

# Venice Commission



## Annual Report



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# **European Commission for Democracy through Law**

The Venice Commission of the Council of Europe

**Annual report of activities 2011**

Council of Europe, 2012



The main focus of the Venice Commission since its establishment in 1990 has been support for democratic reforms in the new democracies of Central and Eastern Europe. This task remains as topical as ever.

In 2011 the Venice Commission contributed to constitutional reforms and debates not only in traditional partner countries such as Bosnia and Herzegovina, Moldova, Montenegro and Ukraine but also in Hungary and Turkey. It adopted 34 opinions on legal texts of 14 European countries.

An issue frequently addressed in these opinions was the need to ensure the independence of the judiciary and the functioning of the judicial system in the interest of society. This problem is playing an ever increasing role in the Venice Commission's activities. In many European countries there is also not yet sufficient trust that elections will be free and fair. While the Commission was instrumental in improving electoral legislation in many European countries, more has to be done, especially as regards the implementation of legislation in line with European standards. In the field of human rights the Commission paid particular attention to freedom of association, freedom of assembly and freedom of religion.

While maintaining its main focus on Europe, the Commission has, since the adoption of its revised Statute in 2002, become increasingly active outside Europe, first of all in the field of constitutional justice. The

Commission actively promotes world-wide co-operation of constitutional courts. 2011 saw a major breakthrough in this respect when, following the 2nd Congress of the World Conference on Constitutional Justice in January 2011 the Statute of the World Conference was approved and entered into force. The World Conference thus became a permanent body and by the end of 2011 49 courts already had become members.

In the Southern Mediterranean the Arab spring and the subsequent adoption of a Council of Europe neighbourhood policy gave an entirely new dimension to the Commission's role. The main topics of the Commission such as constitution-making, free and fair elections, respect for freedom of association, expression and assembly and the rule of law administered by an independent judiciary are now at the top of the agenda in these countries. While there are clear differences between Central and Eastern Europe on the one hand and the Arab countries on the other, lessons can be learnt from the experience of the democratic transition in Europe. The Venice Commission is well placed to share this experience with countries which are members of the Commission (Algeria, Morocco, Tunisia) or which have worked in the past with the Commission in the field of constitutional justice. As from 2012, this co-operation will develop further and extend to additional countries such as Jordan.

*Thomas Markert,  
Director, Secretary of the Venice Commission*



<b>I. Working for democracy through law – An overview of Venice Commission activities in 2011</b> .....	9
1. The Venice Commission: an introduction .....	11
2. The Commission in 2011 .....	15
Member States .....	15
Accession of new member States .....	15
Voluntary contributions .....	15
Scientific Council .....	15
Main activities .....	16
Key developments and figures .....	16
Democratic institutions and fundamental freedoms .....	16
Constitutional and ordinary justice, ombudspersons .....	18
World Conference on Constitutional Justice .....	19
Elections, referendums and political parties .....	20
<b>II. Democratic development of public institutions and respect for human rights</b> .....	21
1. Country specific activities .....	23
Armenia .....	23
Azerbaijan .....	25
Belarus .....	25
Bosnia and Herzegovina .....	27
Bulgaria .....	27
Georgia .....	28
Hungary .....	28
Moldova .....	30
Ukraine .....	31
2. Transnational activities .....	33
Report on the rule of law .....	33
Study on the role of the extra-institutional actors in a democratic regime .....	34
Compilation of Venice Commission opinions and reports on the protection of minorities .....	34
UniDem Campus – legal training for civil servants .....	34

<b>III. Constitutional justice, ordinary justice and ombudsman</b> .....	37
1. Country specific activities .....	39
Armenia .....	39
Bolivia .....	39
Bosnia and Herzegovina .....	39
Bulgaria .....	40
Georgia .....	41
Kazakhstan .....	42
Kyrgyzstan .....	42
Latvia .....	43
Moldova .....	44
Montenegro .....	44
Peru .....	46
Russian Federation .....	46
Serbia .....	47
Turkey .....	48
Ukraine .....	50
Uzbekistan .....	53
Compilations of Venice Commission documents .....	53
2. Transnational activities .....	54
World Conference on Constitutional Justice .....	54
Centre on Constitutional Justice .....	55
Bulletin on Constitutional-Case Law/CODICES database .....	55
Venice Forum .....	55
Observatory .....	55
United Nations-High Commissioner for Human Rights .....	56
<b>IV. Elections, referendums and political parties</b> .....	57
1. Country specific activities .....	59
Albania .....	59
Armenia .....	60
Azerbaijan .....	61
Bulgaria .....	61
Georgia .....	62
Kazakhstan .....	63
Kyrgyzstan .....	63
Moldova .....	64
Montenegro .....	64
Russian Federation .....	65
Serbia .....	65

