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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**Report of the 13th Meeting of the Sub-Commission
on Constitutional Justice with
the liaison officers from Constitutional Courts
and other equivalent bodies**

(Brussels, 31 October 1997)

The Sub-Commission on Constitutional Justice held its 13th meeting in Venice on 16 October 1997, with Mr Matthew Russell in the Chair. A list of participants can be found in Appendix I.

The 11th and 12th meetings of the Sub-Commission took place in Venice on 19 June and 16 October 1997 without the liaison officers.

1. Adoption of the Agenda

The participants adopted the agenda set out in Appendix II.

<p>The participants expressed their gratitude to the Belgian Court of Arbitration for the generous invitation to hold the meeting in Brussels.</p>

2. Publication of the Bulletin and Special Bulletins on "Basic Texts"

2.a Publication schedule

Under this heading, the Secretariat also presented a model letter addressed to new liaison officers summarising the main tasks of a liaison officer (CDL-JU (97) 41). Therefore, it was deemed useful to also provide this text to liaison officers already appointed. The model letter

which contains the usual publication schedule is to be adapted to each particular case of nomination of a liaison officer.

Participants urged the Secretariat to have the model letter systematically signed by the Secretary of the Commission.

The liaison officers welcomed the model letter and adopted the following publication schedule:

- **Period from 1 January to 30 April 1998**
Last date for contributions : 31 May 1998
Publication date : September 1998
- **Period from 1 May to 31 August 1998**
Last date for contributions : 30 September 1998
Publication date : January 1999
- **Period from 1 September to 31 December 1998**
Last date for contributions : 31 January 1999
Publication date : May 1999

2.b Publicity campaign

The Secretariat informed the participants about the steps that had been taken following the decision of the 10th meeting (Venice, 5 March 1997) of conducting a publicity campaign in order to make the Bulletin and the CODICES database more widely known.

The Secretariat had sent to liaison officers an existing list of legal journals which should be addressed. The liaison officers had been asked to complete this list. The Secretariat presented a model for the letter to be sent to the journals (CDL-JU (97) 42) asking them to publish a short text on the Bulletin and CODICES. A proposal for such a text will be annexed to the model letter and is also contained in document CDL-JU (97) 42. The participants requested the Secretariat to include in this text specific information about the price of the subscription to the Bulletin and CODICES.

Furthermore a first version of a leaflet on the Bulletin and CODICES had been prepared by the Graphics Studio of the Council of Europe. An improved version of this leaflet (3 pages, A4 format with a detachable order form) is to be sent to addressees of special mailing lists used at the Council of Europe (Universities, legal institutions). Budget permitting, the acquisition of mailing lists of commercial providers could be envisaged.

The participants welcomed the steps taken in respect of the publicity campaign and requested the Secretariat to pursue its efforts.

3. Special Bulletin on "Leading Cases"

3.a Presentation of the first issue on the European Court of Human Rights

The Secretariat presented a preliminary version of the Special Bulletin on "Leading Cases" of the European Court of Human Rights (CDL-JU (97) 47 prov.) which already contains about half the decisions to be included in the final version (91 cases in total). This document is to be completed with the missing précis, the Systematic Thesaurus and an Alphabetical Index. An alphabetical list of cases is to give a short indication of the contents of the decision.

The participants welcomed the publication of the Special Bulletin on Leading Cases concerning the European Court of Human Rights judging it very useful.

3.b Selection of Courts for following issues

The participants discussed whether it would be useful to continue the publication of Special Bulletins on "Leading Cases" court by court or whether it would be preferable to publish transnational issues each focusing on a specific subject (equality, freedom of expression etc.). The main argument in support of the latter approach was that the Bulletin in general had a transnational character and that it should not be sub-divided into national issues. Furthermore, the workload on the liaison officers for producing the Bulletins would be spread over time.

On one hand, it was argued that it was most important to feed the CODICES database with older decisions in order to have a more complete selection of cases available. Though the workload for each liaison officer for producing an issue on her/his own court would be enormous, it is only a single task. Thematic Bulletins would, on the other hand, create a constant workload for the liaison officer which could not be sustained.

