

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

ANNUAL REPORT OF ACTIVITIES 2005

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Statement by Mr Ugo Mifsud Bonnici, Vice-President of the Venice Commission, presenting the Annual Report for 2005 to the Committee of Ministers of the Council of Europe

Mr Chairman, Your Excellencies, Ladies and Gentlemen,

It is a great pleasure for me to be here for the first time, to present the Annual Report of the Venice Commission to your Committee. Our President, Mr La Pergola, is unfortunately prevented from being here today due to an important conflicting commitment. Indeed, the European Court of Justice has unfortunately scheduled the solemn farewell ceremony for Mr La Pergola for this very day. I will therefore have the privilege of presenting to you the annual overview of our activities. I have accepted this task with great pleasure since I am both well aware of the benevolent attitude of your Committee towards our Commission and sincerely convinced that our achievements during this last year merit your continued support.

I.

Mr Chairman,

I am aware that you are preparing a forthcoming ministerial session which will largely deal **with the implementation of the texts adopted at the Warsaw Summit**. The Summit asked the Council of Europe to focus on its core values, democracy, the rule of law and human rights, and to do so in close co-operation with other international organisations, in particular the European Union and OSCE. Co-operation with the European Union seems particularly topical at the moment, a few weeks after Prime Minister **Juncker** presented his report on this topic to the Parliamentary Assembly of the Council of Europe and at a time when you are discussing a

Memorandum of Understanding between the Council of Europe and the European Union. I will therefore start with a few words on our co-operation with the European Union and other international organisations and then address some major activities to further the core values of our Organisation.

Our **co-operation with the EU** can be fairly described as excellent. This is not only our opinion but also the opinion of the European Union. Commission President Barroso, speaking before the Parliamentary Assembly on 11 April, summed up the EU assessment as follows:

L'actualité montre tous les jours l'importance de l'appui du Conseil de l'Europe et des institutions spécialisées. Je pourrais en donner nombre d'exemples mais citons la Commission de Venise qui, grâce à son inestimable savoir-faire en matière constitutionnelle, est appelée à jouer un grand rôle dans la résolution des situations difficiles que nous allons devoir affronter en 2006. Ce sera le cas au Kosovo, au Monténégro, vraisemblablement en Ossétie du sud, en Abkhazie, en Transnistrie. Certains pays font également appel à une expertise unique en son genre en matière constitutionnelle, par exemple le Kazakhstan ou le Kirghizistan.

The European Commission has indeed encouraged us to be more active in Central Asia and funded our constitutional assistance to Kyrgyzstan, one of our member States, last year. With respect to the various conflicts mentioned by President Barroso, we are in contact with the competent services of the Council and the Commission in order to ensure that our expert contribution is in line with the political orientations of the International Community. While our role is a **technical** one, the role of the EU is a **political** one. But both roles have to tie in and **be co-ordinated**.

The best recent example of such co-ordination is our Opinion on the standards applicable to the **independence referendum in Montenegro**. The Constitutional Charter of the State Union of Serbia and Montenegro, adopted in February 2003 with a strong involvement by the EU and assistance from the Venice Commission, provides for the possibility of such a referendum if international standards are respected. We were asked by the Monitoring Committee of the Parliamentary Assembly to enlighten them as to the contents of the applicable international standards. Our Opinion was accepted by both sides as authoritative and provided the basis for the mediation efforts of the EU Special Envoy, Ambassador Lajčák. The international standards we identified with respect to the majority required do not provide precise indications on the percentage required. We noted that it corresponds to international practice to require a clear majority on such issues and Ambassador Lajčák succeeded in obtaining an agreement by both sides that 55% of the votes cast would be regarded as the required clear majority for the purposes of this referendum. Moreover, as regards the more technical aspects of the referendum, we assisted him, in co-operation with OSCE, in drafting proposals for the special law applicable to the referendum. As a result of these efforts and this co-operation we can now hope to have a result of the referendum which will be accepted as legitimate by everybody.

This was certainly a very good example of co-operation between international organisations. For us, it was a confirmation of the important role we can play in supporting both the Stabilisation and Association Process and the neighbourhood policy of the European Union. Basically, as regards co-operation with the EU, we have only one unfulfilled wish, and that is that the **European Community join our Enlarged Agreement as a full member**. I am pleased to note that this wish was now also expressed by Prime Minister Juncker in his report and in his speech before the Parliamentary Assembly. We hope that his support will permit to overcome the bureaucratic obstacles which have hitherto blocked this accession.

Apart from the European Union, **OSCE**, and in particular **ODIHR**, remains our main partner. We have developed, over the years, a close co-operation in electoral matters and have, more recently, also worked together on other issues. Our constitutional assistance to Kyrgyzstan last year is an example of such a close co-operation between several international organisations: the EU provided financial support, the local OSCE Centre logistical support and we, as well as ODIHR, provided co-ordinated comments on the planned constitutional reform.

II.

Mr Chairman,

The Constitution of a country reflects its fundamental values. In a Council of Europe member State it has to give concrete expression to the fundamental values of our Organisation: democracy, human rights and the rule of law. I am reminded of the comment by the Italian political philosopher **Norberto Bobbio: Democracy is also a matter of good rules and procedures**. The substance of good democratic government cannot be arrived at without sound constitutional law and good practice. When examining a major constitutional reform in a country, we therefore see as our main task to ensure that the text does not only formally reflect these values but that it also is likely to contribute to their realisation in practice and that the text enables effective government in the interest of the citizens.

With respect to last year and the beginning of this year, two examples stand out in this respect, the constitutional reforms in Armenia and in Bosnia and Herzegovina.

As regards **Armenia**, it does not seem necessary for me to dwell on any details, since your Committee has followed developments there closely through the Ago Group. You have also given your explicit support to this reform, which was crucial to enable the country to meet its commitments to the Council of Europe. We are, of course, satisfied that our input is reflected, to a large degree, in the new text of the Constitution and that a long-standing co-operation has finally borne its fruit. Indeed, we started working on this reform together with the Armenian authorities in 2000. This shows how important it is for us to remain constantly engaged in such reform processes and to be persistent, even though we cannot expect for such an important reform to take place every year.

Another case of such long-term involvement of our Commission is **Bosnia and Herzegovina**. We have been dealing with the interpretation of the Constitution appended to the Dayton Agreement from the very start and have, over the years, contributed to the strengthening of the State level and the better functioning of the institutions, to the extent this was possible, under the existing constitutional text. We have, however, also been confronted with the fact that this Constitution was drafted and adopted to stop the violence and not to ensure the best possible functioning of a democratic system. In March 2005 we provided, at the request of the Parliamentary Assembly, a comprehensive Opinion on the constitutional situation, outlining concrete and, in our view, realistic recommendations for reform.

On the basis of our recommendations a group of representatives of the main political parties prepared, with the support and encouragement from the United States, draft constitutional amendments. These draft amendments had a number of flaws, which we pointed out in a recent Opinion, but they would have constituted an important step in the right direction. We are therefore disappointed that at the vote in the House of Representatives last week the required two-thirds majority was not reached, despite many appeals from the International Community in favour of their adoption. The amendments were opposed by some not because they went too far but because they did not go far enough, with the result that Bosnia and Herzegovina will have to continue to live with its flawed Constitution for some time. We have to accept of course the democratic decision of the parliament but we are convinced that the last thing the country can afford is stagnation. We therefore hope that the reform process will resume with renewed vigour after the elections and we will do our best to assist in this case.

As a final example of our long-term involvement in constitutional reform, I would like to mention **Ukraine**, where we were involved in the drafting of the Constitution between 1993 and 1996. Thereafter we often commented on proposals for constitutional reform and last year, we provided an Opinion on the constitutional reform agreed as part of the December 2004 compromise package. This will certainly not be the end of our involvement but we are ready to contribute as soon as the Ukrainian authorities decide to resume the reform process.

III.

Mr Chairman,

The examples of Bosnia and Herzegovina and, on a different level, of the referendum in Montenegro show that our legal expertise has often proved useful in conflict situations.

I would also like to refer, in this respect, to our co-operation with the Georgian authorities on the drafting of a law on the restitution of property to the victims of the **Georgian-Ossetian** conflict. Adoption of this law will not be a panacea for solving the conflict but be an important confidence-building measure. It is encouraging for us that the *de facto* authorities of South Ossetia have invited us to discuss with them the text of this law and we expect to go to Tskhinvali later this month.

As regards other conflicts, we are providing, upon request, ad hoc advice to the Office of UN Special Envoy Ahtisaari on different legal aspects of a **Kosovo** settlement. Once the status talks reach a more decisive stage, we may be involved more closely, if Mr **Ahtisaari** so decides.

IV.

Mr Chairman, distinguished members of the Committee,

The written version of our Annual Report contains many details on a large number of activities. Let me just give you some pointers on our contribution to the implementation of the core values of the Organisation outside the field of constitutional reform.

As regards democracy, there can be no democracy without free and fair elections. We are therefore examining a large number of electoral laws each year, in co-operation with the Parliamentary Assembly, the Congress, ODHR and others. The opinions adopted in this field are so numerous that our partners from the political organs tend to complain about an excessive number of documents produced for the Council for Democratic Elections. In addition, we are intensifying our co-operation with the election administration bodies in the members States. As an example, I would like to refer to the Conference on Development and codification of international standards in the field of elections, which we will organise together with the Central Election Commission of the Russian Federation later this month in Moscow, within the framework of the forthcoming Russian Presidency of your Committee.

In February, within the framework of the Romanian Presidency, a seminar was held in Bucharest on the preconditions for democratic elections, such as respect for fundamental rights as well as access to media and the financing of electoral campaigns.

But democracy is not only about elections. We are also preparing a study about referendums and we will be pleased to work with the Forum on the Future of Democracy on this issue. In any case, democracy cannot be looked at in isolation, but is the basis for the protection of human rights. This is very obvious for some of our recent activities. I would like to mention, in this respect, our Opinion on the freedom of the media in Italy and also our recent Opinion, at the request of the Parliamentary Assembly, on the issue of the CIA flights. In this area the Secretary General has launched an important enquiry under Article 52 of the European Convention of Human Rights which has brought already first results and is going on. We hope that our Opinion will also be of value to the Secretary General when he will draw the conclusions from this enquiry. The Opinion deals with human rights and international law but hovering in the

background is the vast and delicate issue of democratic control of security services. I understand that our Commission may receive a request for an in-depth study on this issue from your Committee.

The *Leitmotiv* of our efforts is democracy through law and therefore I will now turn to activities related more specifically to the rule of law. I would first of all like to mention our Opinions on the chapters on the judiciary in the draft constitution of Serbia and in the constitution of the former Yugoslav Republic of Macedonia. These opinions are important, first of all because of the crucial role of an independent judiciary for democracy, the rule of law and human rights, and second of all because they also have to be seen in the context of the efforts of these countries to fully participate in European integration. We are all aware that in many countries problems within the judicial system are a main obstacle to their accession to the European Union. It is therefore not surprising that the European Commission very much supported our Opinion in the case of the former Yugoslav Republic of Macedonia. I am also pleased to note that the constitutional amendments were adopted by the parliament, taking full account of our Opinion.

Our closest co-operation, however does not concern the ordinary courts but the constitutional courts. Our co-operation with these courts throughout Europe has continued fully since we are very much aware that the best constitution is of limited value if there is not a strong and independent court ensuring its implementation. The courts are very interested in this co-operation since the challenges they face are often quite similar. This holds true not only within Europe, but also internationally, with non-European courts often needing more support to maintain their independence. We are therefore working with non-European courts, especially - thanks to financial contributions from Ireland and Italy - with the Southern African Judges Commission and with the association of francophone constitutional courts. Generally, our approach outside Europe is to work with associations of courts more than with individual courts since we would like to maintain our focus on Europe and do not have the resources for extensive co-operation with other continents.

However, it is useful to have focal points for such co-operation and this role is played in Africa by the South African court and in Latin America by the court of Chile. As from last year we have developed somewhat closer contacts with courts in Asia and the Constitutional Court of Korea could act as such a focal point in that region. You have on your agenda the request from the Republic of Korea to join the Venice Commission as a full member and this would certainly facilitate our contacts with constitutional courts in Asia. The Constitutional Court in Korea is very interested in working with us, as are other state bodies, such as the Ministry of Justice. The situation on the Korean peninsula certainly contributes to the strong interest of the country in our experiences in Central and Eastern Europe and our Commission therefore regards this request for accession very favourably. The decision is of course yours.

One advantage of this accession would be for us to have an additional contributor to our budget. We are aware of how difficult the budgetary situation is within the Council of Europe and we fully understand the need to meet the budgetary requirements of the European Court of Human Rights. Nevertheless, as explained above, we consider our activities as closely linked to the implementation of the core values of the Council of Europe and, looking at the results achieved last year and over the years, we think that the Commission is providing good value for the money invested in it. I am a relatively new member (2002) and feel I can comment with some detachment on the way the Commission is run. It has a first class secretariat, a wise and provident President, some outstanding members recruited from the judiciary and the universities, with an occasional ex-politician like Mrs Suchocka of Poland and myself. The quarterly meetings are conducted with extremely parsimonious use of the time available. The Italian Government provides a beautiful scenario within which, and generous hospitality, supplemented by the contributions of all member governments. We would therefore very much hope that you bear these results in mind when you decide on our budget for next year.

Mr Chairman,

This concludes my statement and I very much look forward to replying to the questions of the members of your Committee. Thank you very much for your attention.

I. WORKING FOR DEMOCRATIC STABILITY AN OVERVIEW OF VENICE COMMISSION ACTIVITIES IN 2005

1. THE VENICE COMMISSION AN INTRODUCTION^[1]

The European Commission for Democracy through Law, better known as the Venice Commission, is a Council of Europe consultative body of independent experts on constitutional matters. Established in 1990, it has since played a leading role in the adoption of constitutions that conform to the standards of Europe's constitutional heritage. The Commission meets four times a year in Venice for plenary sessions and works in three fields: constitutional assistance, electoral matters and constitutional justice.

- Constitutional assistance

The Venice Commission's primary task is to assist and advise individual countries in constitutional matters to provide constitutional first-aid upon request from individual states, the Council of Europe's organs or other international organisations.

The working method adopted by the Commission when providing constitutional assistance is to appoint a rapporteur group (primarily from among its members) which either provides assistance in the drafting of constitutional texts or prepares an opinion on whether a proposal for a legislative text meets European standards in a given field and on how to improve the texts on the basis of European experience. Before transmitting it to the authorities of the country in question, the draft opinion is submitted for consideration and adoption by the full Commission during a plenary session.

Although its opinions are generally reflected in the adopted legislation, the Commission does not set out to impose solutions, but adopts a non-directive approach based on dialogue. That is why the rapporteur group, whenever possible, visits the country concerned and meets with the different political actors involved in the issue to ensure an objective view of the situation as far as possible. A representative of the country concerned may be invited to address the Commission when the draft opinion is discussed in plenary.

- Constitutional justice

Another branch of the Commission's activities includes co-operation with the constitutional courts and equivalent bodies. Since its creation, the Venice Commission has been aware that it is not sufficient to assist states in the adoption of democratic constitutions but that these texts have to be implemented in society. Key players in this field are constitutional courts and equivalent bodies exercising constitutional jurisdiction. As early as 1991, the Commission started to collect and disseminate constitutional case-law and to organise seminars with constitutional courts. The Commission fosters mutual exchanges between the constitutional courts and supports courts seeking assistance in their relationship with other state powers. The activities of the centre are directed by the **Joint Council on Constitutional Justice**, which is composed of members of the Venice Commission and liaison officers appointed by courts from more than fifty countries, as well as the European Court of Human Rights and the Court of Justice of the European Communities.

- Electoral matters

Another field of activity of the Commission is electoral law where it strives to bring the electoral legislation of member states up to European standards. For any democratic society, free and fair elections are of paramount importance; therefore, the Venice Commission has defined the principles applicable to democratic elections in the Code of Good Practice in Electoral Matters and a number of other standard-setting texts. It also drafts opinions and recommendations on the electoral legislation of member countries and organises training seminars targeting all the actors involved in the electoral process. To a large extent these activities are carried out through the **Council for Democratic Elections**, a joint body set up in co-operation with the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe.

2. THE COMMISSION IN 2005

With respect to 2005 the following main activities should be highlighted:

- Constitutional assistance

Constitutional reform

Throughout the year and following up on its earlier activities the Commission remained involved in constitutional reform in Armenia. The draft new Constitution proposed by the authorities was substantially changed in accordance with recommendations from the Commission and the amended draft approved by referendum on 27 November. In March the Commission adopted a comprehensive opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative. On the basis of the Commission's critical assessment of the constitutional situation, a working group was established within the country to prepare the first stage of constitutional reform. This group will continue its activities in 2006.

The Commission also adopted opinions on the constitutional reform adopted in Ukraine in December 2004 and on a proposal for a comprehensive constitutional reform in Kyrgyzstan. Finally, the Commission adopted opinions on proposed constitutional reforms in the area of the judiciary in Georgia, the Former Yugoslav Republic of Macedonia and Serbia.

Territorial organisation and settlement of conflicts

At the request of President Saakashvili the Commission provided advice on how to further develop the Georgian plan for a settlement of the conflict in South Ossetia and remained in contact with the Georgian authorities on this issue throughout the year. The Commission also remained active on the issue of Transnistria. At the request of the Parliamentary Assembly the Commission adopted in December an opinion on the standards applicable to a referendum on independence in Montenegro.

Respect for human rights and the rule of law

The Commission adopted two opinions on different versions of the draft law on public meetings of Armenia, as well as opinions on the certification of police officers in Bosnia and Herzegovina, on the compatibility of two Italian laws with Council of Europe standards on the media and conflict of interest, on the draft statute of national minorities and the draft law on religious freedom of Romania, on the law on the public prosecutor of Russia and on the draft law on religious organisations of Serbia.

- Constitutional justice

Strengthening constitutional justice

The Joint Council on Constitutional Justice of the Commission continued to support, and work with, constitutional courts through the Bulletin on Constitutional Case-Law and the CODICES database (www.CODICES.coe.int).

The Commission adopted an opinion on proposed voting rules for the Constitutional Court of Bosnia and Herzegovina. An important achievement was the preparation of its first *amicus curiae* opinion for the European Court of Human Rights.

In 2005, conferences and seminars on constitutional justice issues were held, *inter alia*, in Armenia, Azerbaijan, the Czech Republic, Hungary, Moldova, Lithuania, Slovenia and Ukraine.

Looking beyond Europe

In addition to its close co-operation with the Conference of European Constitutional Courts, the Commission continued with its regional approach by co-operating with associations of constitutional and supreme courts outside Europe. By virtue of its agreement with the Association of Constitutional Courts Using the French Language (ACCPUF), the Commission included case-law from the

ACCPUF courts in its CODICES database. Thanks to a contribution from Norway, the Commission was able to support the Southern African Judges Commission in the organisation of two meetings in Uganda and Namibia. The purpose of this co-operation is to strengthen the capacity of these courts and to enable them to assist each other in case of undue interference from other state powers. For the first time, the Commission was also invited to participate in a meeting of Asian Constitutional Courts with a view to establishing co-operation.

- Electoral matters

The Commission adopted, mostly together with the OSCE Office of Democratic Institutions and Human Rights, opinions and recommendations on (draft) electoral legislation in Armenia, Azerbaijan, Georgia, Moldova, the Former Yugoslav Republic of Macedonia and Ukraine.