“The former Yugoslav Republic of Macedonia” .....	66
Ukraine .....	66
<b>2. Transnational Activities .....</b>	<b>68</b>
Studies and reports .....	68
Conferences et seminars .....	69
VOTA, the Venice Commission’s electoral database .....	70
<b>3. International co-operation in the field of elections and political parties .....</b>	<b>70</b>
<b>V. Co-operation in the Council of Europe neighbourhood and outside Europe .....</b>	<b>71</b>
<b>1. Mediterranean basin .....</b>	<b>73</b>
Tunisia .....	73
Morocco .....	75
Egypt .....	75
<b>2. Central Asia .....</b>	<b>76</b>
EU-Central Asia Rule of Law Initiative .....	76
Kyrgyzstan .....	79
<b>3. Latin America .....</b>	<b>80</b>
Sub-Commission on Latin America .....	80
Bolivia .....	81
Chile .....	82
Peru .....	82
<b>VI. Co-operation with organs and bodies of the Council of Europe, the European Union and other international organisations .....</b>	<b>85</b>
<b>1. Council of Europe .....</b>	<b>87</b>
Committee of Ministers .....	87
Parliamentary Assembly .....	87
Congress of Local and Regional Authorities .....	88
European Court of Human Rights .....	89
Committee of experts on the participation of people with disabilities in political and public life (CAPAH) .....	90
<b>2. European Union .....</b>	<b>90</b>
Joint European Union-Council of Europe Programmes .....	91
Eastern Partnership Facility .....	91
<b>3. OSCE .....</b>	<b>91</b>
OSCE/ODIHR .....	91

4. United Nations .....	93
5. Other International bodies .....	93
Constitutional justice, ordinary justice and ombudsman .....	93
Association of Constitutional Courts using the French Language (ACCPUF) .....	93
Conference of Constitutional Control Organs of Countries of Young Democracy .....	93
Conference of European Constitutional Courts .....	93
Association of African Constitutional Courts and Councils .....	93
European Network of Councils for the Judiciary (ENCJ) .....	93
Union of Arab Constitutional Courts and Councils (UACCC) .....	93
Conference of Constitutional Jurisdictions using the Portuguese Language .....	94
International Organisation of the Francophonie (OIF) .....	94
Elections, referendums and political parties .....	94
Association of European Election Officials (ACEEEO) .....	94
Inter-American Union of Electoral Bodies (UNIORE) .....	94
<b>Appendices</b> .....	<b>95</b>

**Working for democracy through law –  
An overview of Venice Commission activities in 2011**



## 1. The Venice Commission: an introduction<sup>1</sup>

The European Commission for Democracy through Law, better known as the Venice Commission, is a Council of Europe independent consultative body on issues of constitutional law, including the functioning of democratic institutions and fundamental rights, electoral law and constitutional justice. Its members are independent experts. Set up in 1990 under a partial agreement between 18 Council of Europe member states, it has subsequently played a decisive role in the adoption and implementation of constitutions in keeping with Europe's constitutional heritage.<sup>2</sup> The Commission holds four plenary sessions a year in Venice, working mainly in three fields: constitutional assistance, constitutional justice and election and referendum issues. In 2002, once all Council of Europe member states had joined, the Commission became an enlarged agreement of which non-European states could become full members. In 2011, it had 58 full members and 13 other entities formally associated with its work. It is financed by its member states on a proportional basis which follows the same criteria as that applied to the Council of Europe as a whole. This system guarantees the Commission's independence vis-à-vis those states which request its assistance.

The Commission has the prime function of providing **constitutional assistance** to States, mainly, but not exclusively, those which participate in its activities.<sup>3</sup>

Such assistance takes the form of opinions prepared by the Commission at the request not only of States, but also of organs of the Council of Europe, more specifically the Parliamentary Assembly, Committee of Ministers, Congress of Local and Regional Authorities and Secretary General, as well as of other international organisations or bodies which participate in its activities. These opinions relate to draft constitutions or constitutional amendments, or to other draft legislation in the field of constitutional law. The Commission has thus made an often crucial contribution to the development of constitutional law, mainly, although not exclusively, in the new democracies of central and eastern Europe.