As a first step, the participants decided to publish two Special Bulletins on the European Courts (European Court of Human Rights and, subsequently, Court of Justice of the European Communities).

Within a timeframe of one to two years (to be chosen by the liaison officer) each liaison officer will report in the form of précis (adding full texts on paper and wherever possible on diskette/e-mail) the most important case-law of her/his Court prior to its participation in the Bulletin. The selection of cases will of necessity be much more restrictive than the one for the regular Bulletin. This would result in a maximum of not more than 100 précis for the longest existing Courts.

Once the CODICES database has been fed with these précis, the participants will decide

on subjects for Special Bulletins on specific themes. These thematic Special Bulletins will then be produced directly from the database by the Secretariat. The liaison officers will receive the draft publication for comments and will have the possibility to amend these texts or to provide further précis in the light of this publication.

4. Modification of version 9 of the Systematic Thesaurus

The participants adopted without further discussion version 10 of the Systematic Thesaurus as it had been elaborated by the Working Group on the Thesaurus on 30 October 1997 (list of participants in Appendix III) (CDL-JU (97) 57 prov - showing the differences to version 9 and the final version CDL-JU (97) 57).

The participants decided to apply version 10 as from Bulletin 1997/3. The Secretariat was charged to reindex the old précis in the CODICES database.

5. Publication of CODICES

5.a Presentation of version 2.1 1997/1

The Secretariat presented the latest version of the CODICES database, version 2.1 1997/1 (user guide (CDL-JU (97) 52). New features of this version are in particular:

- Inclusion of about 20 Constitutional texts in full length rather than extracts (some Constitutions in more than one language)
- Separation of Constitutions and Laws on the Courts in separate 'books' of CODICES
- Use of hierarchical levels in the 'books' Constitutions and Laws making it easier to extract/print chapters or articles and providing quick access via the 'Contents' window
- Links from references to Articles in the précis to existing full texts of constitutions
- Improved query mask for full texts

The participants welcomed the progress of the database CODICES.

Note: Due to a technical problem in writing the first CD-ROM, the French version of CODICES V2.1 1997/1 is corrupt. The English version, can, however, be used without problems. Participants who need the French version can either find it on the Internet [<http://www.coe.fr/codices>], or ask the Secretariat for an IOMEGA ZIP diskette containing the French version. A new CD-ROM containing Bulletin 1997/2 will be available in January or February 1998.

5.b Updating of court descriptions (Special Bulletin 1994)

The Secretariat informed the participants that the Special Bulletin 1994 containing descriptions of participating courts had been included in the CODICES database together with the same type of descriptions which had been published in later regular issues of the Bulletin. Some of these descriptions might already be outdated. Liaison officers might wish to have an updated version included in CODICES. Once a large number of such revised versions are available, a new

edition of the Special Bulletin 1994 could be envisaged.

The participants invited liaison officers who deem it necessary to send updated versions of the description of their Court to the Secretariat in view of replacing outdated texts in the CODICES database.

5.c Inclusion of missing full texts

The Secretariat informed the participants that it would send out within the forthcoming weeks letters to liaison officers listing the full texts it has received on electronic storage media (diskettes, e-mail) and which have been included. The letter will ask the liaison officers to provide the full text for these decisions on electronic storage media as well.

The participants took note of the intention to send such a letter hoping that it would lead to an influx of full texts of decisions in view of their inclusion into CODICES.

5.d Inclusion of missing Constitutions and updating

The Secretariat presented the document CDL-JU (97) 43 listing constitutions available at the Secretariat on paper and electronic storage media (diskette, e-mail, via the Internet/WWW). (Note: some of the paper versions are to be scanned by the Secretariat.)

In accordance with the decision by the 10th meeting (Venice, 5 March 1997) the constitutions are to be included into the CODICES database. Once this is achieved, it will be necessary to include any amendments to the constitutions in order to always have the newest version of these texts available in CODICES (old versions will be kept in the database as well in order to maintain references in older précis to these old texts).

The participants decided to invite the liaison officers to provide the Secretariat with the text of future constitutional amendments in the original language and wherever possible with translations to English or French.