The Commission also adopted a number of documents defining the European electoral heritage, including studies on Referendums in Europe and on Electoral rules and affirmative action for national minorities' participation in the decision-making process in European countries as well as guidelines on media monitoring during election observation missions.

Furthermore, the Venice Commission organised the second European conference of electoral management bodies, a UniDem seminar on the Organisation of elections by an impartial body and a round table on the Participation of foreigners in elections.

II. DEMOCRATIC DEVELOPMENT OF PUBLIC INSTITUTIONS AND RESPECT FOR HUMAN RIGHTS [\[2\]](#)

1. COUNTRY SPECIFIC ACTIVITIES

- Albania

In November 2005, a secretariat delegation visited Tirana at the invitation of the Prime Minister, Mr Berisha, and the Speaker of the Parliament, Mrs Topalli. The Albanian authorities were interested in co-operating on three subjects in particular: parliamentary immunity, changing the electoral system and the principal state prosecutor system.

- Armenia [\[3\]](#)

a. Constitutional reforms

In 2005, the Venice Commission pursued its assistance to the Armenian authorities in respect of the process of constitutional reforms which had been launched in January 2004 after a previous attempt had failed in 2003 on account of the insufficient voters turnout at the relevant referendum. The political situation in Armenia appeared very difficult, notably on account of the refusal by the opposition to take part in the parliamentary activities. It appeared indispensable that the opposition should be involved in the reform process. The involvement of the civil society appeared equally essential.

In Spring 2005, the Venice Commission was requested to assess the text of the draft amendments as adopted by the Armenian parliament in the first reading. The Commission expressed its deep dissatisfaction with this text and recommended substantial revision and improvement in the following three areas:

- the balance of powers between the state organs (too broad powers in the hands of the President to the detriment of the National Assembly and the government);
- the independence of the judiciary (insufficient guarantees of independence of the Justice Council and of the judges appointed by the President);
- the manner of appointment of the Mayor of Yerevan (contrary to European standards, he was to be appointed by the President rather than elected, directly or indirectly).

The Commission requested the possibility to assess the revised text prior to its second reading. These requests, which coincided with those of the opposition (which had not participated in the first reading of the amendments), were reiterated and supported by PACE in its Resolution 1458(2005) of 23 June 2005.

After a fruitful working meeting between representatives of the Armenian authorities and the Venice Commissions working group, the amendments were revised and submitted to the Commission for assessment. The Commission found that the new text complied in substance with its own recommendations: as regards the separation of powers, under the new constitution the President of the Republic would no longer retain the current powers to appoint, control and dismiss the government, which would instead be accountable to the National Assembly. The Mayor of Yerevan would be an elected official. The possibility of an indirect election of the Mayor was in conformity with the relevant European standards. In respect of the independence of the judiciary, the composition of the Justice Council was fully acceptable, and so was the possibility for the President to send back a list of candidates to the Justice Council. The law defining the exact procedure was to be prepared with the assistance of the Council of Europe.

In the Commissions opinion (CDL-AD(2005)025), the constitutional amendments represented an important improvement and a fully acceptable and viable solution, even though the entry into force of the amendments was admittedly extensively delayed by the operation of the transitional provisions.

These amendments were adopted in third reading on 29 September 2005. As a result of the constitutional referendum which was held in November 2005, they were adopted and entered into force in December 2005.

The Commission was satisfied with the long-awaited achievement of constitutional reforms in Armenia. It was of course aware that the real challenge was going to be the correct application of the new constitutional guarantees, and for this reason it expressed its availability to continue to assist the Armenian authorities in this crucial task.

b. Law making amendments and addenda to the law on conducting meetings, assemblies, rallies and demonstrations of the Republic of Armenia

At its 64th Plenary Session, the Commission adopted the joint Venice Commission/OSCE-ODIHR opinion on the law making amendments and addenda to the law on conducting meetings, assemblies, rallies and demonstrations of the Republic of Armenia ([CDL-AD\(2005\)035](#)).

The Commissions works on this piece of legislation had commenced in 2004; the earlier opinions of the Venice Commission and OSCE/ODIHR had pointed to the need to permit the broadest exercise of the fundamental rights of freedom of assembly.

The law which had been adopted at the beginning of October 2005 met most of the recommendations previously made. In particular, the previously contained blanket restrictions had been removed, although a certain discretion had been introduced even in cases when there should be none, such as in cases of incitation of racial hatred or the possible overthrow of the constitutional order. Spontaneous assemblies and counter demonstrations were now allowed. Certain suggestions for improvement could still be made,

although in general tribute needed to be paid to the Armenian authorities for their efforts and results.

The Commission was cognizant of and stressed the need to monitor the due application of the law.

The preparation of this opinion represented a good example of fruitful, effective and high-quality co-operation between the Commission and the OSCE/ODIHR, in particular the Legislative Support Unit. The Commission expressed its great satisfaction with this co-operation.

- Bosnia and Herzegovina^[4]

a. Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative

- The Opinion

Resolution 1384 of the Parliamentary Assembly of the Council of Europe asked the Venice Commission to examine the compatibility of the powers of the High Representative with democratic principles, as well as the compatibility of the Constitution of Bosnia and Herzegovina with the European Convention of Human Rights and the European Charter of Local Self-Government and the efficiency and rationality of the constitutional arrangements in the country in general.

Already in 2004 the Commission had exchanged views with the High Representative, Lord Ashdown, on this request and a Commission delegation went to Sarajevo and Banja Luka to exchange views with the constitutional committees of the parliaments of the state and the entities, the Constitutional Court as well as representatives of the main political parties, NGOs and the international community.

Following this visit a draft Opinion was prepared by the rapporteurs (Messrs. Helgesen, Jowell, Malinverni, Scholsem and Tuori), and examined and adopted by the Commission at its March session. The Opinion ([CDL-AD\(2005\)004](#)) does take up many ideas and arguments developed by the Commission throughout the last nine years and further develops them in a more comprehensive and coherent manner.

Its first part deals, taking up the wording used in Resolution 1384 of the Parliamentary Assembly, with the efficiency and rationality of the constitutional arrangements in the country. It not only comes to the conclusion that these constitutional arrangements are neither rational nor efficient but also contains recommendations for improving them. With this constitution, which concentrates most powers at the level of the Entities, the State of Bosnia and Herzegovina is too weak to effectively participate in European integration. The opinion concludes that the Constitution should grant more powers to the State level and considers mere ad-hoc transfers of responsibilities not sufficient. It also advocates more efficient decision-making processes both at State and Entity level. The vital interest veto should be defined more clearly and narrowly, and one should consider abolishing inefficient mechanisms such as the collective Presidency at State level and the Houses of Peoples of State and Federation. Within the Federation of Bosnia and Herzegovina, if it proves impossible to abolish the Cantons, their responsibilities should be reduced to mainly executive functions.

The Opinion notes that time is ripe to start a process of constitutional reform and that it is urgent to address the most obvious inefficiencies and contradictions of the present constitutional set-up. However, it also acknowledges that it will be necessary to move forward in different stages. The long-term aim should be to adopt an entirely new Constitution as the fruit of the democratic process within the country, replacing the present Constitution which was largely imposed to end a bloody conflict. This new Constitution should take as the point of departure the equality of all citizens and not the equality of peoples.

The second question put by the Assembly and taken up in the Opinion concerns the compatibility of the Constitution of the State with the European Convention on Human Rights. The Opinion notes that the provisions on the composition and election of the collective Presidency and the House of Peoples are discriminatory and seem incompatible with the ECHR and its Protocol No. 12. If those institutions are not abolished as suggested they have to be redesigned.

The third part of the Opinion deals with the request from the Parliamentary Assembly to examine the compatibility of the powers of the

High Representative with the membership of Bosnia and Herzegovina in the Council of Europe. The Opinion acknowledges the important and positive role played hitherto by the High Representative. However, this role cannot last forever and gradual change seems to be required. The High Representative's power to impose legislation does contradict the right of the people to freely elect their legislature and risks creating a culture of dependency. His power to dismiss civil servants and elected officials is particularly problematic. As an immediate measure the Opinion recommends the setting up of a panel of independent legal advisers which would have to be consulted on such decisions.

- Follow-up to the Opinion

The Opinion led to a broad discussion both within Bosnia and Herzegovina and internationally. The Opinion was presented to the Political Affairs Committee of the Parliamentary Assembly, the Rapporteur Group on Democratic Stability of the Committee of Ministers and the Foreign Affairs Committee of the European Parliament. It was also presented and discussed at the International Conference Bosnia and Herzegovina: Ten years of Dayton and beyond, held in Geneva on 20 to 21 October 2005.

The Council of Europe office in Sarajevo translated the Opinion into the local language and distributed it widely. It was presented and discussed at a Conference of the Academy of Science of Republika Srpska in June 2005 and with representatives of Bosnian Croats in Mostar in September. Following an initiative by former Principal Deputy High Representative Donald Hays from the US Institute for Peace a group of experts appointed by the main political parties started to prepare a possible constitutional reform taking as the point of departure the Venice Commission opinion. The Opinion was presented to this group and discussed with it in September.

b. Decertification of police officers in Bosnia and Herzegovina

At its 64th Plenary Session, the Venice Commission adopted, at the request of the Prime Minister of Bosnia and Herzegovina, its opinion on a possible solution to the issue of decertification of police officers in Bosnia and Herzegovina ([CDL-AD\(2005\)024](#)). This opinion addressed the issue of the possible review of the fairness of the vetting procedure which was carried out until the end of 2002 by the United Nations Mission in Bosnia and Herzegovina, and led to the decertification of several Bosnian police officers.

In approximately 150 cases, the decertified police officers had challenged the decisions before the domestic courts.

The procedure which had been followed in these cases had been assessed by the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina and had been found to be at variance with the requirement of a fair trial under Article 6 of the European Convention on Human Rights. However, the fact that the procedure had been carried out by an international organisation on behalf of the national authorities and with only a formal contribution by them, caused the domestic courts to be incompetent to review these procedures.

The Commission reiterated that no domestic authority or court was competent to review these decisions. It considered however that this situation was unsatisfactory. In fact, while the United Nations benefited from immunity from BiH jurisdiction under a well-recognised rule of public international law, in respect of decertification the UN had indeed performed state-like functions which were atypical for an international organisation. Immunity from domestic jurisdiction had to be compensated by the existence of an adequate alternative means for determining the claims. The Commission considered therefore that it was appropriate that the United Nations should itself review the approximately 150 decisions. Transparency and accountability of transitional territorial administration by international organisations were an extremely important element of their credibility and authority. Peace and security could not but be fostered by transparent and fair proceedings.

While it was up to the UN Security Council to decide on the most appropriate body to review the decertification proceedings, the Venice Commission suggested this should be done by a panel of three international experts. This panel would be competent to review the recommendations on decertification previously made by the United Nations, on the basis of the information previously gathered by it and in the course of an adversarial procedure in which the former policeman concerned would be allowed to have access to such a file (with the exception of duly classified information) and provide additional information. In the event that the review body would come to the conclusion that the original recommendation needed to be reversed, the competent national authorities would have to implement the new recommendation and annul their previous decision on decertification.

The Commission expressed its readiness to assist the United Nations in the setting up of this body.

- Georgia^[5]

a. Opinion on the draft constitutional amendments on the reform of the judiciary of Georgia

In February 2005, the Georgian Minister of Justice asked the Commission for an opinion on the draft constitutional legislation on amendments to the Georgian Constitution to reform the judiciary. The Commission had made informal observations on an earlier version of the amendments and these had been taken into account in this new version. At its March session, the Commission adopted the opinion on draft constitutional amendments relating to the reform of the judiciary ([CDL-AD\(2005\)005](#)), which was based on the observations of Mr Cardoso da Costa and Mr Hamilton.

The opinion noted first that the current draft amendments were a significant improvement on the previous version. The introduction of a direct individual right to lodge constitutional complaints and the restriction of Constitutional Court judges' tenure to a single term of office were particularly welcome. However, a number of concerns remained. Under the proposals, the President would have sole power to nominate judges for election to the Constitutional Court and the Supreme Court, which would not guarantee a sufficiently diverse membership of these bodies. The opinion therefore recommended the appointment of a judicial council, whose independence would have constitutional protection. Judges' almost total immunity from criminal prosecution was also unjustified and Parliament should not have the power to waive immunity. Judicial immunity should be restricted to functional immunity. Moreover, the Constitutional and Supreme Courts should exercise mutually the power to waive the immunity of each other's judges. Finally, the term of office of ordinary judges, including ones of the Supreme Court, should not be limited and they should remain in post until their retirement.

Georgia's Deputy Minister of Justice attended the March session and clarified the position regarding certain provisions and procedures in the draft amendments as they currently stood. He said that the draft was likely to be further changed following these observations. The Commission was informed at its July session that Parliament had still not approved the Government's proposed constitutional reform.

b. Status of South Ossetia

In November 2004 the Ministry for Foreign Affairs of Georgia had asked the Venice Commission to assist the Georgian authorities in preparing a document for the settlement of the conflict on the status of South Ossetia. The President of Georgia, Mr Saakashvili, presented a first sketch of a peace plan when addressing the Parliamentary Assembly of the Council of Europe on 26 January 2005. On 27 to 28 January 2005 a Venice Commission delegation, composed of Messrs Bartole, Vogel and Malinverni together with Messrs. Buquicchio and Markert from the Secretariat held discussions in Georgia on how to further develop this plan in the areas of competence of the Commission.

The delegation held extensive consultations in Tbilisi with representatives of the Georgian authorities, NGOs and representatives of the international community. It considered the plan for South Ossetia presented by President Saakashvili at the Parliamentary Assembly session of 26 January 2005 as a good and promising point of departure. It noted, however, that the plan was still drafted in quite general terms and would have to be completed and made more concrete. As agreed during the visit, the Venice Commission forwarded to the Georgian authorities in early February informal comments and suggestions for the further development of the plan.

On 17 March 2005 a representative of the Venice Commission Secretariat took part in a Georgia-South Ossetia dialogue at experts level, organised by the International Institute of Strategic Studies with the assistance of the Slovenian OSCE chair and the financial support of the European Commission. He presented the outlines of a possible autonomous status of the region within Georgia. The South Ossetian side showed however no willingness to discuss any solution based on the region remaining part of Georgia.

At a Conference in Batumi on 9 to 10 July 2005 a new initiative of the Georgian government for the settlement of the conflict was presented. While maintaining the reference to co-operation with the Venice Commission on the status issue, the new initiative puts more emphasis on confidence building measures which can be implemented relatively soon.

One such measure would be the adoption of a law on the restitution of property to the victims of the Georgian-Ossetian conflict. In December 2005 the Georgian Ministry of Justice asked the Venice Commission to give an opinion on the text of a draft law on the restitution of property to the victims of this conflict. The Commission will provide its opinion in 2006.

- Iraq

Following an invitation by the German Friedrich Naumann Stiftung the Venice Commission took part in a series of seminars with members of the Iraqi Constitutional Commission. The seminars took place in Amman and Germany and addressed constitution building in general, constitutional justice, federalism including issues of the distribution of resources in federal states and human rights. Messrs. Mifsud Bonnici, Vogel, Closa Montero and Dimitrijevic as well as Messrs Chablais and Drr from the Secretariat participated in these seminars.

- Italy

Opinion on the compatibility of the Italian "Gasparri" and "Frattini" laws with Council of Europe standards on freedom of expression and media pluralism

In October 2004, the Parliamentary Assembly had asked the Venice Commission for its opinion on two Italian laws, the so-called Gasparri and Frattini laws, concerning the Italian broadcasting system and conflicts of interest. The working group's task was to examine the compatibility of this legislation with Council of Europe standards on freedom of expression and media pluralism, particularly in the light of the case-law of the European Court of Human Rights. In January 2005, the Commission visited the Italian authorities and met several of the key persons involved.

At the first plenary session in 2005, the working group reported that an initial assessment had highlighted a number of matters of concern, particularly regarding the criteria for determining a dominant position, the concept of an integrated communication system, the excessive politicisation of the RAI state broadcasting network and failure to establish rules on incompatibility between media ownership and discharge of public office at the highest level. The head of the legislative office of the Italian Ministry of Telecommunications, Mrs Quadri, told the Commission that the Gasparri law would privatise RAI and subject it to the same rules as private undertakings. The law also included certain measures to support the press. With regard to private ownership and conflicts of interest, Ms Bono, representative of the Presidency of the Council of Ministers, said that the Frattini law provided for an extremely severe form of sanction in certain cases, namely political censure.

At its June session, the Commission adopted its opinion on the compatibility of the Gasparri and Frattini laws with Council of Europe standards in the area of freedom of expression and media pluralism ([CDL-AD\(2005\)17](#)). The Italian authorities' comments on these laws submitted to the October and June 2005 sessions respectively appear in documents [CDL\(2005\)050](#) and [CDL\(2005\)051](#).

In the opinion, the Commission maintained that the two thresholds laid down in the Gasparri Law to determine the existence of dominant media positions would not prevent such positions arising, even though dominant positions per se were forbidden in the media sector. The working group rejected the argument that the advent of digital broadcasting would resolve the problem of concentration in Italy. The Commission did however consider that the Gasparri law provided a democratic solution to the issue of access to airtime, even though certain provisions were formulated too vaguely. Turning to the privatisation of RAI, the Commission thought that this would increase the threat of monopolisation, since it might allow the current government to exercise general control of the media. Finally, the Commission welcomed the law's provision for public support for daily newspapers and magazines.

The Commission did not think that the Frattini Law included sufficient safeguards to prevent potential conflicts of interest, as it simply provided for a mix of incompatibilities between public duties and private activities and retrospective examination of individual acts of government. Moreover, there was no incompatibility between the discharge of public office and ownership, even though this aspect of conflict of interests had been the main reason for enacting the legislation. Finally, the penalties laid down did not seem adequate and political censure could be fairly ineffective in practice. The Commission concluded that the Frattini Law was unlikely to have any meaningful impact on the present situation in Italy and encouraged the Italian authorities to continue their efforts to find an appropriate solution.

- Kazakhstan

At the December plenary session, Ms Bychkova, a member of the Kazakhstan Constitutional Court, told the Commission that her country sought full integration into Europe, based on the constitutional principles of pluralist democracy, respect for human rights and the rule of law. A moratorium on the death penalty had already been introduced and democratic institutions were being developed. Kazakhstan had also recently ratified the United Nations Covenant on Civil and Political Rights. The Constitutional Council's role was to protect constitutional values and maintain its position as an independent judicial body.

The country hoped that the Venice Commission would make a major contribution to its legal development. A Commission representative had attended the ceremony to mark the Constitution's tenth anniversary in August 2005 and the Commission would also be invited to the Constitutional Council's anniversary in March 2006.

- Kyrgyzstan

Interim opinion on constitutional reform in the Kyrgyz Republic

In June 2005, the Speaker of the Parliament of Kyrgyzstan asked the Commission to assist the Republic's Constitutional Council with the revision of the Constitution. The Council had been established in the wake of the "tulip revolution" with the task of revising the existing constitution. A Commission delegation visited the country in June 2005 to discuss guidelines for the reform. The European Commission had also granted the Commission financial assistance for this activity. At its October session, the Commission adopted the draft opinion as an interim opinion ([CDL-AD\(2005\)022](#)) since, as the Kyrgyzstan representatives pointed out at the meeting, the constitutional reform process was still under way and a revised draft would be drawn up to reflect the recommendations in the interim document.