The **aim of the assistance** given by the Venice Commission is to provide a complete, precise, detailed and objective analysis not only of compatibility with European and international standards, but also of the practicality and viability of the solutions envisaged by the States concerned. The Commission's recommendations and suggestions are largely based on common European experience in this sphere.

As concerns the **working methods**, the Commission's opinions are prepared by a working group composed of members of the Commission, at times assisted by external experts. It is ordinary practice for the working group

1. For more information, please refer to the Venice Commission's website: [www.venice.coe.int](http://www.venice.coe.int).

2. On the concept of the constitutional heritage of Europe, see inter alia "The Constitutional Heritage of Europe", proceedings of the UniDem seminar organised jointly by the Commission and the Centre d'Etudes et de Recherches Comparatives Constitutionnelles et Politiques (CERCOP), Montpellier, 22 and 23 November 1996, "Science and technique of democracy", No.18.

3. Article 3, paragraph 3, of the Statute of the Commission specifies that any State which is not a member of the agreement may benefit from the activities of the Commission by making a request to the Committee of Ministers of the Council of Europe.

to travel to the country concerned in order to meet and discuss with the national authorities, other relevant bodies and the civil society. The opinions contain an assessment of the conformity of the national legal text (preferably in its draft state) with European and international legal and democratic standards, and on proposals for improvement on the basis of the relevant specific experience gained by the members of the Commission in similar situations. Draft opinions are discussed and adopted by the Commission at one of its plenary sessions, usually in the presence of representatives of the country concerned. Following adoption, the opinions are transmitted to the State or the body which requested it, and come into the public domain.

The Commission's approach to advising states is based on dialogue with the authorities and other stakeholders, including civil society: the Commission does not attempt to impose solutions or abstract models; it rather seeks to understand the aims pursued by the legal text in question, the surrounding political and legal context and the issues involved; it then assesses on the one hand the compatibility of the text with the applicable standards, and on the other hand its viability and its prospects of successful functioning. In doing so, the Commission takes into account the specific features and needs of the relevant country.

Although the Commission's opinions are not binding, they are generally reflected in the law of the countries to which they relate, thanks to the approach taken and to the Commission's reputation of independence and objectivity. Furthermore, even after an opinion has been adopted, the Commission remains at the disposal of the State concerned, and often continues to provide its assistance until the constitution or law has been finally adopted.

The Commission has also played, and continues to play, an important role in the interpretation and development

of the constitutional law of countries which have experienced, are experiencing or run the risk of ethnic/political conflicts. In this role, it supplies technical assistance relating to the legal dimension of the search for political agreement. The Commission has done so in particular at the request of the European Union.

While most of its work concerns specific countries, the Venice Commission also draws up **studies and reports on subjects of general interest**. Just a few examples demonstrating the variety, complexity and importance of the matters dealt with by the Commission are its reports on a possible convention on the rights of minorities, on "kin minorities", on independence of the judiciary, on individual access to constitutional justice, on the status of detainees at Guantanamo Bay, on counter-terrorist measures and human rights, on democratic control of security services and armed forces, on the relationship between freedom of expression and freedom of religion as well as the adoption of codes of good practice in electoral matters, on referendums and in the field of political parties.

These studies may, when appropriate, lead to the preparation of guidelines and even proposals for international agreements. Sometimes they take the form of scientific conferences under the Universities for Democracy (**UniDem**) programme, the proceedings of which are subsequently published in the "**Science and technique of democracy**" series.

Aiming at contributing an appropriate and Council of Europe-oriented implementation of laws by the public service, the Commission has also been carrying out since 1991 an ambitious and successful programme – the **UniDem Campus** – of legal training of civil servants from 16 countries on topical issues of specific interest.

After assisting States in adopting democratic constitutions, the Commission pursues its action aimed at achieving the rule of law by focussing on their

implementation. This is why **constitutional justice** is also one of the main fields of activity of the Commission, which has developed close co-operation with the key players in this field, i.e. constitutional courts and other courts with equivalent jurisdiction (constitutional councils, supreme courts). As early as 1991, the Commission set up the Centre on Constitutional Justice, the main task of which is to collect and disseminate constitutional case-law. The Commission's activities in this field are supervised by the **Joint Council on Constitutional Justice**. This body is made up of members of the Commission and liaison officers appointed by the participating courts in some 70 countries (including some outside Europe), by the European Court of Human Rights, the Court of Justice of the European Communities and the Inter-American Court of Human Rights. Since 1996, the Commission has established **co-operation with a number of regional or language based groups of constitutional courts**, in particular the Conference of European Constitutional Courts, the Association of Constitutional Courts using the French Language, the Southern African Chief Justices' Forum, the Conference of Constitutional Control Organs of Countries of Young Democracy, the Association of Asian Constitutional Courts, the Union of Arab Constitutional Courts and Councils, the Ibero-American Conference of Constitutional Justice.