5.e Updating of Laws on Constitutional Courts

The series of Special Bulletins on Basic Texts contains extracts of constitutions and the laws on the Constitutional Court. The Special Bulletins published so far have been included in CODICES as well. Therefore, here too, the problem of maintaining an updated version of these texts in CODICES exists.

The Secretariat expressed its understanding of the considerable workload a continuous flow of information regarding changes in the law(s) on the courts would create in addition to providing information on constitutional amendments (see point 5.d above).

The participants decided to invite the liaison officers to consider providing the Secretariat with the text of future amendments to the law(s) on the courts as published

in the Special Bulletins on Basic Texts in the original language and wherever possible with translations to English or French.

5.f Internet access

The Secretariat informed the participants that the CODICES database is available on the Internet at the address <http://www.coe.fr/codices>. For the time being CODICES would be hosted by a general Council of Europe server. Therefore, the system of passwords to allow access to subscribers had not yet been put in place. A special server for the Venice Commission was to be assigned to the Venice Commission but the purchase of this server was retarded by the Budget Committee of the Council. Once this server has been installed, regular operation of the internet access can begin.

The participants welcomed the long-awaited availability of CODICES on the Internet at the address <http://www.coe.fr/codices>.

6. Co-operation with the Conference of European Constitutional Courts

The Secretariat informed the participants that the President of the Sub-Commission, Mr Russell and the Secretary of the Commission had participated in the Preparatory meeting for the XIth European Conference of Constitutional Courts in Warsaw on 7-8 October 1997.

During this meeting, a proposal by the Hungarian Presidency of the Xth Conference in Budapest to use the Secretariat of the Venice Commission as a permanent Secretariat of the Conference had been discussed. The Preparatory Conference had decided to entrust a Working Commission to study this issue.

7. Co-operation with the "francophonie"

Ms Remy-Granger informed the participants about the founding of the "Conference of Constitutional Courts using the French language" in Paris on 10 and 11 April 1997. Ms Remy-Granger had been appointed Secretary of this Conference which had dealt with the topic "equality". For this Conference a CD-ROM containing decisions of the participating courts on equality had been produced together with an Internet access (<http://francophonie.org/bdj>). The next meeting is to take place in Gabon in 1998.

The Conference has been inspired by the co-operation between constitutional courts in the Sub-Commission. The following countries participate in both the works of the Sub-Commission and the Conference of Constitutional Courts using the French Language: Belgium, Canada, Bulgaria, France, Luxembourg, Moldova, Roumania, Switzerland.

The Conference intended to publish an annual Bulletin with summaries of important decisions of participating courts. For this reason, the Conference would be grateful to be granted permission by the participants to use the Systematic Thesaurus which has been elaborated for the

The participants decided to study the proposal of granting the Conference of Constitutional Courts using the French Language, permission to use the Systematic Thesaurus and to discuss this issue at the next meeting.

8. Co-operation with Villanova and Chicago-Kent Law Schools, USA

Prof. Perritt, Prof. Warner and Ms Major from the Chicago-Kent Law School presented their project of establishing and linking Web-Sites of Constitutional Courts. The central point of this proposal consisted in "unbundling" the current system whereby there is an information flow from Constitutional Courts to the Secretariat of the Venice Commission by creating direct links between web-sites of the Courts. Each Court would publish its decisions in full text in the original language on the Web and any user of the Internet world-wide would be invited to produce translations of these decisions into English. These translations would then be published on the Web-Site of the respective Court.

The Secretariat pointed out that this "unbundling" would lead to major problems for the Bulletin/CODICES because of the constant flow of précis and full texts allowed for the creation of these publications. The CODICES CD-ROM, especially, depended on the availability of full texts in the original language or on an official translation into another language for their inclusion.

Another proposal by the American guests was to create an e-mail discussion forum for the Constitutional Courts, where current issues could be discussed between the Courts and the public (Universities).

The Secretariat welcomed this idea and informed the participants that it had already established such a forum on the Server of the Council of Europe.¹ For the time being the existence of this forum would be communicated only to the liaison officers in order to see how discussions develop. Later on, this forum could be made public and another one could be set up but only for the benefits of the Constitutional Courts in order to allow for a more open discussion.

The participants decided to study the advantages of the 'unbundling' of information flow between Constitutional Courts and welcomed the establishment of a discussion forum.