The opinion was based on the observations of Mr Lapinskas and Mr Fogelklou, who thought that the constitutional amendments were generally positive. Several provisions would strengthen the rule of law and safeguards for human rights and fundamental freedoms. The reform would also establish a better balance between the different organs of state and improve the constitutional situation in the country. However, certain improvements were still desirable. For example, the Commission encouraged the Kyrgyz authorities to change certain remnants of the former communist system, particularly the link between human rights and the duties of the citizen, the interpretation of laws by Parliament, and the *prokuratura* (prosecutors office). There should also be a further strengthening of safeguards of judicial independence, particularly concerning the appointment and dismissal of judges. At the session, Mr Petit of the OSCE/ODIHR said that his organisation supported the Lapinskas-Fogelklou opinion.

The presidential office produced a new draft in response to the interim opinion. Although the new version continued to reflect the first draft with regard to progress in human rights protection, in two areas it represented a step back. Firstly, with respect to the separation of powers the draft contains no amendments which would permit evolution towards a semi-presidential regime. Secondly, it was proposed to abolish the Constitutional Court as an independent body and integrate it into the Supreme Court. Most of the participants at the conference on constitutional reform in Bishkek in November, which was co-sponsored by the Commission and attended by Mr Lapinskas and Mr Fogelklou, as well as Mr Markert of the Commission secretariat, expressed a preference for the initial draft amendments of June. On the eve of the conference, the President of Kyrgyzstan, Mr Bakiyev, also said that the proposal to abolish the Constitutional Court was a mistake. After the conference, Mr Bakiyev met representatives of the Commission and the OSCE and said that he looked forward to receiving the Commission's opinion on the final draft amendments.

However, at the December session, Mrs Baekova told the Commission that the Kyrgyz authorities had recently announced the postponement of constitutional reform until 2009. Members of the Commission expressed misgivings about this development, in view of the urgent need for reform in areas such as presidential powers, judicial independence and the protection of human rights.

- Mexico

Opinion on draft constitutional amendments relating to the disappearance and murder of a great number of women and girls in Mexico

In December 2004, the Chair of the Parliamentary Assembly's Committee on Equal Opportunities for Women and Men had asked the Commission for an opinion on a reform of the Mexican Constitution to alter the division of responsibilities between the states and the federal authorities. At its March session, the Commission adopted an opinion on these constitutional reforms (CDL-AD(2005)006).

The opinion was based on the comments of Mrs Flanagan and Mr Vogel, and on the information in the introductory memorandum by the Assembly rapporteur. Since 1993, hundreds of young women in the northern Mexican state of Chihuahua had been abducted and murdered, apparently as a consequence of a highly fragmented social situation, traditional inequality between the sexes and the low regard for women and their rights in the region.

The state of Chihuahua had been responsible for investigating these crimes but the criminal inquiries had been highly ineffective. A draft Presidential decree amending the Mexican Constitution and a draft amendment to the Federal Code of Criminal Procedure and the Federal Judicature Act would transfer power to prosecute ordinary offences related to human rights violations when they transcended the powers of the states from the Mexican states to the federal authorities. The Commission had to decide whether the proposed transfer of investigating and prosecuting powers would constitute an unlawful retroactive application of the law.

As a party to the Convention on the Elimination of all Forms of Discrimination Against Women, Mexico was obliged to take necessary measures concerning these crimes. The Commission considered that there was nothing in international law to prevent the retroactive transfer of power to investigate these offences to the federal authorities. Based on the information available, the proposed changes to Mexican law did not impair or remove rights, create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction. It was therefore concluded that the transfer of prosecuting authority was a proportionate procedural change and was thus permissible.

- Romania

a. Opinion on the draft law on the status of national minorities in Romania

In June 2005, the Romanian authorities asked the Commission for an opinion on the draft legislation on the status of national minorities living in Romania. The draft opinion was

produced by Mr Bartole and Mr van Dijk and adopted at the Commission's October session ([CDL-AD\(2005\)026](#)).

It was drawn up following a working meeting in Bucharest in September 2005 attended by Mr Bartole and various representatives of the Romanian authorities. The Commission generally welcomed the proposals, which in principle offered a satisfactory basis for protecting the country's national minorities. However, certain amendments were needed to make the legislation easier to apply and improve its content. The draft law contained numerous general references to other legislation, which should be specified more clearly to reflect the principle that specific law takes precedence over general law. The Commission also called for measures to avoid the risk of institutional overlap and duplication of tasks stemming from a lack of coordination in the planned system of cultural autonomy. The conditions governing the registration of organisations of citizens belonging to national minorities should be eased to make the proposals more compatible with the principle of freedom of association. Finally, the Commission questioned the need for citizenship to be a general requirement when defining national minorities and for the list of minorities accompanying the definition to be exhaustive.

When the opinion was presented at the October session, the Romanian representative, Mr Marko, said that it was common European practice to include a citizenship condition in the definition of national minorities and that non-citizens enjoyed adequate protection under other legislation. He also assured the Commission that the opinion would be disseminated and taken into account by the Romanian Parliament.

Finally the legal adviser of the Office of the OSCE High Commissioner on National Minorities said that his organisation had also been asked to assess the draft law and that its assessment agreed in substance with that of the Commission

b. Opinion on the draft law on religious freedom and the general regime of religions of Romania

In July 2005 the Romanian authorities asked for a Commission opinion on the draft legislation on religious freedom and the general legal arrangements governing religion in Romania. At its October session the Commission adopted its opinion on the draft law ([CDL-AD\(2005\)037](#)), based on the comments of Mr Malinverni and Mr Vogel. Mr Vogel had also attended a conference in Bucharest in September 2005 on freedom of religion in the Romanian and European contexts, where the draft legislation had been examined.

The Commission commended the consultation process preceding publication of the proposals, to which eighteen confessions and other international experts had contributed. Overall, they offered a satisfactory framework for freedom of worship in Romania but they might be considered somewhat rigid in that they classified religious communities into three legal categories. The numerical threshold for an association to qualify as a religious one could also be deemed excessively strict. The Commission thought that the provisions on judicial protection should be strengthened to offer more safeguards for the right of access to a court.

At the session the Romanian representative, Mr Lemeni, said that the eighteen confessions already recognised appeared to account for 99% of the Romanian population. He also told the Commission that new legislation had been introduced to make it easier to take disputes over religious property to the courts.

- Russian Federation

a. Opinion on the law on the prokuratura (prosecutors office) of the Russian Federation

In April 2005, the Parliamentary Assembly's Monitoring Committee asked the Commission for an opinion on whether the current functions and structure of the *prokuratura* (prosecutors office) of the Russian Federation were compatible with Council of Europe standards. At its June session the Commission adopted its opinion on the federal legislation governing the *prokuratura*, on the basis of the observations of Mr Hamilton and Mrs Suchoka ([CDL-AD\(2005\)014](#)).

Despite improvements to the relations between the prosecutor and the courts, the law still adopted an approach to the prosecutors role that corresponded far more to the Soviet *prokuratura* than to the European model. Although there were no precise general or European standards governing the powers and organisation of prosecution authorities, Committee of Ministers Recommendation (2000)19 of 6 October 2000 did offer general guidelines on the role of public prosecution in the criminal justice system. In its current form the *prokuratura* was too big, too powerful and not sufficiently transparent. Its numerous functions meant that it was liable to encroach on the spheres of other bodies in the executive and legislative branches. As it stood, the system did not seem to comply with Recommendation (2000)19 and raised serious questions of compatibility with democratic principles and the rule of law. Further reform of the system was therefore essential, with the emphasis on criminal proceedings and a general responsibility for defending the public interest through the criminal justice system, as proposed in Parliamentary Assembly Recommendation 1604 (2003).

In its Resolution 1455(2005), the Parliamentary Assembly urged the Russian authorities to "continue to reform the *Prokuratura* in line with relevant European standards and the Venice Commission Opinion ..., in particular with regard to the extensive general oversight powers, and withdraw the reservation made to Article 5 of the European Convention on Human Rights".

b. Law on the Parliament of the Chechen Republic

As part of an appraisal exercise on the legislation of the Chechen Republic, the Venice Commission was asked to examine the draft law on the Chechen Parliament. At its October session, the Commission approved Mr Malinverni's observations on the draft legislation ([CDL-AD\(2005\)030](#)).

A number of major criticisms could be levelled at the bill. From a formal standpoint, it included too many references to other legislation whereas certain points should have been dealt with in the law itself. It also failed to cover such important matters as parliamentary

immunity and the method of electing the two chambers. Certain provisions also raised substantive problems relating to the separation of powers and other democratic principles, particularly regarding the powers of Parliament and the Supreme Court and the procedures for appointing members of the Constitutional Court and ordinary judges. Moreover the federal authorities' powers to dissolve the Chechen Parliament needed to be restrictively and exhaustively defined in order to comply with the principles governing the division of powers between the federation and the federated entities. Finally, since the draft legislation had been based on the Chechen Constitution, the Commission felt bound to reiterate the reservations in its opinion on that Constitution (CDL-AD-2003-2). The representative of the Russian Federation, Mr Baglay, told the meeting that the bill would establish the first Parliament of the Chechen Republic and that the latter would perform a genuine legislative function. He also said that the proposals had to comply with existing federal legislation on the allocation of responsibilities. With regard to the separation of powers, it remained to be seen how relations between Parliament, the President and the executive were settled - Serbia and Montenegro[6] a. Opinion on the provisions on the judiciary in the draft constitution of the Republic of Serbia In June 2005, the Serbian Minister of Justice asked the Commission for an opinion on one of the sections of the draft Serbian Constitution, which the Serbian Government had approved in June 2004. At its October session, the Commission adopted its opinion on the provisions on the judiciary in the draft constitution of the Republic of Serbia ([CDL-AD\(2005\)023](#)), which was based on the observations of Mrs Suchocka and MM Hamilton, Jowell and Nolte.

The aim of these provisions was to establish judicial independence and an independent public prosecution service. Overall, the Commission gave a positive assessment. However, it expressed doubts about the systematic involvement of the People's Assembly, or Parliament, in the appointment and dismissal of judges and concluded that its involvement in decisions on the dismissal of judges and their permanent appointment following a probationary period was not in line with European standards on judicial independence. The Serbian Minister of Justice, Mr Stojkovic, told the Commission that he was largely in agreement with the conclusions of the opinion.

b. Opinion on the draft law on the Ombudsman of Serbia

In December 2004, the Commission had adopted an opinion, prepared jointly with the Council of Europe's Commissioner for Human Rights and Directorate General of Human Rights, on the draft law on the Ombudsman of Serbia ([CDL-AD\(2004\)041](#)). At the October 2005 session, Mr Drr of the secretariat informed the Commission that he had received the English version of the legislation, which had taken account of a number of the opinion's recommendations. However, the fact that the ombudsman could only intervene after all other remedies had been exhausted remained a major problem. The Serbian Minister of Justice, who attended the session, assured the Commission that the institution of ombudsman would be incorporated into the new constitution and said that the draft law allowed the ombudsman to intervene to prevent irreparable damage even before all legal remedies had been exhausted.

c. Draft law on religious organisations in Serbia

In January 2005, the Serbian Minister for Religious Affairs asked the Council of Europe to assess the draft legislation on religious organisations in Serbia. The Commission agreed to produce an opinion and endorsed the comments of Mr Jambrek and Mr Christians at its March session (CDL-AD(2005)010).

Their analysis was based on relevant articles of the European Convention on Human Rights and certain documents produced by the OSCE, and on the case-law of the European Court of Human Rights. The draft law raised a number of concerns in that it required religious groups to register in order to enjoy full freedom of religion, which was contrary to European standards and could restrict the religious freedom of certain religious organisations, or even individuals. Moreover, in accordance with the Charter on Human and Minority Rights and Civil Liberties of Serbia and Montenegro, the draft law should authorise appeals to the State Court against administrative decisions affecting fundamental rights. However, these comments were only to be considered as a preliminary analysis, which would be expanded subsequently to take account of new draft legislation.

d. Followup to the opinion on human rights in Kosovo: possible establishment of review mechanisms

In October 2004, the Commission had adopted its opinion on human rights in Kosovo (CDL-AD(2004)033). In the opinion, the Commission had put forward a short term and a medium term proposal for monitoring the activities of the two international organisations, UNMIK and KFOR, responsible for the interim administration of Kosovo. In May 2005, UNMIK asked for the Commission's comments on a proposal to set up an advisory panel of independent experts within MINUK to review the activities of United Nations agencies operating in Kosovo and ensure they were compatible with human rights. At its October session, the Commission was told that the issue of the appointment of the Panels members and the involvement of the President of the European Court of Human Rights was still under discussion, but it was expected that the Panel would be set up shortly.

- The former Yugoslav Republic of Macedonia

Opinion on draft constitutional amendments on the reform of the judicial system

In July 2005, the Minister of Justice of "The former Yugoslav Republic of Macedonia" asked the Commission for an opinion on a series of constitutional amendments aimed at reforming the judicial system. In September 2005, the minister arranged a meeting of experts to consider the draft amendments, at which Mr Drr of the Commission secretariat presented an initial version of the opinion. Finally at its October session, the Commission adopted the opinion on the draft constitutional amendments concerning the reform of the judicial system in "The former Yugoslav Republic of Macedonia" (CDL-AD(2005)005), which was based on the observations of Mr Hamilton, Mr Mazak and Mrs Suchocka.

It thought that the draft amendments were very positive and likely to strengthen the independence of the judiciary, since they would transfer regulatory powers to the state judicial council and state prosecutors council. The positive elements included provision for the lifting of presidential and ministerial immunity and the appointment of judges by the state judicial council. However, several improvements were still possible. In particular, the fair trial provisions should be more closely based on Article 6 of the ECHR. Nor was it helpful to establish a prosecutors' council on exactly the same lines as a judicial council. The state judicial council should not give final rulings in disciplinary cases regarding judges. Judges should have the right of appeal against such decisions to the courts.

The Minister of Justice attended the October session and told the Commission that her ministry had accepted most of the recommendations in the preliminary version of the opinion presented by Mr Drr to the meeting of experts. For example, the provisions relating to probationary periods for judges, which the Commission had criticised in the opinion, had been dropped.

- Ukraine^[7]

a. Opinion on the law on amendments to the Ukrainian Constitution adopted on 8 December 2004

In April 2005, the Ukrainian Minister of Justice asked the Commission for an appraisal of the legislation amending the country's Constitution, adopted on 8 December 2004. At its June session, the Commission adopted its opinion on the law (CDL-AD(2005)015), which was based on the observations of Mrs Flanagan, Mr Tuori and Mr Bartole.

The Commission had already been involved in Ukraine's constitutional reform process in 2003, when it had adopted an opinion on three draft laws proposing constitutional amendments ([CDL-AD\(2003\)019](#)). This had criticised many aspects of the proposed legislation. In October 2004, it had adopted an opinion on the procedure for amending the Constitution ([CDL-AD\(2004\)030](#)), which had drawn attention to the complicated and hurried way in which a variety of constitutional amendments had been proposed. The law on amendments to the Constitution had been adopted on 8 December 2004 but although it took account of many of the Commission's 2003 recommendations, certain criticisms remained valid. In general, the amendments were still not sufficient to achieve a balanced and properly functioning system of government. A number of specific gaps had been identified, particularly concerning the independence of members of parliament, cabinet cohesion and the procedure for appointing senior officials and judges of the Constitutional Court. The constitutional amendment concerning the *prokuratura* (prosecutors office) was a backward step towards the former Soviet model and, in the Commission's view, incompatible with Ukraine's undertakings to the Council of Europe. The Commission concluded that certain changes were still necessary to strengthen democracy and the rule of law in Ukraine.

b. Draft national strategy on the reform of the territorial organisation system of the authorities in Ukraine

In autumn 2004, the Congress of Local and Regional Authorities of the Council of Europe had asked the Commission for an opinion on Ukraine's draft national strategy on the reform of its system of local and regional government. At its March 2005 session, the Commission endorsed the comments of Mr Lapinskas ([CDL\(2005\)030](#)), Mr Bartole ([CDL\(2005\)031](#)) and Mr Luchaire ([CDL\(2005\)032](#)) on the reform.

The authors were critical of the Ukrainian strategy. The proposed reform was vague and imprecise in certain respects and it was difficult to determine the practical goals and objectives. The strategy was very broad ranging in scope and envisaged two types of legislation, to reform, respectively, local self-government and regional policies. However, the national strategy should distinguish clearly between the two and outline the form that each should take. The proposals should also clarify the different stages of the reform and how it was to be implemented. The authors feared that the planned decentralisation would in fact entail considerable state oversight. Nevertheless the strategy would be a significant launch pad for reform of the system of local and regional government in Ukraine.

On 5 December 2005 Mr Lapinskas presented the Commission's views to a seminar in Kiev on "decentralisation in Ukraine, priorities for 2006", under the auspices of the Congress of Local and Regional Authorities Task Force on Regionalisation in Ukraine. The seminar was concerned with developing an action plan for 2006 on decentralisation of government and the development of local democracy.

In connection with the constitutional provisions on Ukraine's local and regional structure, Mr Lapinskas recommended (1) reviewing the basis by seeking an optimum geographical structure, (2) defining the extent and limits of central control of local self-government, taking into account international standards and practice, and (3) giving priority to representative institutions rather than executive ones.

- Information on constitutional developments in other states

Members of the Commission, observers and other invited guests informed the Commission at its plenary sessions of constitutional developments of particular interest. In 2005, these concerned:

- **Albania:** the constitutionality of a draft resolution that would lift the parliamentary immunity of any member of parliament suspected of corruption or misuse of authority;
- **Bahrain:** constitutional court established in 2002, exercising prior and retrospective constitutional control of legislation;
- **Bulgaria:** inclusion in the Bulgarian Constitution of the principle of Community law precedence over domestic law and of the power to bring Bulgarian citizens before international criminal courts, in anticipation of the country's forthcoming accession to the European Union;
- **Canada:** the activities of the new Federal Council, a permanent political body to promote co-operation and closer ties between the provinces;
- **Croatia:** the prospects for numerous constitutional and legislative changes to bring Croatian law into line with European Union Community law;
- **Iceland:** draft constitutional revision, to be submitted in 2006, on the relationship between the presidency and parliament, the judicial system and the local and regional authorities;
- **Israel:** the powers of the Israeli Supreme Court and its responsibility for protecting human rights in Israel and the Occupied Territories;
- **Italy:** the constitutional reform approved by the Italian Parliament on relations between the state and the regions, the role of the Prime Minister and the composition of the Constitutional Court;
- **Republic of Korea:** the constitutionality of new legislation establishing the principle of a new capital and Korea's possible

membership of the Venice Commission;

- **Monaco:** ratification of the European Convention on Human Rights;
- **Portugal:** constitutional amendment to make the referendum on the proposed European Constitution a referendum on the constitutional treaty itself;
- **Slovenia:** draft of a new Constitution being drawn up by an independent group of experts, to be published in March or April 2006;
- **United Kingdom:** amendments to the institution of Lord Chancellor (nearest equivalent to minister of justice) to safeguard judicial independence and new anti-terrorist legislation.
- **European Union:** uncertain prospects for the European Constitution following the French and Dutch referendums opposing ratification of the treaty;

2. STUDIES AND SEMINARS OF GENERAL SCOPE

- Democratic oversight of the security sector in member states

In July 2005, the Committee of Ministers asked the Commission for its comments on Parliamentary Assembly Recommendation 1713(2005) on democratic oversight of the security sector in member states. At its October session, the Commission adopted an opinion (CDL-AD(2005) 033), based on the comments of Mr Conostas, setting out certain principles pertaining to intelligence services and defence. In the case of intelligence services, the Commission proposed a new study of national security legislation, with particular emphasis on the role of parliaments, the courts and international bodies. Turning to defence, it thought that the traditional distinction between police and armed forces had become blurred, that it was difficult to enforce democratic oversight of national and international forces and that the subject required further consideration.

