat by e-mail as soon as possible of the due changes in these texts, even if the translations were yet not available: at least a note in CODICES could be placed, informing the users of the changes

In conclusion, the Chairman noted that CODICES was a unique comparative database and congratulated Secretariat on its efforts to improve the database.

8. Data input mask

8.a CD-Rom input mask V1.8 T14

The Secretariat informed the participants about installation problems linked to Version 1.6 T13 of the CD-ROM Input Mask. There was an error linked to selection of countries in version 1.7.

Mr Rohrhuber proposed to make the mask available for downloading on the restricted site. For the next contribution, due end of May, the liaison officers were to use the previous input mask or its Internet version. They were also kindly asked to send their contributions within the deadlines and to send large contributions in several parts to facilitate proofreading.

The Secretariat presented the version 1.8 T14 of the mask. This version would be made available to the liaison officers on the next version of the CODICES CD-ROM. It had a word count function and could save all précis or those for a specific Bulletin. These two features had been requested for at the last meeting.

A saved file could be printed and edited in plain text format with Microsoft Word or any other text processing software like Notepad. In these files, liaison officers were asked not to change any tokens and spacing or hyphenation in the Systematic Thesaurus.

8.b Internet input mask

The Internet version of the data input mask was available for the liaison officers on the restricted web site of the Venice Commission for liaison officers (<http://venice.coe.int/ju/codices>). The individual usernames and passwords, valid also for the access to the site, were attributed to all liaison officers and were sent in January this year. The old common username “liaison” had been deleted. Those liaison officers who for some reason had not received this information were invited to contact Ms Gorey (ana.gorey@coe.int).

The liaison officers were kindly asked to note on the reply form whether they had used the internet input mask.

The Joint Council invited the Secretariat to make version 1.8 T14 of the CODICES CD-ROM input mask available for download for liaison officers using Microsoft Access on the restricted website of the Commission (<http://venice.coe.int/ju>) without the runtime system.

9. Amendments to version 14 of the Systematic Thesaurus

The participants approved the proposals by the Working Group on the Systematic Thesaurus for version 15 of the Systematic Thesaurus (CDL-JU (2003) 13 prov. – document, produced after the meeting of the Working Group on 8 May on the basis of proposals in document CDL-JU (2003) 10).

The Working Group had also made a number of suggestions of a general nature. First of all, the Systematic Thesaurus was not to be amended too radically; much could be remedied by cross-references. Secondly, when there was a proposal to introduce a keyword to the Thesaurus, the relevant case law had to be enclosed to demonstrate the necessity for such a change. It was also important to keep in mind that the Systematic Thesaurus was based on keywords common to all participating courts, meant to describe legal notions and not to interpret them.

The Secretariat informed the participants of the revised dictionaries of keywords of the Alphabetical Index including cross-references (CDL-JU (2003) 14 and 15). Cross-references contained in the dictionaries needed further improvement. This task was very time consuming, though.

Mr Mavcic informed the participants that Slovenian Constitutional Court used a translation of the Systematic Thesaurus for its internal indexing. The Secretariat pointed out that the approach for indexing a national database containing all decisions and for the Bulletin / CODICES where only selection of decisions was available would probably be different because in a national database descriptive indexing would make sense (e.g. origin of request) whereas in CODICES only issues dealt with by the Court in substance should be indexed.

The Joint Council adopted version 15 of the Systematic Thesaurus as proposed by the Working Group and decided that it should apply as from issue 2003/2 of the Bulletin onwards.

10. Library of the Centre on Constitutional Justice

The participants received the list of documents available at the library of the Centre on Constitutional Justice (CDL-JU (2003) 8). This list had been updated since the publication of the document and the updated version was available on the public and restricted web sites of the Venice Commission (<http://venice.coe.int> and <http://venice.coe.int/ju>). Currently a trainee was adding further articles from the publications – both monographs and periodicals - listed under “general”.

Liaison officers from courts for which the Library didn't not yet contain the digest or other publications by the courts (including in original language) were kindly invited to assist the Secretariat in obtaining these resources, one copy of each publication only. The contact person for these issues is Ms Mychelova.

11. Other business

Mr Brau inquired into the statistics regarding use of the website as well as about the promotion of CODICES and the Bulletin. The Secretariat informed participants that statistics existed although the figures didn't allow for a sensible analysis. The introduction of LivePublish might also help in this respect.

As for the publicity of CODICES and the Bulletin, the Secretariat informed that participants that following the sending of about 7000 leaflets in 1998 by the Secretariat itself this task was mainly left to Council of Europe Publications commercialising these publications. Together with CoE Publishing, Mr. Dürr would present the Bulletin and CODICES at the Congress of the American Association of Law Libraries in Seattle in July. The Secretariat would try to post information on the publications in specialised Internet Forums. Further suggestions to reinforce the publicity were most welcome.

12. Date and place of the next meeting

<p>The next meeting of the Joint Council on Constitutional Justice would take place mid-March 2004 in Venice. The exact dates would be communicated at a later stage.</p>
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Members of the Sub-Commission on Constitutional Justice

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Mr Panayiotis KALLIS, Judge, Supreme Court (also liaison officer), NICOSIA

HUNGARY / HONGRIE

Mr László SÓLYOM, Co-President of the Joint Council, President of the Sub-Commission on Constitutional Justice, Former President, Constitutional Court, **BUDAPEST**

ICELAND / ISLANDE

Mr Hjörtur TORFASON, Former Judge of the Supreme Court (also liaison officer), REIJKLAVIK

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Mrs Halina PLAK, Head of the Library and Documentation Centre, Constitutional Tribunal, WARSZAWA

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