¹ In order to participate in the Venice forum simply send an e-mail to "venice-request@www.coe.fr" containing only the English word "subscribe" in the text part. From then on, you will receive all messages sent to the forum by any participant via e-mail.

In order to send an e-mail to the forum you have to send your message to "venice@www.coe.fr". This message will then be automatically sent out to all other participants.

To quit the forum and to no longer participate in it, you must send an e-mail to "venice-request@www.coe.fr" with the word "unsubscribe".

9. Series of seminars with recently established Constitutional Courts

The Secretariat informed the participants about the series of seminars which are being organised with Constitutional Courts. Since the 10th meeting of the Sub-Commission with liaison officers, a seminar had been held in co-operation with the Constitutional Court of Karelia in Petrozavodsk (Russia) on "the Relations between the Constitutional Court of the Russian Federation and Constitutional Courts of Subjects of the Russian Federation".

In Yerevan, a seminar on "Constitutional Control and the Protection of Human Rights" had taken place on 15-17 October 1997. Upon instigation by the Armenian Court, the participants of this seminar expressed their appreciation of the role of the Venice Commission in the organisation of such seminars.

On the sidelines of this seminar, the Constitutional Courts of Armenia, Belarus, Kazakstan (Constitutional Council), Kyrgyztan, Russia and Tadjikistan had founded a Conference of Constitutional Courts and invited organs of constitutional control from other new democracies to join this Conference. Upon request by participants, the Secretariat informed the participants that even though the seminar served as the occasion for this initiative, the Venice Commission is not providing any secretarial services for this Conference.

Other seminars planned until the end of the year 1997 were to take place in Tbilissi (The Execution of Decisions of Constitutional Courts) and in Baku (Essential Elements of a Constitutional Court). Some of these seminars are partially co-organised with USAID (Yerevan, Tbilissi), UNDP (Tbilissi) and COLPI (Yerevan, Tbilissi, Baku).

For 1998, seminars are envisaged in Kiev, Bishkek and Yerevan.

10. Study on the Composition of Constitutional Courts

The Secretariat informed the participants that the Plenary Commission had adopted the report on the Composition of Constitutional Courts. It was recalled that the questionnaire had been addressed to the members of the Commission who had had the possibility to consult with the liaison officer. Comments by the liaison officers had been included in the report as well.

<p>Participants who so wished were invited to provide any final factual information required before the imminent publication of the report in the series Science and Technique of Democracy.</p>

11. Date and place of next meeting

The participants decided to hold their next meeting (Sub-Commission with liaison officers) on the sidelines of the next Plenary meeting in Venice on 10 June 1998 unless a Court would invite the participants to hold the meeting at its seat.

Note: Following the meeting, the Slovenian Constitutional Court has kindly invited the

- 9 -

participants to hold the next meeting in **Ljubljana on 15 June 1998.**

APPENDIX I

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

SUB-COMMISSION ON CONSTITUTIONAL JUSTICE/ SOUS-COMMISSION JUSTICE CONSTITUTIONNELLE

IRELAND/IRLANDE

Mr Matthew RUSSELL, Former Senior Legal Assistant to the Attorney General of Ireland
(Chairman/Président)

BULGARIA/BULGARIE

Mme Anna MILENKOVA, Membre de l'Assemblée nationale (Apologised/Excusée)
M. Alexandre DJEROV, Membre du Parlement (Apologised/Excusé)

CYPRUS/CHYPRE

Mr Michael TRIANTAFYLIDIS, Chairman of the Council of the University of Cyprus,
Former President of the Supreme Court and Former Attorney General of the Republic
(Apologised/Excusé)

DENMARK/DANEMARK

Mr Asbjørn JENSEN, Judge at the Supreme Court (Apologised/Excusé)

FINLAND/FINLANDE

Mr Antti SUVIRANTA, Former President of the Supreme Administrative Court

ESTONIA/ESTONIE

Mr Heiki LOOT, Head of the Public Law Division, Ministry of Justice (Apologised/Excusé)

FRANCE

M. Jacques ROBERT, Membre du Conseil constitutionnel (Apologised/Excusé)

GERMANY/ALLEMAGNE

Mr Helmut STEINBERGER, Professor at the University of Heidelberg (Apologised/Excusé)