- Laws on freedom of assembly

In January 2005, the OSCE/ODIHR asked the Commission for an opinion on draft guidelines for states drafting laws on freedom of assembly, prepared by the OSCE/ODHIR Legislative Support Unit. At its October session the Commission adopted this opinion (CDL-AD(2005)040), based on the comments of Mrs Flanagan, Mr Malinverni and Mr Bradley. It concluded that the guidelines were very useful but should not be interpreted as an encouragement to excessively far-reaching regulation of freedom of assembly. The authorities should not interfere more than was necessary in this area. The guidelines were very comprehensive but certain points, such as which bodies should be responsible for enforcing the law, needed to be developed further.

- Role of Second Chambers in Council of Europe member States

At the request of the Congress of Local and Regional Authorities of the Council of Europe the Commission decided to participate in a joint study and conference on the role of second chambers in Council of Europe member states, especially with respect to the representation of territorial interests through such bodies. In 2005 contributions on the situation in fifteen member states which have a second chamber of some importance were put together. In these contributions particular attention was paid to a critical assessment of the role of second chambers in protecting the interests of regions or federated entities and to the reform discussions in the countries concerned.

On the basis of these contributions a comparative study will be prepared in 2006 and a conference will be held in Vienna by the Congress in co-operation with the Austrian authorities and the Venice Commission in the framework of the Austrian EU Presidency.

- UniDem seminar on The Status of International Treaties on Human Rights in International law (Coimbra, 7 8 October 2005)

In the framework of its UniDem Programme, the Commission, in co-operation with the University of Coimbra, *Ius Gentium Coimbrigae Centre*, the Faculty of Law of Coimbra and the International Association of Constitutional Law (IACL) organised a seminar on The Status of International Treaties on Human Rights in International law in Coimbra, from 7 to 8 October 2005. This activity was organised in the framework of the Portuguese Presidency of the Committee of Ministers of the Council of Europe.

The idea of organising a UniDem seminar on this topic originates from a debate on the report on the case-law of countries which have adopted the supremacy of treaties on fundamental human rights and freedoms, which took place during the Commissions 60th plenary session (Venice, 8-9 October 2004).

The aim of the seminar was to examine the position which international human rights treaties have in international law as well as in internal legal systems and try to determine whether there exist core human rights, that is rights which impose obligations on all states and which should override conflicting norms of whatever origin. After a number of reports (12) made by leading experts in the field of international human rights law and constitutional law, the participants held a fruitful discussion. The reports covered various aspects of the issue of the status of international human rights treaties, such as human rights treaties and succession of states; territorial scope of human rights obligations; constitutional supremacy of human rights treaties; social rights as core human rights in Europe, and human rights provisions and their effects on international criminal justice.

Based on ethical foundations and inherent dignity of the human person, the international treaties on human rights, in the view of the participants at the seminar, represent a special category of international treaty and as such should be given an interpretation which is the most favourable to individuals in the framework of the Vienna Convention on the Law of the Treaties. The participants also acknowledged that while there exist, among human rights and freedoms, core human rights that are *conditio sine qua non* for the enjoyment of all others, their exact delimitation and legal consequences need to be further explored.

3. UNIDEM CAMPUS - LEGAL TRAINING FOR CIVIL SERVANTS

The UniDem Campus project was established in 2001 with the aim of strengthening efficient administration and good governance as well as democratisation and human rights in the countries of the Stability Pact. The programme comprises five four-day seminars per year, made up of introductory lectures and discussions of practical examples proposed by the lecturer, and offers legal training to public officials in subjects such as the protection of fundamental rights, including the rights of national minorities, standards of public life and good administration, good law-making principles and issues raised by accession to the EU. The officials attending the seminars are required to share the knowledge acquired at the Campus with their colleagues in their respective countries.

The geographical scope of the project was extended in 2005 with the participation of four additional countries, bringing to fifteen the number of countries entitled to send participants to the seminars, namely Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Moldova, Romania, the Russian Federation, Slovenia, Serbia and Montenegro, the former Yugoslav Republic of Macedonia and Ukraine.

The seminars in 2005 covered the following topics:

The role of media freedom and pluralism in strengthening democracy (January)

Administrative justice and inter-ministerial communication within public administration (March)

Managing diversity: integration policies for minorities and migrants (May)

Legal framework for public administration, legal performance indicators and performance measurement (June)

The impact of the enlarged European Union on new member states and prospects for further enlargement (October)

Some 40 lecturers and 120 officials from the fifteen countries attended the Trieste UniDem Campus seminars in 2005 .

III. STRENGTHENING CONSTITUTIONAL JUSTICE AS GUARANTOR OF DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW^[8]

Since its creation, the Venice Commission has seen its co-operation with constitutional courts and equivalent bodies (constitutional councils, supreme courts in countries without specialised constitutional jurisdiction) as a key to ensuring that the principles of the common constitutional heritage are not only laid down on paper but are implemented in real life. The Commission seeks to strengthen the independence and the authority of these bodies in order to allow them to take decisions, which sometimes displease the executive, the legislative and even the judiciary powers. Handing down such difficult judgments is however essential in upholding the basic principles of the Council of Europe democracy, the protection of human rights and the rule of law in the Councils member states.

The Commission uses two main vectors to pursue this objective: In the framework of its Centre on Constitutional Justice, the Commission fosters exchanges between the courts through seminars and conferences, publishing the important case-law of the courts via its *Bulletin on Constitutional Case-Law* and the CODICES database and by enabling quick electronic exchange via its confidential Venice Forum. The other major field of co-operation with the courts is opinions on constitutional amendments and legislation on the courts activities, *amicus curiae* for the courts and when necessary direct support for courts which are under undue pressure.

1. CONSTITUTIONAL JUSTICE SEMINARS

The Commission followed its concept of pursuing two major objectives in the organisation of seminars in co-operation with Constitutional Courts (CoCoSems): to facilitate discussion on substantive issues, mostly human rights related, and to strengthen the operative capacity of the courts by enabling exchanges on the experience of other courts in matters of court organisation.

The Round Table on the **Relationship between the Court of Justice of the European Communities and Constitutional Courts** held in co-operation with the Constitutional Court of Hungary (Budapest, 14-15 February 2005) addressed this sometimes delicate relationship requiring a balance between necessary harmonisation and respect for national legal systems on the basis of discussions centred on the protection of personal data and freedom of services. A readiness for a continuous and open dialogue was identified as a requirement to maintain this balance.

The International Conference on **Constitutional Justice, Presence and Perspectives** (Chisinau, 23-24 February 2005) held in co-

operation with the Constitutional Court of Moldova on the occasion of the 10th anniversary of the establishment of the Court, allowed for discussion on the special role of constitutional courts in countries in transition for the protection of human rights. The importance of the individual complaint to the constitutional court was emphasised especially in the light of a proposal to introduce this instrument also in Moldova.

A mini-conference held together with the 4th meeting of the Joint Council on Constitutional Justice, held in Baku at the invitation of the Constitutional Court of Azerbaijan (15-16 June 2005) dealt with the **"Role of Comparative Research in Constitutional Justice"**. The participants, liaison officers and members of the Sub-Commission on Constitutional Justice, underlined that comparative research is a prerequisite for the reinforcement of the common constitutional heritage. The tools offered by the Venice Commission (Bulletin on Constitutional Case-Law, CODICES database, seminars) allowed for such research, which has more and more become part of the standards for the preparation of constitutional courts judgements. Even if decisions handed down do not explicitly refer to the case-law of other constitutional courts, the ideas received via comparative methods often serves as a means of inspiration and cross-fertilisation between the courts.

In co-operation with the Constitutional Court of Lithuania, the Venice Commission organised a conference on **Law and Fact in Constitutional Jurisprudence** (Vilnius, 30 June-1 July 2005). The participants related the need to examine the facts to the type of review the constitutional court or equivalent body carries out. Requests for abstract review of norms from state authorities such as parliament or government relate to facts only to a very limited extent whereas cases on impeachment, prohibition of political parties or electoral disputes have to deal with facts to a larger extent. Depending on the type of review and the applicable national legislation, each court follows its own procedures for taking evidence. More than in other fields of activity, a number of courts have a direct influence on these issues through the adoption of their own rules for review.

In co-operation with the Constitutional Court of Slovenia, the Venice Commission organised the **third Conference of Secretaries General of Constitutional Courts and Courts of Equivalent Jurisdiction** (Bled, 29-30 September 2005) bringing together 33 secretaries general. The reports and discussions focused on three themes:

1. The organisation of the work and the role of law clerks within courts. The participants agreed that law clerks provide valuable and essential assistance with drafting and making court decisions. While their tasks vary little in substance from one court to another there were, however, significant differences in the ways in which their work was organised in the various courts (e.g. permanent, temporary employment). The discussions covered the recruitment conditions for law clerks, career management, recourse to experts, the real or supposed influence of the persons concerned in shaping final judgments and the steps taken to guarantee maximum transparency in the delivery of judgments;

2. The role of information technology in the judgment process was the theme of the second working session. The ever-greater need for support by information technology related to databases like CODICES but also to case management within the courts, many courts using dedicated software for case-management cases from the moment appeals were lodged right through to the delivery of the judgments. In several courts, provision was even made for lodging appeals online, or this was being planned. Some courts were also planning totally computerised case management, abandoning the use of paper documents. The growing and vital role of information technology in the management of courts and cases has a significant impact on budgets, with an increasing share of appropriations having to go on information technology expenditure;

3. Relations with the media remained a key concern for secretaries general, who were having to cope with a steadily increasing pressure from the media.

Following a request by the secretaries general to be more closely associated with the work of the Venice Commission, the latter established a special section for secretaries general on its website, giving them access to the restricted site on constitutional justice, a discussion forum and regular information updates on the Commissions activities in the field of constitutional justice.

The **International Conference on the Influence of the ECHR Case-Law on National Constitutional Jurisprudence** (Kyiv, 14-15 October 2005), enabled stock to be taken of the important influence of the Strasbourg court on the case-law of constitutional courts in old and new member states of the Council of Europe. The question whether constitutional courts are bound to follow the European Court of Human Rights was of course central to the discussion. While some courts clearly accept to be bound directly, other courts emphasise that the yardstick for their activity remains the national constitution. However, the discussions showed that in practice such different approaches lead to the same results, i.e. the application of human rights by the constitutional courts taking into account the interpretation given to specific rights by the Strasbourg Court. Open dialogue between the courts remains a key to overcoming any problems that may arise through the different approaches.

On the occasion of the 10th anniversary of the Constitution of Azerbaijan, the Venice Commission co-organised with the Constitutional Court, OSCE and GTZ a conference on the **Role of the Constitution in Building a State Governed by the Rule of Law** (Baku, 11-12 November 2005). The reports and discussions concentrated on the role of the Constitution in a democratic state, basic principles that a democratic constitution should contain and the importance of the inbuilt mechanisms for the implementation of these principles. Lively discussions developed on the importance of bridging the gap between the written law and law in practice, where constitutional courts have a central role to play. Constitutional jurisdiction can highlight the lacunas in the implementation of laws and thus improve their effectiveness. Thus especially in young democracies, strong constitutional courts are crucial to the upholding the rule of law.

In co-operation with the Constitutional Court of the Czech Republic, the Venice Commission organised a seminar on the topic **The Limits of Constitutional Control of the Decisions of Ordinary Courts in Constitutional Complaint Procedures** (Brno, 14-15 November 2005). The review of last instance judgements of ordinary courts in constitutional complaint procedures sometimes creates problems between constitutional courts and supreme courts. The exact scope of the constitutional matter to be decided upon by the Constitutional Court needs to be defined clearly in order to avoid turning the constitutional court simply into another instance for full review of the case. The evaluation of evidence and the interpretation of simple law were identified as elements that normally should remain within the jurisdiction of the ordinary courts. There was indeed a danger of interpreting the constitutional right to a fair trial to an extent which indeed even led to a re-assessment of evidence by the constitutional court. Too high expectations from the public also contributed to problems related to the high case-load created by individual complaints.

2. OPINIONS

The Commission sees the high quality of the legislation on constitutional courts or equivalent bodies as an indispensable precondition for the independence and effective operation of these bodies and consequently their ability to uphold constitutional principles and guarantees. Rules which prevent a court from acting smoothly upon appeals can in extreme cases lead to a denial of justice as is expressed in the well known saying that justice delayed is justice denied. While this is certainly a problem in respect of appeals from state bodies it can be a serious violation of human rights in cases of individual appeal or concrete norm control (preliminary requests by ordinary courts).

In its Opinion on **Proposed Voting Rules for the Constitutional Court of Bosnia and Herzegovina** (CDL-AD(2005)039) requested of the Office of the High Representative, the Venice Commission replied to the question of whether special voting rules - proposed by one of the communities - requiring that decisions of the Constitutional Court of Bosnia and Herzegovina would be valid only if at least one judge from each constituent people supported the decision, are in compliance with European standards. The Venice Commission gave a negative reply and insisted that even the specific situation in Bosnia and Herzegovina cannot justify such a solution, which would contradict a number of constitutional principles and might create serious practical problems. As a consequence, the proposal to introduce such a rule was not further pursued.

The opinion on **Draft Constitutional Amendments relating to the Reform of the Judiciary in Georgia** (CDL-AD(2005)005) dealt *inter alia* with the proposal to change the procedure of appointing judges to the Constitutional Court from a tripartite system of appointment (1/3 of the judges appointed by each of the President, Parliament and the Judiciary) to a system with nominations only by the President and approved by Parliament. The Commission was of the opinion that the old system ensured a better balance of powers. On the other hand the Commission welcomed the proposal to introduce in addition to the existing individual complaint against normative acts an individual appeal against final judgements by ordinary courts. Both proposals were not adopted by Georgia. (See also Section II)

The opinion on **draft Constitutional Amendments concerning the Reform of the Judicial System in the Former Yugoslav Republic of Macedonia**, provided that the types of decisions of the Constitutional Court, their legal effect and enforcement are to be regulated by law and the internal organisation of the of the Court are to be regulated by the Court itself. In the opinion (CDL-AD(2005)038) the Commission pointed out that the draft amendment did not cover important elements of the Constitutional Courts activity such as the procedure before the Court. A coherent regulation of the activities of the Constitutional Court taking into account all aspects of its jurisdiction and operation would seem appropriate. The draft amendment was not further pursued by the authorities. (See also Section II)

At its 63rd Plenary Session, the Commission adopted an *amicus curiae* opinion on the nature of the proceedings before the **Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina** (CDL-AD(2005)020).

This opinion was prepared as a "third party intervention" in the proceedings before the European Court of Human Rights.

The Court asked the VC to state its opinion as to whether Annexes 4 (the Constitution) and 6 (the Human Rights Agreement) to the Dayton Peace Accords of 1995 were unilateral undertakings given by Bosnia and Herzegovina or international treaties, and whether the proceedings before both the Human Rights Chamber and the Constitutional Court were domestic within the meaning of Article 35 1 of the Convention or amounted to another international procedure within the meaning of Article 35 2 b) of the Convention.

The Commission considered that Annexes 4 and 6 were international treaties. It considered however that this conclusion did not automatically imply that the proceedings before the Human Rights Chamber and the Constitutional Court, two bodies set up by these Annexes, amounted to an international procedure. Indeed, there existed elements pointing to this international character (partly international composition, sui generis position within the domestic legal order), but also, and they were preponderant, elements pointing to the domestic nature of these two bodies. In this context, the Commission attached particular importance to their exclusively domestic jurisdiction. The Commission concluded therefore that Annexes 4 and 6 to the 1995 Dayton Peace Agreement should be treated as international treaties, while both the Human Rights Chamber and the Constitutional Court were domestic bodies within the meaning of Article 35.1 of the European Convention on Human Rights.

On 15 November 2005, the Court adopted its judgment in the case in question. The Court fully shared the opinion of the Commission, which it quoted extensively.

3. REGIONAL CO-OPERATION

The activities of the Venice Commission in the field of constitutional justice meet a high interest from constitutional courts and equivalent bodies outside Europe. Due to its nature as an enlarged agreement, the Commission can pursue such co-operation with regional bodies uniting courts. Apart of the Conference of European Constitutional Courts, major non-European partners are the *Association des cours constitutionnelles ayant en partage l'usage du français* (ACCPUF) and the Southern African Judges' Commission (SAJC). Links were also established with a group of Asian constitutional courts.

- Conference of European Constitutional Courts

The Conference is the key partner of the Venice Commission in the endeavour to strengthen constitutional courts in Europe. On 16-18 May 2005, the Commission participated in the XIIIth Conference in Nicosia, Cyprus. At the request of the Cypriot Presidency, the Commission had prepared a working document on the topic of the Conference, the Criteria for Limitations to Human Rights. The document to be published as a special issue of the Bulletin on Constitutional Case-Law - was welcomed by the Conference.

At its Plenary Session on 17 December, the Commission adopted a joint statement together with the Lithuanian Presidency of the Conference, calling for a speedy appointment of judges to the Constitutional Court of Ukraine, which was unable to sit because the number of remaining judges had fallen below the required quorum.

- Association of Constitutional Courts using the French language (ACCPUF)

Based on the co-operation agreement between ACCPUF and the Venice Commission, the Commission participated in the Conference of Heads of Institutions of ACCPUF (Bucharest, 31 May-1 June 2005) and offered to include further ACCPUF case-law in the CODICES database.

On 29-30 November 2005, the Commission participated in the annual meeting of national correspondents on the topic of the "Working Methods of Constitutional Courts and Equivalent Bodies". The Commission Secretariat made a presentation of the CODICES database and explained the technique of preparing contributions to CODICES.

- Southern African Judges Commission

In co-operation with the Supreme Court of Uganda and the SAJC, the Venice Commission co-organised the Conference of the Southern African Judges Commission on "**Modernising the Judiciary** (Entebbe, Uganda, 4-5 February 2005). During the Conference, the subject of the modernisation of the judiciary was approached from two major angles: information technology and the

training of judges and staff of the courts. The participants agreed that the effectiveness of the judiciary is a precondition to the implementation of the rule of law. In the judiciary, computers are required in the drafting of judgements but may be even more important as a tool to communicate within the judiciary and with the public. Given the lack of resources in the countries of the region and the high costs of publishing judicial digests, the use of web-sites was seen as a means to publish the case-law of the Courts.

The lack of equipment and sometimes the lack of training to use existing equipment appropriately can lead to a denial of justice if the judiciary remains incapable of administering justice within reasonable time. The discussion of specific projects showed that IT projects in the judiciary are likely to fail if they are not properly prepared, implemented and followed up. The lack of adapting standard software solutions to the specific needs of the judiciary, resistance from the persons concerned and inadequate follow up as concerns the equipment and continued training after the implementation were identified as major problems.

In co-operation with the Supreme Court of Namibia and the SAJC, the Venice Commission co-organised the Conference of the Southern African Judges Commission on **Independence and Accountability of the Judiciary** (Windhoek, Namibia, 11-13 August 2005).

The justices agreed that the *independence of the judiciary* was a benchmark indicating to what extent a society was free and democratic. An appropriate legal framework and adequate funding are crucial and therefore the justices called on the governments to adhere to their obligations in this regard. In addition, the participants considered it necessary for the efficient functioning of the judiciary, to institute measures for the basic education on the functioning of the judiciary for the general public as well as for the executive and legislative powers.

At the same time, the participants agreed that *the judges were accountable for the way they discharged their duties, i.e. their conduct*. Proper selection of the members of the judiciary, clear reasoning in the rendered decisions, transparent appeal proceedings, access of the general public to court proceedings and accurate reporting by the media, all contribute to the proper functioning of judiciary. To ensure accurate reporting by the media, judiciaries were encouraged to develop communication policies, including informal consultations with media representatives and the provision of clear summaries of judgments. Moreover, codes of conduct and appropriate bodies ensuring that members of the judiciary act according to the high ethical standards of their office, had to be established where absent and existing ones were made to function in accordance with the relevant international instruments such as the Latimer House Guidelines and the Bangalore Principles. The participants also took note of a number of existing Council of Europe documents in the field^[9], which were put at their disposal. The first day of the meeting concluded with the SAJC adopting a statement outlining its position on the above-mentioned issues.

The second day of the meeting was devoted to current matters of the SAJC. The General Meeting also adopted a resolution formalising Kenyasmembership in the SAJC.

The Secretary of the Venice Commission informed the SAJC of the recent Irish governments voluntary contribution to support a new programme of SAJC activities which had been drafted on the basis of the individual proposals of the SAJC participating judiciaries. Apart from the annual conferences and training activities, the new programme is aimed at fostering the exchange of case-law via the Venice Commissions CODICES and its preliminary website for the SAJC: www.venice.coe.int/sajc. Courts should send their important constitutional cases, however, key civil and criminal cases can also be included.

The question of the current situation in Zimbabwe and participants concluded that the SAJC, whilst bearing in mind the utmost importance of the atmosphere of peer trust for the survival of the Commission, should nevertheless voice its concerns with regard to similar situations in the region. However, the manner in which such action should take place should be well thought through. Therefore appropriate rules had to be drafted. The Venice Commission was asked to share the available know-how in these matters with the SAJC.

The Commission was able to support the SAJC thanks to a voluntary contribution from Norway.

- Asian Courts

At the invitation of the German Konrad Adenauer Foundation, which organises annual seminars of Asian Constitutional and Supreme Courts, the Secretariat participated in the 3rd Seminar for Asian Constitutional Court Judges on 6-8 September 2005 in Ulan Bator, Mongolia. In line with the discussions held at the 4th meeting of the Joint Council on Constitutional Justice (Baku, 16-17 June 2005),

the Secretariat invited the Asian courts to contribute to the CODICES database.

IV. DEMOCRACY THROUGH FREE AND FAIR ELECTIONS [\[10\]](#)

1. ACTIVITIES BY COUNTRY

- Albania

Legal advice to an election observation mission

In accordance with the agreement between the Parliamentary Assembly and the Venice Commission, the Commission advised the Assembly's election observation mission during the legislative elections of 3 July 2005. The Commission's role was to brief the observation mission on legal aspects of the electoral process and to identify deficiencies in Albania's legislation and electoral practices on the basis of the observation conducted.

- Armenia

Electoral reform

At its March 2005 session, the Commission adopted the preliminary joint opinion by the OSCE/ODIHR and the Venice Commission on the revised draft amendments to the Electoral Code of Armenia (CDL-AD(2005)008). This preliminary opinion had been drafted following a visit by the Commission and OSCE/ODIHR representatives to Yerevan to discuss the most recent amendments to the Electoral Code. Although it notes some improvement in the draft amendments, this opinion highlights serious problems with, *inter alia*, election administration, voter lists and the procedures for election-related appeals. The new provision requiring political parties to be registered at least one year before an election is of particular concern.

At its June session, the Commission then endorsed the draft joint interim opinion by the OSCE/ODIHR and the Venice Commission on revised draft amendments to the Electoral Code of Armenia (CDL-AD(2005)019). Lastly, at its October session the Commission adopted the joint final opinion on the amendments to the Electoral Code of the Republic of Armenia as adopted by the National Assembly of Armenia in May 2005 (CDL-AD(2005)027). These amendments implemented several of the recommendations contained in the previous joint opinions by the Commission and the OSCE/ODIHR (*ref.* CDL-AD(2003)021; CDL-AD(2004)049), and constitute a definite improvement in the legal framework for elections. The Electoral Code could still be improved, however, particularly in the area of election administration. Another major concern is the fact that the code does not appear to create the necessary legal framework for the adjudication of appeals and protection of suffrage rights. Lastly, the joint opinion states that the implementation in good faith of the principles set out in the code remains crucial for the holding of democratic elections.

- Azerbaijan

a. Electoral reform

In March 2005, an Azerbaijani delegation met Commission and OSCE/ODIHR representatives in Strasbourg to discuss the revision of the Election Code to be applied during the autumn 2005 legislative elections. The Commission then endorsed a joint interim opinion by the Commission and the OSCE/ODIHR on proposed amendments to the Election Code of Azerbaijan (CDL-AD(2005)018) at its plenary session in June. These proposed amendments followed two other joint opinions previously adopted by the Commission (*ref.* CDL-AD(2003)054; [CDL-AD\(2004\)016rev](#)), but most of the key recommendations they contained were not implemented in the draft under consideration.

Another meeting between the Azerbaijani authorities and Commission and OSCE/ODIHR representatives took place in Strasbourg in May 2005, following which a revised version of the proposed amendments to the Election Code was submitted to Parliament and adopted by the latter in June. The final text of these amendments, as adopted, was discussed in the final joint opinion by the Commission and the OSCE/ODIHR on the amendments to the Election Code of Azerbaijan (CDL-AD(2005)029), adopted at the Commission's plenary session in October. The final opinion, drawn up on the basis of comments by MM Nolte, Paczolay and Maleev, points out that several problematic provisions identified in the 2003, 2004 and 2005 opinions have still not been modified by the amendments, or have been modified only to a very limited degree. In particular, these provisions deal with the composition of election commissions, the right to campaign and appeals. In addition, one amendment eliminates a previous provision on transparency in the compilation of voter lists. The Commission and the OSCE/ODIHR conclude that the Election Code as drafted only partially meets the commitments made to the OSCE by Azerbaijan and the Council of Europe's standards for democratic elections. Furthermore, at the October plenary session the Secretary General of the Council of Europe expressed his concerns to Commission members regarding voter lists, inequalities among candidates and measures to combat fraud and multiple voting, which are attracting criticism from international organisations and national observers.

b. Workshops and training seminars in preparation for the parliamentary elections

The following activities have been organised as part of the Action Plan for Parliamentary Elections in Azerbaijan, adopted by the Committee of Ministers of the Council of Europe:

- From 11 to 13 July 2005, the Venice Commission, in co-operation with the Media Division of the Directorate General of Human Rights, held a round table on dialogue between the media and the authorities in Azerbaijan, along with a seminar on media and elections. The main purpose of these activities was to foster dialogue between the authorities and the media and to adopt a code of conduct for the media during the election campaign.

- On 7 and 8 September 2005, the Commission held an electoral training workshop in Baku, in conjunction with the Central Election Commission of Azerbaijan, aimed at those responsible for training members of the electoral constituency commissions before the elections on 6 November 2005. About thirty trainers attended this workshop.

- On 29 and 30 September 2005, the Commission held a seminar on the role of judges in the settlement of electoral disputes, attended by 25 judges from the courts of first instance and appeal. The seminar was organised with a view to holding a discussion with these judges about procedures for filing electoral appeals, which have been modified as a result of recent amendments to the Election Code of Azerbaijan. Prospects and international experience in this area were also discussed, as were more effective ways of dealing with electoral disputes.

c. Legal advice to an election observation mission

In accordance with the agreement between the Parliamentary Assembly and the Venice Commission, the Commission advised the Assembly's election observation mission during the legislative elections of 6 November 2005. The Commission's role was to brief the observation mission on legal aspects of the electoral process and to assess the implementation of the Election Code of Azerbaijan, which had previously been the subject of a Commission opinion (CDL-AD(2005)029).

- Croatia

At its December session, the Commission was informed that Croatia had embarked on a process of electoral reform, with a view to drawing up a comprehensive electoral code. The drafting of this code may, however, be postponed until after the 2007 elections. On the other hand, the draft law on the State Electoral Commission ([CDL-EL\(2005\)053](#)) has already been submitted for joint expert appraisal by the Venice Commission and the OSCE/ODIHR, with a view to forwarding a draft opinion to the Croatian authorities before the March 2006 session.

- Georgia

a. Electoral Code

In October 2005, the Georgian Parliament requested the Commission's opinion on various draft institutional laws amending the Electoral Code of Georgia.

At its December session, the Commission adopted an opinion on the draft law concerning the election of the municipal council of Tbilisi (CDL-AD(2005)042), on the basis of comments by Ms Lazarova Trajkovska and Mr Owen, which take into consideration the Commission's previous opinions on the Electoral Code of Georgia (ref. [CDL-AD\(2002\)009](#); [CDL-EL\(2003\)005](#); [CDL-AD\(2004\)005](#)). The Commission recognises that the amendments are basically positive and clarify some matters connected with local elections, but states that there is still room for improvement in some respects. The new mixed electoral system proposed for the election of the local council (*Sakrebulo*) of the capital of Georgia (Tbilisi) should be defined more clearly. In addition, candidacy restrictions aimed at those who have not been residents of Tbilisi for a period of five years should be removed. Lastly, the provisions concerning the timeframe for announcing final results and the system of effective appeals should be worded more precisely in the proposed draft amendments, as should the appeals procedure and the powers and responsibilities of various bodies, so as to avoid conflicts of jurisdiction.

An opinion on the other amendments to the Electoral Code will be submitted to the Commission for adoption in 2006.

b. Electoral assistance

At the request of the new Central Election Commission (CEC), an assistance mission took place in September and October 2005. An electoral expert, Mr Bernard Owen, was made available to the CEC to provide technical and legal assistance and explain the principles of electoral law. The CEC has also requested an assistance mission for the local elections in June 2006.

- Moldova

a. Electoral law and election administration in Moldova

At its December session, the Commission adopted a joint opinion with the OSCE/ODIHR on amendments to the Electoral Code of Moldova (CDL-AD(2006)001). This opinion was drawn up on the basis of comments by MM Polizzi and Vollan and contains recommendations concerning the Electoral Code of Moldova as amended in July and November 2005.

Firstly, the Commission emphasises that the most recent version of the Moldovan Electoral Code incorporates only some of its previous recommendations (ref. [CDL-AD\(2003\)001](#); [CDL-AD\(2004\)027](#)), for example in relation to the provisions reducing the thresholds for participation in the allocation of parliamentary seats or those concerning the composition of the CEC. Several of the recommendations set out in previous opinions have not been implemented, and some provisions of the Electoral Code are still problematic. For instance, the provision concerning the permanent deprivation of voting rights for persons sentenced to imprisonment, regardless of the seriousness of the offence committed, is not acceptable. In addition, the Commission states that restrictions on the right to free speech and expression must be specific and in keeping with the principle of proportionality, and that the limitations on the

right to campaign set forth in the Moldovan Electoral Code should therefore be brought into line with international instruments and domestic constitutional law. The Electoral Code should also make sure special categories of voters can effectively exercise their right to vote at all elections, and ensure the secrecy of the vote for all.

b. Conference on the funding of political parties

On 29 and 30 November 2005, the Venice Commission held a conference on Council of Europe Standards in the Electoral Field and Funding of Political Parties in Chisinau, in conjunction with the PACO (Programme Against Corruption and Organised Crime in South-eastern Europe), the Ministry of Justice, the Central Election Commission of Moldova and the Centre for Combating Economic Crime and Corruption. Reports discussing the new legislation on funding of political parties and electoral disputes in the pre-election period were presented during the conference.

c. Legal advice to an election observation mission

In accordance with the agreement between the Parliamentary Assembly and the Venice Commission, the Commission advised the Parliamentary Assembly's election observation mission during the parliamentary elections of 6 March 2005. The Commission's role was to brief the observation mission on legal aspects of the electoral process and to identify deficiencies in Moldova's legislation and electoral practices on the basis of the observation conducted.

- Palestine

Legal advice to an election observation mission

From 7 to 10 January 2005, the Venice Commission took part in the observation mission for the Palestinian Authority's presidential elections. As part of this mission, the Commission met the Palestinian Central Election Commission and the Palestinian Legislative Council. The Commission was to help the Parliamentary Assembly assess the electoral legislation and the legitimacy of the entire electoral process.

- Serbia and Montenegro

Referendum Legislation in Montenegro

In May 2005, the Parliamentary Assembly of the Council of Europe asked the Commission for an opinion on the compatibility of Montenegro's current legislation on the organisation of referendums with the applicable international standards. The opinion was to focus specifically on the provisions relating to turnout, the majority required and eligibility to vote. At its December session, the Commission adopted opinion CDL-AD(2005)041, drafted on the basis of comments by MM Tuori, Closa Montero and Bradley.

In this opinion, the Commission firstly recalls that, in 2001, it had adopted an Interim Report on the Constitutional Situation of the Federal Republic of Yugoslavia, ([CDL-INF\(2001\)023](#)), which contained a legal assessment of a possible referendum on the status of Montenegro. The Commission states that some of the constitutional issues discussed in the report are still relevant. With respect to the issues raised by the Parliamentary Assembly in 2005, the Commission concludes that Montenegro's legislation concerning the organisation of referendums does not breach the international standards laid down by, *inter alia*, the Code of Good Practice in Electoral Matters ([CDL-AD\(2002\)023rev](#)) and the Guidelines for Constitutional Referendums at National Level ([CDL-INF\(2001\)010](#)). According to this legislation, the result of a referendum is valid if a majority of registered voters participated in the vote, without any quorum for approval being set. However, the Commission considers that it would be desirable to introduce a quorum for approval by a certain percentage of the electorate, given what is at stake, and consequently recommends to the Montenegrin authorities and the opposition that they agree on such a quorum. The current situation with regard to the legislation on eligibility to vote is also acceptable in the light of international standards; only the requirement for two years residence seems excessive, although it is legal. The

Commission concludes by emphasising that international observation of the referendum would certainly help to ensure compliance with the relevant international standards.

- Ukraine

Electoral legislation

At its December session, the Commission adopted the joint opinion with the OSCE/ODIHR on the law of 7 July 2005 amending the Ukrainian Law on Elections of Peoples Deputies of Ukraine ([CDL-AD\(2006\)002](#)). This opinion was drawn up on the basis of comments by MM Pilgrim and Middleton, ODIHR experts, and by MM Sanchez Navarro and Annus of the Commission.

Elections to Ukraine's national parliament, the Verkhovna Rada, are scheduled for 26 March 2006. These elections will be governed by the Ukrainian Law on Elections of Peoples Deputies of Ukraine, passed in 2004 and substantially amended on 7 July 2005. The joint opinion deals with this latest version of the law, acknowledging that in some respects it implements the recommendations contained in the previous Commission and OSCE/ODIHR opinions (ref. [CDL-AD\(2004\)001](#); [CDL-AD\(2004\)002](#)). In particular, the law improves regulations on the composition of election commissions, the organisation of polling stations and the election campaign. However, certain provisions are still inappropriate, such as those prohibiting foreign media participation in the election campaign and those pertaining to the protection of candidates rights, the compilation of voter lists and sanctions for breaches of the law. Lastly, the opinion invites the Ukrainian legislature to consider the possibility of combining the various electoral laws into a single code, which might simplify the electoral process and avoid rules being duplicated. The representative of the President of Ukraine, who was present at the session, also informed the Commission that amendments had already been made in respect of the media, in line with the Commissions previous recommendations.

In April 2005, the Ukrainian Minister of Justice requested an opinion on the draft law on the state register of voters in Ukraine. At its December session, the Commission adopted a joint opinion with the OSCE/ODIHR on this draft law (CDL-AD(2006)003), drawn up on the basis of comments by MM Sanchez Navarro, of the Commission, and Middleton, of the OSCE/ODIHR. The purpose of the law under consideration is to create a single national register of voters and an entirely new system whereby voters data would be recorded in a permanent register. This model seems to be technically acceptable, and appears to be a good starting point for resolving one of the main problems of any electoral legislation, which relates to the compilation of the register of voters. However, the law has a tendency to regulate in excessive detail. Lastly, the opinion reiterates the suggestion made in the previous opinion regarding the adoption of a comprehensive electoral code by Ukraine.

2. TRANSNATIONAL ACTIVITIES

- Studies and seminars of general scope

a. Electoral rules and affirmative action for minorities

In June 2004, a motion for a resolution on Electoral rules and affirmative action for minorities participation to the decision-making process in the European countries was submitted to the Parliamentary Assembly of the Council of Europe. The Commission was then asked to carry out an in-depth study on the subject. The Commission decided to begin with a comparative study of electoral rules on affirmative action, based on the practices of Council of Europe member states. The findings of this study appear in a Commission report ([CDL-AD\(2005\)009](#)), adopted at the March 2005 plenary session and drawn up on the basis of comments by Ms Lazarova Trajkovska.

The report shows that a number of states have interesting electoral rules with affirmative action goals and that, in most of these states, such rules are introduced as isolated elements. In addition, electoral rules promoting affirmative action are generally of limited scope, particularly in terms of the exact number of beneficiaries determined by the Constitution or the legislation. Such rules appear to be

particularly effective when applied in local elections. Despite the controversial nature of affirmative action, there are therefore a considerable number of affirmative action mechanisms in the electoral sphere that are consistent with the European electoral heritage.

style='font-size:12.0pt;mso-bidi-font-size:10.0pt;letter-spacing:0pt; mso-ansi-language:EN-GB;font-weight:normal'>b. Election observation questionnaires

In Resolution 1320 (2003), the Parliamentary Assembly of the Council of Europe asked the Venice Commission to draft a questionnaire setting out in a practical form the general principles of the Code of Good Practice in Electoral Matters, so as to give observer delegations a better overview of the electoral situation. At its June 2005 session, the Commission adopted the election observation form ([CDL-AD\(2005\)013](#)), drafted jointly with the OSCE/ODIHR, and also took note of the more detailed version ([CDL-EL\(2005\)009](#)) containing additional questions that should be included in all election observation questionnaires where possible. The Commission then forwarded these documents to the Parliamentary Assembly and Congress of Local and Regional Authorities of the Council of Europe, which have used them for a number of election observation missions.

c. Restrictions on the right to vote

In December 2004, the Venice Commission adopted two reports on the abolition of restrictions on the right to vote, at the request of the Parliamentary Assembly of the Council of Europe (CDL-AD(2004)011 and 012). In June 2005, the Parliamentary Assembly adopted Recommendation 1714 (2005) on the abolition of restrictions on the right to vote, in which, *inter alia*, the Venice Commission was asked to develop its activities aimed at improving the conditions for the effective exercise of election rights by groups facing special difficulties. The Committee of Ministers requested the Venice Commission's opinion on this recommendation, and at its October 2005 plenary session the Commission adopted the opinion on Recommendation 1714 (2005) of the Parliamentary Assembly on the abolition of restrictions on the right to vote (CDL-AD(2005)031), drawn up on the basis of comments by Ms Lazarova Trajkovska ([CDL-AD\(2005\)011](#)) and Mr Matscher ([CDL-AD\(2005\)012](#)).