HUNGARY/HONGRIE

M. János ZLINSZKY, Juge à la Cour constitutionnelle, BUDAPEST (Apologised/Excusé)

ITALY/ITALIE

Mr Antonio LA PERGOLA, President of the European Commission for Democracy through
Law, Advocate General, Court of Justice of the European Communities (Apologised/Excusé)

LATVIA/LETONIE

Mr Aivars ENDZI_Š, Acting Chairman of the Constitutional Court, RIGA

LIECHTENSTEIN

M. Gérard BATLINER, Président du Conseil Scientifique du Liechtenstein Institut
(Apologised/Excusé)

LITHUANIA/LITUANIE

Mr Kestutis LAPINSKAS, Professor, Judge of the Constitutional Court, (also Liaison Officer)
(Apologised/Excusé)

LUXEMBOURG

M. Gérard REUTER, Président de la Chambre des Comptes (Apologised/Excusé)

MALTA/MALTE

Mr Joseph SAID PULLICINO, Chief Justice, Kappara (Apologised/Excusé)

POLAND/POLOGNE

Mrs Hanna SUCHOCKA, Member of Parliament (Apologised/Excusée)

PORTUGAL

M. Armando MARQUES GUEDES, Ancien Président du Tribunal constitutionnel
(Apologised/Excusé)

Mme Maria de Jesus SERRA LOPES, Ancienne Batonnière de l'ordre des Avocats
(Apologised/Excusée)

ROMANIA/ROUMANIE

Mr Petru GAVRILESCU, Conseiller, Ambassade de Roumanie, BRUXELLES

SLOVENIA/SLOVENIE

Mr Peter JAMBREK, Judge at the Constitutional Court, LJUBLJANA (Apologised/Excusé)

SWEDEN/SUEDE

Mr Rune LAVIN, Parliamentary Ombudsman, STOCKHOLM (Apologised/Excusé)

TURKEY/TURQUIE

Mr Ergun ÖZBUDUN, Professor at the University of Ankara, Vice-President of the Turkish
Foundation for Democracy (Apologised/Excusé)

LIAISON OFFICERS/AGENTS DE LIAISON

ALBANIA/ALBANIE

Mr Kristofor PEĆI, Member of the Constitutional Court, TIRANA

ARMENIA/ARMENIE

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M. Rolando E. GIALDINO, Secretario, Secretaria de investigacion de derecho comparado, Corte Suprema de Justicia de la Nacion, BUENOS AIRES

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M. Rick RYCKEBOER, Référéndaire à la Cour d'arbitrage, BRUXELLES

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DENMARK/DANEMARK

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M. Stéphane COTTIN, Service de documentation, Conseil constitutionnel, PARIS

GEORGIA/GEORGIE

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TBILISSI

GERMANY/ALLEMAGNE

Ms Renate JAEGER, Judge at the Constitutional Court, KARLSRUHE

Mr Wolfgang ROHRHUBER, Regierungsdirektor, Bundesverfassungsgericht, KARLSRUHE

GREECE/GRECE

Mme Olga PAPADOPOULOU, Auditeur, Conseil d'Etat hellénique, ATHENES

Mr Konstantinos MENOUDAKOS, Supreme Court, Council of State, ATHENS
(Apologised/Excusé)

HUNGARY/HONGRIE

Mr Peter PACZOLAY, Secretary General, Constitutional Court, BUDAPEST

IRELAND/IRLANDE

Mr James COMERFORD, Registrar, Supreme Court, DUBLIN (Apologised/Excusé)

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M. Giovanni CATTARINO, Secrétariat Général, Cour constitutionnelle, ROME
(Apologised/Excusé)

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LUXEMBOURG

M. Roger EVERLING, Cour supérieure de Justice, LUXEMBOURG (Apologised/Excusé)

MALTA/MALTE

Mr Anthony ELLUL, Constitutional Court, MALTA (Apologised/Excusé)

MOLDOVA

M. Nicolae OSMOCHESCU, Juge à la Cour constitutionnelle, CHI_INAU (Apologised/Excusé)

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Mrs Anne M. SAMUELSON, The Norwegian Supreme Court, OSLO