In this opinion, the Commission states that the right to vote is one of the fundamental political rights and that, as the principles of universality, equality, freedom and secret ballots are the pillars of the European electoral heritage, the abolition of restrictions on the right to vote should be of particular interest to the states. It welcomes the appeal to member and observer states to sign and ratify the 1992 Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level, aimed at granting active and passive electoral rights to foreign residents. The Commission also endorses the appeal to states to reconsider existing restrictions on the electoral rights of prisoners and members of the military, with a view to abolishing all those that are no longer necessary and proportionate.

d. Media analysis during election observation missions

At its October 2005 session, the Commission adopted the Guidelines on Media Analysis during Election Observation Missions ([CDL-AD\(2005\)032](#)), prepared in co-operation with the OSCE/ODIHR, the European Commission and the Directorate General of Human Rights of the Council of Europe. The purpose of these guidelines is to review the standards of these various organisations applicable to the media during election campaigns.

The media can help voters make informed decisions about political parties and candidates, and play an essential role as the primary source of information during an election campaign. Independent media are essential in genuine democracies. The guidelines, therefore, describe the legal framework applicable to the media during election campaigns, the relationship between political and media systems and the methods used to monitor media coverage. They also outline international standards relating to freedom of expression and methods of media analysis during election observation missions.

e. International election observation

In September 2004, at the European Commission's invitation, the Venice Commission took part in a meeting on electoral assistance in Brussels, aimed at framing a joint strategy for election observation missions. In its October 2005 session, the Commission endorsed the Declaration on Principles for International Election Observation ([CDL-AD\(2005\)036](#)), prepared by the United Nations

Electoral Assistance Division (UNEAD), the National Democratic Institute for International Affairs (NDI) and The Carter Centre (TCC).

This declaration sets out principles to be applied by the various intergovernmental and international non-governmental organisations endorsing it when they take part in election observation missions. In particular, these principles relate to the organisation of the missions themselves, the assessments carried out by these bodies, their sources of funding, their composition, the statements they publish and requirements for respecting the sovereignty of the country in which the elections are being held. The Declaration is supplemented by a code of conduct for international election observers and a pledge to be signed by the latter. These texts were solemnly adopted at an international conference held in New York on 27 October 2005.

f. Referendum

In April 2005, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1704(2005) on Referendums: Towards Good Practices in Europe and forwarded it to the Venice Commission for information and comment. At its October 2005 session, the Commission adopted its opinion on this recommendation ([CDL-AD\(2005\)028](#)), drawn up at the Committee of Ministers request on the basis of comments by MM Luchaire, Van Dijk and Malinverni. This opinion gives a detailed analysis of the content of the Assembly recommendation and reiterates the Commissions willingness to assist the Council of Europes statutory bodies in their work on the question of referendums.

The Commission decided to prepare a general study on referendums as a basis for detailed guidelines on referendums. Also at the October session, Mr Luchaire submitted the report and summary tables of the comparative study on referendums in Europe, which describe the practices of different states and were adopted by the Commission ([CDL-AD\(2005\)028](#)). The Commission also instructed the rapporteurs, MM Van Dijk, Luchaire and Malinverni, to prepare guidelines on referendums, in co-operation with the Commissions Secretariat.

g. Stability of electoral law

At its December session, the Commission adopted the draft interpretive declaration on the stability of electoral law (CDL-AD(2005)043). This text interprets point II.2.b of the Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), which stipulates that the fundamental elements of electoral law should not be open to amendment less than one year before an election.

The Commission considers that this principle does not take precedence over the other principles of the Code of Good Practice and that it should not be invoked to maintain a situation contrary to European electoral standards. The Commission also states that this principle only concerns the fundamental rules of electoral law when they appear in ordinary law, and that these fundamental rules include those relating to the electoral system proper, the membership of electoral commissions and the drawing of constituency boundaries. Lastly, the Commission emphasises that any reform of electoral legislation to be applied during an election should occur early enough for it to be really applicable to the election.

h. Unidem seminar on Organisation of Elections by an Impartial Body (Belgrade, 24 and 25 June 2005)

As part of the Unidem (Universities for Democracy) programme, the Commission organised a seminar on Organisation of Elections by an Impartial Body in Belgrade on 24 and 25 June 2005, in co-operation with the Serbian Electoral Commission and the Council of Europe Office in Belgrade.

The following main themes were discussed: the composition and functioning of the electoral administration, the activities and competencies of the electoral administration and the transparency and impartiality of the electoral administration on election day and after the election. About thirty participants attended the seminar, most of them chairpersons and members of central election commissions in central and eastern Europe.

The seminar afforded an opportunity to disseminate the principles of the European electoral heritage. In particular, the agencies responsible for organising elections were able to pool information and experience in this area. The Venice Commissions Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), *inter alia*, served as a basis for discussions about the European

electoral heritage.

i. European Conference of Electoral Management Bodies

The Venice Commission organised the Second European Conference of Electoral Management Bodies, held in Strasbourg on 10 and 11 February 2005. This conference was attended by representatives of national authorities and various international organisations with a special focus on electoral matters.

The main aim of this conference was to discuss the issue of voter turnout during elections and the impact of the new technologies on public participation in the electoral process, and to explore different voting systems and the experiences of national electoral management bodies and agencies. During the conference, participants agreed that the Venice Commission should organise annual meetings of electoral management bodies with the participating countries and set up an Internet discussion forum for representatives of electoral management bodies and intergovernmental organisations. The participants also agreed to contribute regular legislative updates to the Venice Commissions VOTA database.

- VOTA, the Venice Commissions electoral database

The VOTA database was set up as part of the joint Venice Commission and European Union programme Democracy through Free and Fair Elections. It contains the electoral legislation of the Venice Commission member states and other states involved in the Commissions work. More than 60 statutes from about 30 states are already available in the database, in English and French.

Following the recommendations made at the European Conference of Electoral Management Bodies held in Strasbourg in February 2005 (see above), the VOTA forum has been set up and is available online:

<http://www.team10.coe.int/cdle/Lists/NewsGroup/AllItems.aspx>. This forum, open to members of the Council for Democratic Elections and to European electoral management bodies, now affords an opportunity to discuss the issues that arise and activities to be undertaken in the electoral field. - Activities relating to political parties Participation of political parties in the electoral process In December 2004, the Council for Democratic Elections decided to carry out a study on the participation of political parties in the electoral process. MM Sanchez Navarro and Vogel were appointed as rapporteurs. At the June 2005 session, a report dealing with the questions that arise before, during and after an election was submitted to the Commission (CDL-EL(2005)018; also see CDL-EL(2005)057). Discussions are continuing, and will give rise to a Venice Commission opinion in 2006.

VI. CO-OPERATION BETWEEN THE COMMISSION AND THE STATUTORY ORGANS OF THE COUNCIL OF EUROPE, THE EUROPEAN UNION AND OTHER INTERNATIONAL ORGANISATIONS

- Third Summit of the Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005)

At the invitation of the Polish Chair of the Committee of Ministers, the President of the Commission, Mr La Pergola, took part in the Summit. In the Summit Action Plan the Heads of State and Government call on member states to make use of the advice and assistance of the European Commission for Democracy through Law (Venice Commission) for the further development of European standards in particular in the field of the functioning of the democratic institutions and electoral law. To ensure the implementation of European standards at national level it should step up its co-operation with constitutional courts and courts of equivalent jurisdiction which play a key role in this respect.

- Committee of Ministers

Representatives of the Committee of Ministers participated in all the Commissions plenary sessions during 2005. The following ambassadors attended the sessions during 2005:

Mr Roland Wegener, Permanent Representative of Germany, Mr Per Sjgren, Permanent Representative of Sweden, Ms Anne-Marie Nyroos, Permanent Representative of Finland, Mr Daniel Bučan, Permanent Representative of Croatia, Mr Joaquim Duarte, Permanent Representative of Portugal, Mr Constantin Yerocostopoulos, Permanent Representative of Greece, Mr Gheorghe Magheru, Permanent Representative of Romania, Mr Roland Mayer, Permanent Representative of Luxembourg and Mr Marios Lyssiotis, Permanent Representative of Cyprus.

Different subjects were raised by the representatives of the Committee of Ministers, including the Council of Europe Summit of Heads of State and Government in Warsaw in May and the follow-up to this Summit, the Forum on the Future of Democracy, the programmes of the Portuguese and Romanian chairs of the Committee of Ministers, the honouring of commitments by Armenia and Azerbaijan, the role of the Commission in developing Europe's democratic heritage, assistance from the Commission for countries wishing to join the European Union, the adoption of Protocol 14 to the European Convention on Human Rights, co-operation with the OSCE, co-operation with the EU including the forthcoming Juncker report and the execution of decisions by the European Court of Human Rights..

At the request of the Committee of Ministers, the Commission adopted opinions on the possible follow-up to Recommendation 1713(2005) of the Parliamentary Assembly on democratic oversight of the security sector in member states (CDL-AD(2005)033) and on Recommendation 1704(2005) of the Parliamentary Assembly on Referendums: towards good practices in Europe ([CDL-AD\(2005\)28](#)).

- Parliamentary Assembly

Mr Jurgens attended the sessions of the Commission in March, June and October, Mr Schieder in June, October and December and Mr Bindig in December.

The Commission was regularly informed about the activities of the Assembly of interest to the Commission, including the need to respect human rights in the fight against terrorism, the implementation of decisions of the European Court of Human Rights, the proposal to set up a human rights agency within the European Union, the possible role of the Venice Commission within the framework of the European Neighbourhood Policy, the functioning of the co-operation agreement between the Commission and the Assembly and the Assembly's intention to ask the Commission for a legal opinion on the obligation of member states with respect to the so-called CIA flights.

A number of opinions were provided at the request of the Parliamentary Assembly, including the opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative, the opinion on constitutional reforms relating to the disappearance and murder of a great number of women and girls in Mexico, the report on electoral rules and affirmative action for national minorities participation in the decision-making process in European countries, the report on the abolition of restrictions on the right to vote in general elections, the opinion on the federal Law on the *prokuratura* (prosecutors office) of the Russian Federation, the opinion on the compatibility of the Laws Gasparri and Frattini of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media, and the opinion on the compatibility of the existing legislation in Montenegro concerning the organisation of referendums with applicable international standards.

The Parliamentary Assembly continued to participate actively in the Council for Democratic Elections, established in 2002 as a tri-partite body of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe (see Part IV above). The Council for Democratic Elections was chaired by a member of the Parliamentary Assembly, Mr Jurgens, and a number of activities of the Council were initiated by the representatives from the Parliamentary Assembly. In accordance with the co-operation agreement concluded between the Venice Commission and the Parliamentary Assembly, Venice Commission representatives participated in number of election observation missions of the Assembly.

- Congress of Local and Regional Authorities of the Council of Europe

The Congress was represented at the June and October plenary sessions of the Commission by Mr Ian Micallef and at the December session by Mr J. Mans. The Congress continued to participate actively in the Council for Democratic Elections, established in 2002 as a tri-partite body of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe (see Part IV above).

The Congress asked the Venice Commission to undertake a study on the role of the second chambers in national parliaments. This study should be presented at a joint conference in Vienna in September 2006. The activities with respect to the reform of the territorial administration of Ukraine were undertaken at the request of the Congress.

- Forum on the Future of Democracy

The Forum on the Future of Democracy was established at the Warsaw Summit as an open forum acting in close co-operation with the Venice Commission. One of the Vice-Presidents of the Commission, Mr Mifsud Bonnici, attended the launching meeting of the Forum in Warsaw on 3 to 4 November 2005.

2. EUROPEAN UNION

The **European Commission** accepted, in the framework of the European Initiative for Democracy and Human Rights (EIDHR), a joint programme with the Venice Commission entitled Democracy through free and fair elections, which started in December 2003 (see Part IV above). Most opinions of the Venice Commission in the electoral field, the UniDem seminar on Organisation of elections by an impartial body held in Belgrade on 24-25 June 2005, a round table on participation of foreigners in elections, assistance to the central election commission and to election observation missions, as well as other seminars and training workshops and the development of the Vota database were financed through the joint programme in 2005.

On several occasions the European Commission urged national authorities to follow the recommendations given by the Venice Commission on constitutional reforms and draw on its advice relating to the solution of ethno-political conflicts (e.g. Armenia, Bosnia and Herzegovina, Georgia, Kyrgyzstan, Moldova, the former Yugoslav Republic of Macedonia). In particular, the European Commission requested that the Venice Commission assist the Kyrgyz authorities in the framework of the constitutional reforms initiated in June 2005. The European Commission funds the relevant Venice Commissions action in Kyrgyzstan (see part II above).

Mr Armando Toledano Laredo represented the European Commission at the plenary sessions of the Commission.

The **Council of the European Union** urged the authorities of Montenegro to fully respect the recommendations of the Venice Commission when organising a referendum on independence. Following the adoption of the Venice Commissions opinion (see Part IV above), the High Representative, Mr Solana, appointed a special envoy in order to facilitate as suggested by the Venice Commission - negotiations between the majority and the opposition on the conditions of the referendum. The Commission maintained close contacts with the EU and the OSCE on a number of issues, in particular the conflicts with respect to Transnistria and South

Ossetia and decentralisation in Kosovo.

Following the adoption in June 2005 of the Venice Commission's opinion on the compatibility of the Italian Legislation on the Media and on the Conflict of Interest with the Council of Europe Standards in the Field of Freedom of Expression and Pluralism of the Media (see Part II above), the **European Parliament** - Commission on Culture and Education - invited a representative of the Venice Commission's Secretariat to intervene in the Public Hearing on No freedom without pluralism - the revision of the directive Television without frontiers on 13 September 2005 in Brussels. In addition, the Committee on Foreign Affairs of the European Parliament invited a representative of the Venice Commission to present the Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative at a hearing in Brussels on 10 October 2005 on Dayton Agreements 10 years after.

On 3 February 2005 Mr van Dijk, Vice President of the Commission, presented the activities of the Commission to the Permanent Representatives to the Council of Europe from EU member States and exchanged views with them on current developments and perspectives for the future.

3. OSCE

During 2005 the Venice Commission continued its close co-operation with OSCE/ODIHR in electoral matters, in particular through the drafting of opinions on the electoral legislation in Armenia, Azerbaijan, Georgia, Moldova, the Former Yugoslav Republic of Macedonia and Ukraine and the Elaboration of Guidelines on media monitoring during election observation missions. More details on this co-operation are provided in Part IV above.

At the request of ODIHR the Venice Commission provided comments on the OSCE/ODIHR Guidelines for Drafting Laws Pertaining to Freedom of Assembly (see Part II above).

The Venice Commission co-operated with OSCE/ ODIHR and the OSCE Centre Bishkek on constitutional assistance to Kyrgyzstan (see Part II above).

- OSCE Human Dimension Seminars

The Venice Commission took part in an OSCE Supplementary Human Dimension meeting on "Challenges of election technologies and procedures (Vienna, 21-22 April 2005). This conference focused on new election technologies, such as electronic voting, as well as the comparison of the main systems in use; on-going challenges to the implementation of existing OSCE commitments for democratic elections, as well as election observation: challenges to enhancing electoral integrity.

4. COMMUNITY OF DEMOCRACIES

The Secretary of the Commission, Mr Buquicchio, took part in the 3rd Ministerial Conference of the Community of Democracies in Santiago de Chile on 28-30 April 2005. At the Conference he presented the contribution of the Council of Europe and in particular the Venice Commission to the strengthening of democracy and the rule of law with a particular emphasis on electoral law.

5. FORUM OF FEDERATIONS

Mr Scholsem and the Secretary of the Commission, Mr Buquicchio, participated in the Third International Conference on Federalism,

organised by the Belgian authorities in co-operation with the Forum of Federations. The Conference took place in Brussels on 3 to 5 March 2005. The Venice Commission representatives contributed as Chair and Vice-Chair to the Working Group on Federalism and Conflict Settlement.

6. ASSEMBLY OF EUROPEAN REGIONS

The Deputy Secretary of the Commission, Mr Markert, and a Venice Commission expert, Mr Pinelli, took part in a Conference organised by the Assembly of European Regions in Novi Sad on 1-2 March 2005 on Creating the Conditions for Effective Regional Democracy. They addressed in particular issues of territorial organisation in the framework of the drafting of a new Constitution of the Republic of Serbia.

7. SOUTH CAUCASUS PARLIAMENTARY INITIATIVE

The Venice Commission organised, in co-operation with the National Assembly of Armenia, a conference on Our choice European Integration in Ljubljana on 19 January 2005. The conference took place during the 3rd Plenary Assembly of the South Caucasus Parliamentary Initiative. The Conference was mainly attended by members of the Parliaments of Armenia, Azerbaijan and Georgia as well as representatives of the Council of Europe, the European Commission and OSCE.

The presentations and discussions concentrated upon the different aspects of European integration and the compliance with the Council of Europe Parliamentary Assembly monitoring procedure requirements. It was stressed that the South Caucasus was historically, economically and culturally a part of Europe and was striving to further integrate into the European structures. Notwithstanding the specific mandates of other IGOs active in Europe, respect for Council of Europe values through the honouring of obligations and commitments entered into upon joining the Organisation is a major means and precondition of further integration of the South Caucasian countries into Europe. The PACE monitoring is not a mere supervision procedure but a dialogue in the process of achieving the goals that were set in agreement with the states upon their accession. It was emphasised that honouring of the obligations and commitments was in the interest of the people of the member states. The relevant PACE resolutions are to be seen as a roadmap to further progress and not a finger-pointing exercise.

The proceedings of the Conference will be published by the National Assembly of Armenia.