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Mr Gheorghe IANCU, Head Secretary at the Constitutional Court, BUCHAREST

RUSSIA/RUSSIE

M. Eugène G. PYRICKOV, Head of the International Relations Department, Constitutional Court, MOSCOW (Apologised/Excusé)

SLOVAKIA/SLOVAQUIE

Mr Ján DRGONEC, Judge at the Constitutional Court, KOŠICE

SLOVENIA/SLOVENIE

Mr Arne MAV_I_, Secretary General, Constitutional Court, LJUBLJANA

SOUTH AFRICA/AFRIQUE DU SUD

Ms Kate O'REGAN, Judge at the Constitutional Court of South Africa (Apologised/Excusée)

Ms Nolene MORRIS, Judge at the Constitutional Court of South Africa (Apologised/Excusée)

Ms Sheryl LUTHULI, Constitutional Court of South Africa (Apologised/Excusée)

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Mr Johan MUNCK, Supreme Court Judge, STOCKHOLM (Apologised/Excusé)

Mr Leif LINDSTAM, Supreme Administrative Court Judge, STOCKHOLM (Apologised/Excusé)

SWITZERLAND/SUISSE

M. Paul TSCHÜMPERLIN, Secrétaire Général, Tribunal fédéral, LAUSANNE

Mme Juliane ALBERINI-BOILLAT, Chef du service de documentation, Tribunal fédéral, LAUSANNE

**"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA/
L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE"**

Mrs Zorica PULEJKOVA, Constitutional Court, SKOPJE

TURKEY/TURQUIE

Mr Mehmet TURHAN, Reporter, Constitutional Court, Ankara (Apologised/Excusé)

UKRAINE

Mr Petro F. MARTYNENKO, Judge at the Constitutional Court, Ukraine (Apologised/Excusé)

UNITED STATES/ETATS-UNIS

Mr Francis LORSON, Chief Deputy Clerk, Office of the Clerk, Supreme Court of the United States, WASHINGTON (Apologised/Excusé)

Mr James C. DUFF, Administrative Assistant to the Chief Justice, Supreme Court of the United States, WASHINGTON (Apologised/Excusé)

SPECIAL GUESTS / INVITES D'HONNEUR

M. Stanislas ZALINSKI, Agence de coopération culturelle et technique, Délégation Générale à la Coopération, PARIS (Apologised/Excusé)

Mr Henry H. PERRITT, Vice President, Illinois Institute of Technology, Dean, Chicago-Kent College of Law, Professor of Law, CHICAGO, USA

Mr Richard WARNER, Associate Professor of Law, Chicago-Kent College of Law, CHICAGO, USA

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M. Tyrone CARBONE

Mme Christine MARCHAND-LONG

APPENDIX II

AGENDA

1. Adoption of the Agenda
2. Publication of the Bulletin and Special Bulletins on "Basic Texts"
 - a. Publication schedule
 - b. Publicity campaign
3. Special Bulletin on "Leading Cases"
 - a. Presentation of the first issue on the European Court of Human Rights
 - b. Selection of Courts for following issues
4. Modification of version 9 of the Systematic Thesaurus
(adoption of proposals by working group meeting of 30 October 1997)
5. Publication of CODICES
 - a. Presentation of version 2.1 1997/1
 - b. Updating of court descriptions (Special Bulletin 1994)
 - c. Inclusion of missing full texts
 - d. Inclusion of missing Constitutions and updating
 - e. Updating of Laws on Constitutional Courts
 - f. Internet access
6. Co-operation with the Conference of European Constitutional Courts
7. Co-operation with the "francophonie"
8. Co-operation with Villanova University, USA
9. Series of seminars with recently established Constitutional Courts
10. Study on the Composition of Constitutional Courts
11. Date and place of next meeting

APPENDIX III

WORKING GROUP ON THE SYSTEMATIC THESAURUS

(Brussels, 30 October 1997)

GROUPE DE TRAVAIL SUR LE THESAURUS SYSTEMATIQUE

(Bruxelles, 30 octobre 1997)

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

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CROATIA/CROATIE

Mrs Marija SALE_I_, Legal Adviser, Constitutional Court, ZAGREB

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