A P P E N D I X I - LIST OF MEMBER COUNTRIES

MEMBERS

Albania (14.10.1996)

Andorra (1.02.2000)

Armenia (27.03.2001)

Austria (10.05.1990)

Azerbaijan (1.03.2001)

Belgium (10.05.1990)
Bosnia and Herzegovina (24.04.2002)
Bulgaria (29.05.1992)
Chile (1.10.2005)
Croatia (1.01.1997)
Cyprus (10.05.1990)
Czech Republic (1.11.1994)
Denmark (10.05.1990)
Estonia (3.04.1995)
Finland (10.05.1990)
France (10.05.1990)
Georgia (1.10.1999)
Germany (3.07.1990)
Greece (10.05.1990)
Hungary (28.11.1990)
Iceland (5.07.1993)
Ireland (10.05.1990)
Italy (10.05.1990)
Kyrgyzstan (01.01.2004)
Latvia (11.09.1995)
Liechtenstein (26.08.1991)
Lithuania (27.04.1994)
Luxembourg (10.05.1990)
Malta (10.05.1990)
Moldova (25.06.1996)
Monaco (05.10.2004)
Netherlands style='mso-bidi-font-size:12.0pt'> (1.08.1992)
Norway (10.05.1990)
Poland (30.04.1992)
Portugal (10.05.1990)
Romania (26.05.1994)
Russian Federation (1.01.2002)
San Marino (10.05.1990)
Serbia and Montenegro (3.04.2003).
Slovakia (8.07.1993)
Slovenia (2.03.1994)
Spain (10.05.1990)
Sweden (10.05.1990)
Switzerland (10.05.1990)

the former Yugoslav Republic of

Macedonia (19.02.1996)

Turkey (10.05.1990)

Ukraine (3.02.1997)

United Kingdom (1.06.1999)

ASSOCIATE MEMBER

Belarus (24.11.1994)

OBSERVERS

Argentina (20.04.1995)

Canada (23.05.1991)

Holy See (13.01.1992)

Israel (15.03.2000)

Japan (18.06.1993)

Kazakhstan (30.04.1998)

Mexico (12.12.2001)

Republic of Korea (6.10.1999)

United States (10.10.1991)

Uruguay (19.10.1995)

PARTICIPANTS

European Commission

OSCE/ODIHR

SPECIAL CO-OPERATION STATUS

South Africa

APPENDIX II - LIST OF MEMBERS ^[11]

Mr Antonio LA PERGOLA (Italy), President, Judge at the Court of Justice of the European Communities

(Substitute: Mr Sergio BARTOLE, Professor, University of Trieste)

Mr Olivier DUTHEILLET DE LAMOTHE (France), Vice-President, State Counsellor, Member of the Constitutional Council

(Substitute: Mr Alain LANCELOT, Former member of the Constitutional Council)

Mr Aivars ENDZINS (Latvia), Vice-President, President, Constitutional Court

Ms Finola FLANAGAN (Ireland), Vice-President, Director General, Senior Legal Adviser, Head of the Office of the Attorney General

(Substitute: Mr James HAMILTON, Director of Public Prosecutions)

Mr Ugo MIFSUD BONNICI (Malta), Vice-President, President Emeritus

* * *

Mr Giorgio MALINVERNI (Switzerland), Professor, University of Geneva

(Substitute: Mr Heinrich KOLLER, Professor Basel University)

Mr Franz MATSCHER (Austria), Professor, University of Salzburg, Former judge at the European Court of Human Rights

(Substitute: Mr Christoph GRABENWARTER, Judge, Constitutional Court)

Mr Ergun ZBUDUN (Turkey), Professor, University of Bilkent, Vice President of the Turkish Foundation for Democracy

(Substitute: Mr Erdal ONAR, Associate Professor, Faculty of Law, Ankara University)

Mr Jean-Claude SCHOLSEM (Belgium), Professor, Law Faculty, University of Lige

Mr Gerard BATLINER (Liechtenstein), Member, Academic Council of the Liechtenstein Institute ^[12]

(Substitute: Mr Wilfried HOOP, Lawyer, Aspen)

Mr Helmut STEINBERGER (Germany), Director of the Max-Planck Institute, Professor, University of Heidelberg

(Substitute: Mr Georg NOLTE, Professor of Public Law, University Ludwig-Maximilians, Munich)

Mr Jan HELGESEN (Norway), Professor, University of Oslo

Ms Hanna SUCHOCKA (Poland), Ambassador of Poland to the Holy See

Mr Peter JAMBREK (Slovenia), Professor, Dean, Graduate School of Government and European Affairs, Former Minister of the Interior, Former President of the Constitutional Court, Former Judge at the European Court of Human Rights

(Substitute: Mr Miha POGACNIK)

Mr Kestutis LAPINSKAS (Lithuania), Judge, Constitutional Court

(Substitute: Ms Zivile LIEKYTE, Director, Department of Legislation and Public Law, Ministry of Justice)

Mr Cyril SVOBODA (Czech Republic), Deputy Prime Minister, Minister of Foreign Affairs

(Substitute: Ms Eliska WAGNEROVA, Vice-President, Constitutional Court)

Mr Stanko NICK (Croatia), Ambassador of Croatia in Hungary

(Substitute: Ms Jasna OMEJEC, Vice-President, Constitutional Court)

Mr Kaarlo TUORI (Finland), Professor of Jurisprudence, University of Helsinki

(Substitute: Mr Matti NIEMVUO, Director at the Department of Legislation, Ministry of Justice)

Mr Luan OMARI (Albania), Vice President, Academy of Science of Albania

Mr Hjrtur TORFASON (Iceland), Former Judge, Supreme Court of Iceland

(Substitute: Ms Herdis THORGEIRSDOTTIR, Professor, Faculty of Law, Bifrost School of Business)

Mr Pieter VAN DIJK (The Netherlands), State Councillor, Former Judge at the European Court of Human Rights

(Substitute: Mr Erik LUKACS, Former Legal Adviser, Ministry of Justice)

Mr Francois LUCHAIRE (Andorra), Honorary President of the University of Paris I, Former member of the French Constitutional Council, former President of the Constitutional Tribunal of Andorra

Mr Jeffrey JOWELL (United Kingdom), Professor of Public Law, University College London

(Substitute: Mr Anthony BRADLEY, Professor)

Mr Gaguk HARUTUNIAN (Armenia), President, Constitutional Court

(Substitute: Mr Armen HARUTUNIAN, Counsellor, Constitutional Court, Rector, State Administration Academy)

Mr Henrik ZAHLE (Denmark), Professor, Institute of Legal Science, University of Copenhagen

(Substitute: Mr John LUNDUM, High Court Judge)

Mr Cazim SADIKOVIC (Bosnia and Herzegovina), Dean, Faculty of Law, University of Sarajevo

Mr Dimitri CONSTAS (Greece), Professor and Director of the Institute of International Relations, Pantheon University Athens, Former Minister for the Press and Mass Media, former Ambassador of Greece to the Council of Europe

(Substitute: Ms Fani DASKALOPOULOU-LIVADA, Assistant Legal Adviser, Legal Department, Ministry of Foreign Affairs)

Ms Lydie ERR (Luxembourg), Member of Parliament

Mr Panayotis KALLIS (Cyprus), Former Supreme Court Judge

(Substitute: Mr Myron NICOLATOS, Supreme Court Judge)

Ms Rodica Mihaela STANOIU (Romania), Senator

(Substitute: Mr Alexandru FARCAS, Minister of European Integration)

(Substitute: Mr Bogdan AURESCU, Director General, Ministry of Foreign Affairs)

Mr Vojin DIMITRIJEVIC, (Serbia and Montenegro), Director, Belgrade Human Rights Centre

(Substitute: Mr Srdja DARMANOVIC, Professor, University of Montenegro, Director, Centre for democracy and human rights)

Mr Jos CARDOSO da COSTA (Portugal), Former President of the Constitutional Court, Professor, University of Coimbra

(Substitute: Ms Assuncao ESTEVES, Member of the European Parliament)

Mr Piero GUALTIERI (San Marino), Professor

(Substitute: Ms Barbara REFFI, State Attorney)

Mr John KHETSURIANI (Georgia), President, Constitutional Court

(Substitute: Mr Levan BODZASHVILI, Director, Ministry of Foreign Affairs)

Ms Cholpon BAEKOVA (Kyrgyzstan), President, Constitutional Court

Mr Ltif HSEYNOV (Azerbaijan), Professor of Public International Law

Mr Anton STANKOV (Bulgaria), Judge, Sofia City Court

(Substitute: Mr Todor TODOROV Expert Consultant of the Speaker of the National Assembly)

Ms Marijana LAZAROVA TRAKOVSKA, ("The former Yugoslav Republic of Macedonia"), Judge, Constitutional Court
(Substitute: Mr Borce DAVITKOVSKI, Professor, Law Faculty, St Cyril and Methodius University)

Mr Jn MAZAK (Slovakia), President, Constitutional Court
(Substitute: Mr Peter KRESAK, Professor, Member of the National Council of Slovakia)

Mr Carlos CLOSA MONTERO (Spain), Professor, Sub-Director for Studies and Investigation, Centre for Political and Constitutional Studies
(Substitute: Mr Angel J. SANCHEZ NAVARRO, Professor of Constitutional Law, Complutense University, Madrid)

Mr Serhiy HOLOVATY (Ukraine), Minister of Justice, President, Ukrainian Legal Foundation

Mr Dominique CHAGNOLLAUD (Monaco), Member of the Supreme Court, Professor, University of Law, Economics and Social Science Paris II

Mr Nicolae ESANU (Moldova), Deputy Minister of Justice

Mr Peter PACZOLAY (Hungary), Head, Office of the President of the Republic of Hungary
(Substitute: Mr Laszlo TROCSANY, Professor of Constitutional Law University of Szeged)

Mr Oliver KASK (Estonia), Head of Public Law Division, Legislative Politics Department, Ministry of Justice
(Substitute: Ms Liina LUST, Adviser, Public Law Division Legislative Methodology Department, Ministry of Justice)

Mr Luis CEA EGANA (Chile), President, Constitutional Court
(Substitute: Mr Juan COLOMBO CAMPBELL, Judge, constitutional Court)

Mr Hans Heinrich VOGEL, Professor in Public Law, University of Lund)
(Substitute: Mr Iain CAMERON, Professor, University of Uppsala)

Mr Valeriy ZORKIN (Russia), President of the Constitutional Court
(Substitute: Mr Valeriy MUSIN, Head of Division, Legal Faculty, St Petersburg State University)

ASSOCIATE MEMBERS

Mr Anton MATOUCEWITCH (Belarus), Deputy Rector, Commercial University of Management

OBSERVERS

Mr Hector MASNATTA (Argentina), Ambassador, Executive Vice-Chairman, Centre for constitutional and social studies

Mr Yves de MONTIGNY (Canada), Judge, Federal Court of Canada

(Substitute: Mr Grald BEAUDOIN, Professor, University of Ottawa, Former Senator)

Mr Vincenzo BUONOMO (Holy See), Professor of International Law, Latran University

Mr Dan MERIDOR (Israel), Chairman, The Jerusalem Foundation, Senior Partner, Haim Zadok and Co

Mr Yasushi FUKU (Japan), Consul, Consulate General of Japan, Strasbourg

Mr Oljas SOULEIMENOV (Kazakhstan), Ambassador of Kazakhstan in Rome

Mr OH, Haeng-kyeom (Republic of Korea), Ambassador of the Republic of Korea to Luxembourg, Belgium and the European Union

Ms Maria AMPARO CASAR (Mexico),

Mr Jed RUBENFELD (United States of America), Professor, Yale Law School

Mr Jorge TALICE (Uruguay), Ambassador of Uruguay in Paris

SECRETARIAT

Mr Gianni BUQUICCHIO

Mr Thomas MARKERT

Mrs Simona GRANATA-MENGHINI

Mr Pierre GARRONE

Mr Rudolf DRR

Mr Sergue KOUZNETSOV

Ms Caroline MARTIN

Ms Dubravka BOJIC-BULTRINI

Mr Alain CHABLAIS

Ms Helen MONKS

Ms Tatiana MYCHELOVA

Mr Gal MARTIN-MICALLEF

Ms Sandra MATRUNDOLA

Ms Brigitte AUBRY

Ms Marian JORDAN

Mrs Emmy KEFALLONITOU

Mrs Brigitte RALL

Ms Ana GOREY

Mrs Marie-Louise WIGISHOFF

Ms Caroline GODARD

Ms Rosella ETIENNE

A P P E N D I X III - OFFICES AND COMPOSITION OF THE SUB-COMMISSIONS

- President: Mr La Pergola

- Vice-Presidents: Messrs Dutheillet de Lamothe, Endzins, Ms Flanagan, Mr Mifsud Bonnici

- Bureau: Mr Zorkin, Mr Paczolay, Mr Zahle

- Chairmen of Sub-Commissions: Mr Conostas, Mr van Dijk, Mr Helgesen, Mr Jambrek, Mr Jowell, Mr Luchaire, Mr Malinverni, Mr Matscher, Mr Omari, Mr Scholsem, Ms Suchocka, Mr Torfason, Mr Tuori

- Constitutional Justice: Chairman: Mr Torfason - members: Mr Bartole, Mr Cardoso da Costa, Mr Chagnollaund, Mr Dutheillet de Lamothe, Mr Endzins, Mr Hamilton, Mr Harutunian, Mr La Pergola, Mr Lapinskas, Mr Malinverni, Mr Scholsem, Mr Steinberger, Ms Suchocka, Mr Vogel, Mr Zahle - observers: Canada, Israel

- Federal State and Regional State: Chairman: Mr Malinverni - members: Mr Aurescu, Mr Bartole, Mr Jowell, Mr La Pergola, Mr Matscher, Mr Sadikovic Mr Scholsem, Mr Steinberger, Mr Tuori observers: Canada, USA

- International Law: Chairman: Mr Conostas - members: Mr Aurescu, Mr Cardoso da Costa, Mr Chagnollaund, Mr Farcas, Mr Helgesen, Mr Huseynov, Mr La Pergola, Mr Luchaire, Mr Lukacs, Mr Malinverni, Mr Matscher, Mr Nick, Mr Steinberger, Mr Torfason

- Protection of Minorities: Chairman: Mr Matscher - members: Mr Aurescu, Mr Bartole, Mr Conostas, Mr van Dijk, Mr Farcas, Mr Hamilton, Mr Helgesen, Mr Huseynov, Mr Klucka, Mr Malinverni, Mr Nick, Mr zbudun, Mr Scholsem, Mr Torfason, Mr Tuori, observers: Canada

- Constitutional Reform: Chairman: Mr Jowell - Members: Mr Bartole, Mr Cardoso da Costa, Mr Chagnollaund, Mr Dutheillet de Lamothe, Mr Endzins, Mr Farcas, Mr La Pergola, Mr Lapinskas, Mr Luchaire, Mr Lukacs, Mr Malinverni, Mr Nolte, Mr Omari, Mr zbudun, Mr Scholsem, Mr Steinberger, Ms Suchocka, Mr Torfason, Mr Tuori observers: Israel

- Democratic Institutions: Chairman: Mr Scholsem - members: Mr Cardoso da Costa, Mr Chagnollaund, Mr Dutheillet de Lamothe, Mr Endzins, Ms Err, Mr Farcas, Mr Hamilton, Mr Harutunian, Mr Jambrek, Mr Jowell, Mr Lapinskas, Mr Luchaire, Mr Malinverni, Mr Omari, Mr zbudun, Mr Svoboda, Mr Torfason, Mr Tuori, Mr Vogel

- UniDem Governing Board: Chairman: Mr Luchaire - members: Mr Cardoso da Costa, Mr Conostas, Mr van Dijk, Mr Helgesen, Mr Jambrek, Mr Jowell, Mr La Pergola, Mr zbudun, Ms Suchocka, Mr Svoboda, Mr Vogel observers: Holy See, ODIHR

- Southern Africa: Chairman: Mr van Dijk - members: Mr Cardoso da Costa, Ms Flanagan, Mr Hamilton, Mr Helgesen, Mr Jambrek, Mr Jowell, Mr La Pergola, Mr Torfason, Mr Tuori, Mr Vogel - observers: Canada, USA

- Mediterranean Basin: Chairman: Mr Omari - members: Mr Chagnollaud, Mr Conostas, Mr Dutheillet de Lamothe, Mr La Pergola, Mr Mifsud Bonnici Mr Nick, Mr zbudun observers: Israel

- Administrative and Budgetary Questions: Chairman: Mr Tuori - members: Mr van Dijk, Mr Malinverni, Mr Matscher

- South-East Europe: Chairman: Mr Jambrek members: Mr Conostas, Mr Farcas, Mr Luchaire, Mr Lukacs, Mr Nick, Mr Omari, Mr Sadikovic, Mr Torafason

- Latin America: Chairman: Mr Helgesen

- Ethics Committee: Chairman: Ms Suchocka members: Mr van Dijk, Mr Helgesen, Mr Jowell, Mr Scholsem.

A P P E N D I X IV - MEETINGS OF THE VENICE COMMISSION IN 2005^[13]

1. PLENARY SESSIONS

62nd Session 11-12 March

63rd Session 10-11 June

64th Session 21-22 October

65th Session 16-17 December

Bureau

Meeting enlarged to include the Chairpersons of Sub-Commissions

- 10 March

Meeting enlarged to include the Chairpersons of Sub-Commissions

- 9 June

Meeting enlarged to include the Chairpersons of Sub-Commissions

- 20 October

Meeting enlarged to include the Chairpersons of Sub-Commissions

- 15 December

2. SUB-COMMISSIONS

Constitutional Reform 10 March (Joint Meeting with the Sub-Commission on International Law)

International Law 10 March (Joint Meeting with the Sub-Commission on Constitutional Reform)

Protection of Minorities 9 June

UniDem Governing Board 15 December

3. DEMOCRATIC DEVELOPMENT OF PUBLIC INSTITUTIONS AND RESPECT FOR HUMAN RIGHTS

Meetings of Working Groups and Rapporteurs

Armenia

Law on Rallies

17-18 March (Yerevan)

3 June (Yerevan)

Constitutional reforms

2 June (Yerevan)

23-24 June (Strasbourg)

15 October (Yerevan)

Round table on checks and balances

4 November (Yerevan)

Bosnia and Herzegovina

Opinion on decertification of police officers in Bosnia and Herzegovina

25 February (Paris)

Georgia

Statute of South Ossetia

27-28 January (Tbilisi)

17 March (Ljubljana)

9-11 July (Batumi)

Italy

Italian media laws

12-14 January (Rome)

19 May (Paris)

Kyrgyzstan

Constitutional reform

16-17 June (Bishkek)

24-25 November (Bishkek)

Romania

Draft law on statute of national minorities

7-8 September (Bucharest)

Serbia and Montenegro

Law on organisation of religions

17 March (Belgrade)

The former Yugoslav Republic of Macedonia

Draft amendments to the Constitution

22 September (Skopje)

Other Seminars and Conferences organised by the Commission or in which the Commission was involved

Conference Our Choice European Integration

19 January (Ljubljana)

Meeting with EU concerning co-operation in South Eastern Europe

15 February (Brussels)

The frozen conflict in Transnistria: implications for the European neighbourhood policy

18 February (Brussels)

Seminar Creating the conditions for effective regional democracy organised by the Assembly of European Regions and the province of Vojvodina

1-2 March (Novi Sad)

International Conference on Federalism

3-4 March (Brussels)

4th Steering Committee Meeting on Joint Programme of co-operation EC/CoE with Ukraine

18 March (Kyiv)

Scientific workshop Republika Srpska 10 years of the Dayton Peace Agreement

12-13 May (Banja Luka)

Meeting of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe on the Constitutional situation in Bosnia and Herzegovina

31 May (Paris)

Conference on constitutions: approaches, contents and implementations

1-3 June (Amman, Jordan)

The new neighbourhood policy

6 July (Brussels)

Seminar on Constitution Building in Iraq

10-12 July (Gummersbach)

Iraqs Constitutional Settlement: Past, Present and Future".

7-10 October (Amman, Jordan)

Symposium on religious freedom in the Romanian and European context organised by the Ministry of Culture of Romania

12-13 September (Bucharest)

European Parliament public hearing no freedom without pluralism revision of the directive television without frontiers

13 September (Brussels)

UniDem Seminar on the status of international human rights treaties

7-8 October (Coimbra)

Public hearing on the Dayton agreement 10 years after

11 October (Brussels)

Conference Subsidiarity and self-Governance within the EU Minority inhabited regions in the enlarged EU

7-8 November (Bucharest)

Conference on upgrading the Dayton Constitution

11-14 November (Brussels)

Task Force Meeting on regionalisation in Ukraine organised by the Chamber of Regions of the Congress of Local and Regional authorities of the Council of Europe

5-6 December (Kyiv)

4. STRENGTHENING CONSTITUTIONAL JUSTICE AS GUARANTOR OF DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW

Meeting of the Working Group on the systematic thesaurus

15 June (Baku)

Joint Council on Constitutional Justice

16 June (Baku)

(Meeting with Liaison officers from Constitutional Courts)

5th Seminar of national correspondents ACCPUF

31 May-1 June (Bucharest)

Constitutional Justice Seminars

Modernising the judiciary

4-5 February (Entebbe, Uganda)

Round Table on the Relationship between the Court of Justice of the European Communities and Constitutional Courts

14-15 February (Budapest)

International Conference on Constitutional Justice, Presence and Perspectives on the occasion of the 10th anniversary of the Constitutional Court of Moldova

23-24 February (Chisinau)

Role of Comparative Research in Constitutional Justice

15-16 June (Baku)

Law and Fact in Constitutional Jurisprudence

30 June-1 July (Vilnius)

Independence and Accountability of the Judiciary

11-13 August (Windhoek, Namibia)

Third Conference of Secretaries General of Constitutional Courts and Courts of Equivalent Jurisdiction

29-30 September (Bled)

International Conference on the Influence of the ECHR Case-Law on National Constitutional Jurisprudence

14-15 October (Kyiv)

Role of the Constitution in Building a State Governed by the Rule of Law

11-12 November (Baku)

The Limits of Constitutional Control of the Decisions of Ordinary Courts in Constitutional Complaint Procedures

14-15 November (Brno)

Other Seminars and Conferences in which the Commission participated

International Judicial Conference of Arab countries

29-31 May (Cairo)

Inauguration Constitutional Court of Bahrain

17-19 April (Al Manama, Bahrain)

3rd National meeting on Constitutional Justice

20-22 April (Bogota)

XXth Conference of European Constitutional Courts

15-19 May (Nicosia)

Conference on comparing access to justice in Asian and European transitional countries

27-29 June (Bogor, Indonesia)

Conference on Constitution: individual, society and state

30-31 August (Astana, Kazakhstan)

3rd Seminar of Asian Constitutional Court Judges

6-8 September (Ulan Batar, Mongolia)

10th Yerevan Conference Legal Principles and Political Reality in the Exercise of Constitutional Control"

29 September-1 October (Yerevan)

8th International Forum on Constitutional Justice on the Implementation of the Rulings of the European Court of Human Rights in European Constitutional Courts Practice.

9-10 December (Moscow)

5. DEMOCRACY THROUGH FREE AND FAIR ELECTIONS

Council for Democratic Elections

10 March

9 June

20 October

15 December

Meetings of Working Groups and Rapporteurs

Albania

Reform of the electoral system

18 November (Tirana)

Armenia

Round Table on electoral reforms

3-4 March (Yerevan)

Azerbaijan

Meeting on election code of Azerbaijan

31 May (Baku)

4-5 October (Baku)

Bosnia and Herzegovina

Revision of the electoral code of Bosnia and Herzegovina

21-23 February (Sarajevo)

Croatia

Draft law on the state election commission of Croatia

13 December (Zagreb)

Montenegro

Referendum

13 October (Frankfurt)

26 October (London)

22 December (Vienna)

Electoral Law Training Workshops

7-9 September (Baku)

Electoral Assistance and election observation

Observation elections in Palestine

7-10 January (Ramallah)

Observation elections in Moldova

3-8 March (Chisinau)

Observation elections in Albania

30 June-4 July (Tirana)

Assistance to the Central Election commission and observation elections in Georgia

19 September-19 October (Tbilisi)

Observation elections in Azerbaijan

4-7 November (Baku)

Other Seminars and Conferences organised by the Commission or in which the Commission was involved

2nd Conference of Electoral Management bodies

10-11 February (Strasbourg)

Human Dimension meeting Challenges of election technologies and procedures

21-22 April (Vienna)

Round Table on the participation of foreigners in elections

27-28 May (Moscow)

UniDem Seminar the organisation of elections by an impartial body

24-25 June (Belgrade)

Seminar on media and elections

12-13 July (Baku)

3rd Conference of electoral organisations and General Assembly of ACEEEO Legal remedies in election processes and standards of electronic voting.

15-17 September (Siofok, Hungary)

Symposium on Referenda and the publics access to political decision making

16 September (Reykjavik)

Seminar on media professionalism and the coverage of the constitutional referendum

28 October (Yerevan)

Seminar on the electoral process : permanencies and innovations

22 November (Paris)

Conference on Financing of political parties, particularly during electoral periods and Electoral disputes, arisen during the pre-electoral period

29 November-1 December (Chisinau)

6. UNIDEM CAMPUS FOR THE LEGAL TRAINING OF THE CIVIL SERVICE

The role of media freedom and pluralism in strengthening democracy

24-28 January (Trieste)

Administrative justice and inter-ministerial communication within the public administration

14-18 March (Trieste)

Diversity and cohesion : integration policies for minorities and immigrants

16-20 May (Trieste)

Legal framework for public administration performance indicators and performance measurement

27 June - 1 July (Trieste)

The impact of the enlarged EU on new member states and prospects for further enlargement

24-28 October (Trieste)

Meeting of National Co-ordinators

28 November (Paris)

7. OTHER SEMINARS AND CONFERENCES OF A GENERAL NATURE ORGANISED BY THE COMMISSION OR IN WHICH THE COMMISSION WAS INVOLVED

Entretiens de Strasbourg

11 February (Strasbourg)

Crans Montana Forum

13-14 April (Zagreb)

3rd Ministerial Conference of the Community of Democracies

28-30 April (Santiago di Chile)

3rd Summit of the Council of Europe

16-17 May (Warsaw)

Masters in European Integration and Regionalism

17 June (Bolzano)

Forum on the Future of Democracy

3-4 November (Warsaw)

IACL Executive Committee Meeting

4-5 November (Berlin)

International Conference Paris place of law: convergence of law and European construction

16 November (Paris)

Seminar on security systems and international stability, the Council of Europe after the Warsaw Summit

25-26 November (Rome)

International Seminar on Italian co-operation : peace, human rights and development

2 December (Perugia)

APPENDIX V - LIST OF PUBLICATIONS OF THE VENICE COMMISSION

SERIES SCIENCE AND TECHNIQUE OF DEMOCRACY[\[14\]](#)

- No. 1 Meeting with the presidents of constitutional courts and other equivalent bodies^{[\[15\]](#)} (1993)
- No. 2 Models of constitutional jurisdiction*^{[\[16\]](#)}
by Helmut Steinberger (1993)
- No. 3 Constitution making as an instrument of democratic transition (1993)
- No. 4 Transition to a new model of economy and its constitutional reflections (1993)
- No. 5 The relationship between international and domestic law (1993)
- No. 6 The relationship between international and domestic law*
by Constantin Economides (1993)
- No. 7 Rule of law and transition to a market economy² (1994)
- No. 8 Constitutional aspects of the transition to a market economy (1994)
- No. 9 The Protection of Minorities (1994)
- No. 10 The role of the constitutional court in the consolidation of the rule of law (1994)
- No. 11 The modern concept of confederation (1995)
- No. 12 Emergency powers*
by Ergun zbudun and Mehmet Turhan (1995)
- No. 13 Implementation of constitutional provisions regarding mass media in a pluralist democracy² (1995)
- No. 14 Constitutional justice and democracy by referendum (1996)
- No. 15 The protection of fundamental rights by the Constitutional Court* (1996)
- No. 16 Local self-government, territorial integrity and protection of minorities (1997)

- No. 17 Human Rights and the functioning of the democratic institutions in emergency situations (1997)
- No. 18 The constitutional heritage of Europe (1997)
- No. 19 Federal and Regional States* (1997)
- No. 20 The composition of Constitutional Courts (1997)
- No. 21 Citizenship and state succession (1998)
- No. 22 The transformation of the Nation-State in Europe at the dawn of the 21st century (1998)
- No. 23 Consequences of state succession for nationality (1998)
- No. 24 Law and foreign policy (1998)
- No. 25 New trends in electoral law in a pan-European context (1999)
- No. 26 The principle of respect for human dignity in European case-law (1999)
- No. 27 Federal and Regional States in the perspective of European integration (1999)
- No. 28 The right to a fair trial (2000)
- No. 29 Societies in conflict: the contribution of law and democracy to conflict resolution² (2000)
- No. 30 European Integration and Constitutional Law (2001)
- No. 31 Constitutional implications of accession to the European Union² (2002)
- No. 32 The protection of national minorities by their kin-State² (2002)
- No. 33 Democracy, Rule of Law and Foreign Policy² (2003)
- No. 34 Code of good practice in electoral matters* (2003)
- No. 35 The resolution of conflicts between the central State and entities with legislative power by the Constitutional Court² (2003)

No. 36 Constitutional Courts and European Integration^[17] (2004)

No. 37 European and U.S. Constitutionalism⁴ (2005)

No. 38 State Consolidation and National Identity⁴ (2005)

No 39 European Standards of Electoral Law in Contemporary Constitutionalism¹ (2005)

No 40 Evaluation of fifteen years of constitutional practice in Central and Eastern Europe* (2005)

• **OTHER PUBLICATIONS**

Bulletin on Constitutional Case-Law - 1993 2004 (three issues per year)

Special Bulletins -

Description of Courts (1999)*

Basic texts - extracts from Constitutions and laws on Constitutional Courts - issues Nos 12 (1996), issues Nos 3-4 (1997), issue No 5 (1998), issue No 6 (2001)

Leading cases of the European Court of Human Rights (1998)*

Freedom of religion and beliefs (1999)

Special Edition Leading cases 1 - Czech Republic, Denmark, Japan, Norway, Poland, Slovenia, Switzerland, Ukraine (2002)

Inter Court Relations (2003)

Annual Reports -

1993 - 2005

Brochures -

10th anniversary of the Venice Commission (2001)*

Revised Statute of the European Commission for Democracy through Law (2002)

The Venice Commission (2002)

UniDem Campus Legal training for civil servants (2003)

A P P E N D I X VI - LIST OF DOCUMENTS ADOPTED IN 2005

- [CDL-AD\(2005\)004](#) Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative adopted by the Commission at its 62nd Plenary Session (11-12 March 2005);
- CDL-AD(2005)005 Opinion on draft constitutional amendments relating to the reform of the judiciary in Georgia adopted by the Commission at its 62nd Plenary Session (11-12 March 2005);
- CDL-AD(2005)006 Opinion on constitutional reforms relating to the disappearance and murder of a great number of women and girls in Mexico adopted by the Commission at its 62nd Plenary Session (11-12 March 2005);
- [CDL-AD\(2005\)007](#) Opinion on the draft law making amendments and addenda to the law on conducting meetings, assemblies, rallies and demonstrations of the Republic of Armenia adopted by the Commission at its 62nd Plenary Session (11-12 March 2005);
- [CDL-AD\(2005\)008](#) Preliminary Joint Opinion on the revised draft amendments to the electoral code of Armenia by the Venice Commission and ODIHR adopted by the Commission at its 62nd Plenary Session (11-12 March 2005);
- CDL-AD(2005)009 Report on electoral rules and affirmative action for national minorities participation in the decision-making process in European countries adopted by the Commission at its 62nd Plenary Session (11-12 March 2005);
- CDL-AD(2005)010 Individual comments on the draft law on religious organisations in Serbia endorsed by the Commission at its 62nd Plenary Session (11-12 March 2005);
- CDL-AD(2005)013 Election observation form by the Venice Commission and ODIHR adopted by the Commission at its 62nd Plenary Session (11-12 March 2005);
- CDL-AD(2005)014 Opinion on the Federal Law on the *Prokuratura* (Prosecutors Office) of the Russian Federation adopted by the Commission at its 63rd Plenary Session (10-11 June 2005);
- CDL-AD(2005)015 Opinion on the amendments to the Constitution of Ukraine adopted on 8 December 2004 adopted by the Commission at its 63rd Plenary Session (10-11 June 2005);
- CDL-AD(2005)016 Second Interim opinion on constitutional reforms in the Republic of Armenia adopted by the Commission at its 63rd Plenary Session (10-11 June 2005);
- [CDL-AD\(2005\)017](#) Opinion on the compatibility of the laws Gasparri and Frattini of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media adopted by the Commission at its 63rd Plenary Session (10-11 June 2005);
- [CDL-AD\(2005\)018](#) Interim Opinion on proposed amendments to the election code of the Republic of Azerbaijan by the Venice Commission and ODIHR adopted by the Commission at its 63rd Plenary Session (10-11 June 2005);
- [CDL-AD\(2005\)019](#) Interim Joint Opinion on the draft amendments to the election code of Armenia (version of 19 April 2005) by the Venice Commission and ODIHR adopted by the Commission at its 63rd Plenary Session (10-11 June 2005);

- [CDL-AD\(2005\)020](#) *Amicus Curiae* Opinion (proceedings before the European Court of Human Rights) on the nature of the proceedings before the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina adopted by the Commission at its 63rd Plenary Session (10-11 June 2005);
- [CDL-AD\(2005\)021](#) Joint Opinion by the Venice Commission and ODIHR on the draft law on conducting meetings, assemblies, rallies and demonstrations and related provisions of the criminal code of the Republic of Armenia (pursuant to discussions in Yerevan on 17 March 2005) endorsed by the Commission at its 63rd Plenary Session (10-11 June 2005);
- CDL-AD(2005)022 Interim Opinion on constitutional reform in the Kyrgyz Republic adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- CDL-AD(2005)023 Opinion on the provisions on the judiciary in the draft constitution of the Republic of Serbia adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- [CDL-AD\(2005\)024](#) Opinion on a possible solution to the issue of decertification of police officers in Bosnia and Herzegovina adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- CDL-AD(2005)025 Final Opinion on constitutional reform in the Republic of Armenia adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- CDL-AD(2005)026 Opinion on the draft law on the statute of national minorities living in Romania adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- CDL-AD(2005)027 Final Opinion on the amendments to the electoral code of Armenia by the Venice Commission and ODIHR adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- CDL-AD(2005)028 Opinion on Parliamentary Assembly Recommendation 1704 (2005) on referendums: towards good practices in Europe adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- [CDL-AD\(2005\)029](#) Final Opinion on the amendments to the electoral code of the Republic of Azerbaijan by the Venice Commission and ODIHR adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- CDL-AD(2005)030 Comments on the draft law on the Parliament of the Chechen Republic (Russian Federation) endorsed by the Commission at its 64th Plenary Session (21-22 October 2005);
- CDL-AD(2005)031 Opinion on Parliamentary Assembly Recommendation 1714 (2005) on the abolition of restrictions on the right to vote adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- [CDL-AD\(2005\)032](#) Guidelines on media analysis during election observation missions prepared by the Venice Commission, OSCE/ODIHR, Directorate General of Human Rights of the Council of Europe and the European Commission adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- CDL-AD(2005)033 Opinion on Parliamentary Assembly Recommendation 1713 (2005) on democratic oversight of the security sector in member States adopted by the Commission at its 64th Plenary Session (21-22 October 2005);

- [CDL-AD\(2005\)034](#) Report on referendums in Europe an analysis of the legal rules in European States adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- [CDL-AD\(2005\)035](#) Opinion on the draft law making amendments and addenda to the law on conducting meetings, assemblies, rallies and demonstrations of the Republic of Armenia adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- [CDL-AD\(2005\)036](#) Declaration of principles for international election observation and code of conduct for international election observers and pledge to accompany the code of conduct for international election observers adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- CDL-AD(2005)037 Opinion on the draft law regarding religious freedom and the general regime of religions in Romania adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- [CDL-AD\(2005\)038](#) Opinion on draft constitutional amendments concerning the reform of the judicial system in the former Yugoslav Republic of Macedonia adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- [CDL-AD\(2005\)039](#) Opinion on proposed voting rules for the Constitutional Court of Bosnia and Herzegovina adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- CDL-AD(2005)040 Opinion on OSCE/ODIHR guidelines for drafting laws pertaining to freedom of assembly adopted by the Commission at its 64th Plenary Session (21-22 October 2005);
- CDL-AD(2005)041 Opinion on the compatibility of the existing legislation in Montenegro concerning the organisation of referendums with applicable international standards adopted by the Commission at its 65th Plenary Session (16-17 December 2005);
- CDL-AD(2005)042 Opinion on the draft organic law on making amendments and additions to the election code of Georgia adopted by the Commission at its 65th Plenary Session (16-17 December 2005);
- CDL-AD(2005)043 Interpretative declaration on the stability of electoral law adopted by the Commission at its 65th Plenary Session (16-17 December 2005);
- [CDL-AD\(2006\)001](#) Joint Opinion on the electoral code of Moldova as amended on 22 July, 4 and 17 November 2005 by the Venice Commission and OSCE/ODIHR adopted by the Commission at its 65th Plenary Session (16-17 December 2005);
- CDL-AD(2006)002 Opinion on the law on elections of peoples deputies of Ukraine by the Venice Commission and OSCE/ODIHR adopted by the Commission at its 65th Plenary Session (16-17 December 2005);
- [CDL-AD\(2006\)003](#) Joint Opinion by the Venice Commission and OSCE/ODIHR on the draft law on the State Register of voters of Ukraine submitted by Mr O. Zadorozhny and Mr Y. Klyuchkovsky, adopted by the Commission at its 65th Plenary Session (16-17 December 2005).

[1] For more information please refer to the Venice Commissions site [lang='FR' style='font-size:10.0pt;mso-ansi-language:FR'>www.venice.coe.int](http://www.venice.coe.int)

[2] The full text of all adopted opinions can be found on the web site www.venice.coe.int.

[3] For opinions in the electoral field see Section IV below

[4] For the opinion on proposed voting rules for the Constitutional Court of Bosnia and Herzegovina and the amicus curiae opinion on the nature of the proceedings before the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina see Section III below

[5] For opinions in the electoral field see Section IV below

[6] For the opinion on the compatibility of the existing legislation in Montenegro concerning the organisation of referendums with applicable international standards see Section IV below

[7] For opinions in the electoral field see Section IV below

[8] The full text of all adopted opinions can be found on the web site www.venice.coe.int.

[9] Charter on the status of judges of 1998, Recommendation on the independence, efficiency and role of judges R(1994)12, Opinion of the CCJE No 3 on professional conduct.

[10] Le texte intégral de tous les avis adoptés se trouve dans le site web www.venice.coe.int.

[11] By order of seniority.

[12] Term of office expired on 25 August 2003, a new member has not yet been appointed.

[13] All meetings took place in Venice unless otherwise indicated ..

[14] Publications are also available in French unless otherwise indicated.

[15] Speeches in the original language (English or French)

[16] Publications marked with * are also available in Russian

[17] the electoral code of Moldova as amended on 22 July, 4 and 17 November 2005 by the Venice Commission and OSCE/ODIHR adopted by the Commission at its 65th Plenary Session (16-17 December 2005);

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