In order to bring these groups together, the Venice Commission organised a First World Congress of the **World Conference on Constitutional Justice** in Cape Town in January 2009, which was hosted by the Constitutional Court of South Africa. On the basis of a declaration adopted at this First Congress, the statute for a permanent body was prepared and then discussed at the Second Congress hosted by the Federal Supreme Court of Brazil, in Rio de Janeiro in January 2011. The statute was adopted on 23 May 2011 in Bucharest, and

entered into force on 24 September 2011 on the accession of 30 constitutional courts or equivalent bodies, making the World Conference on Constitutional Justice a permanent body. By the end of 2011, 49 courts had joined the World Conference.

Since 1993, the Commission's constitutional justice activities have also included the publication of the **Bulletin on Constitutional Case-Law**, which contains summaries in French and English of the most significant decisions over a four month period. The Bulletin also has an electronic counterpart, the **CODICES database**, which contains some 7,000 decisions rendered by over 95 participating courts together with constitutions and descriptions of many courts and the laws governing them.<sup>1</sup> These publications have played a vital "cross-fertilisation" role in constitutional case-law.

At the request of a constitutional court and the European Court of Human Rights, the Commission may also provide *amicus curiae* briefs, not on the constitutionality of the act concerned, but on comparative constitutional and international law issues.

One final area of activity in the constitutional justice sphere is the support provided by the Commission to constitutional and equivalent courts when these are subjected to pressure by other authorities of the State. The Commission has even, on several occasions, been able to help some courts threatened with dissolution to remain in existence. By facilitating the use of foreign case-law, if need be, the Bulletin and CODICES also help to strengthen judicial authority. Lastly, the Commission holds seminars and conferences in co-operation with constitutional and equivalent courts, and makes available to them on the Internet a forum reserved for them, the "Venice Forum", through which they can speedily exchange information relating to pending cases.

4. CODICES is available on CD-ROM and on line (<http://www.CODICES.coe.int>).

The **ordinary courts** have become a subject of growing importance to the Commission. The latter is asked increasingly to give an opinion on constitutional aspects of legislation relating to the courts. Frequently, it co-operates in this sphere with other Council of Europe departments, so that the constitutional law viewpoint is supplemented by other aspects. With its report on the independence of the judicial system (Part I – Independence of judges (CDL-AD(2010)004 and Part II – Prosecution Service (CDL-AD(2010)040)), the Commission produced a reference text, which it uses in its opinions on specific countries.

The Commission also co-operates with **ombudspersons**, through opinions on the legislation governing their work, and by offering them *amicus ombud* opinions on any other subject, opinions which, like *amicus curiae* briefs, present elements of comparative and international law, but contain no verdict on the possible unconstitutionality of a text, a decision which only the constitutional court itself can take. The Commission promotes relations between ombudspersons and constitutional courts with the aim of furthering human rights protection in member countries.

**Elections and referendums** which meet international standards are of the utmost importance in any democratic society. This is the third of the Commission's main areas of activity, in which the Commission has, since it was set up, been the most active Council of Europe body, leaving aside election observation operations.

The activities of the Venice Commission and the Council for Democratic Elections also relate to political parties, without which elections in keeping with Europe's electoral heritage are unthinkable.

In 2002, the **Council for Democratic Elections** was set up at the Parliamentary Assembly's request. This is a subordinate body of the Venice Commission comprising members of the Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. The Council for Democratic Elections also includes an observer from the OSCE/ODIHR. The Council for Democratic Elections and the Venice Commission have done much to set European standards in the electoral sphere, adopting a good number of general documents, the most important of which are the **Code of Good Practice in Electoral Matters** (2002), which is the Council of Europe's reference document in this field, and the **Code of Good Practice for Referendums** (2007),<sup>5</sup> Guidelines on the international status of election observers (2009) and, in the field of political parties, the **Code of Good Practice in the field of Political Parties** (2008). The other general documents concern such matters as electoral law and national minorities, and restrictions on the right to vote or the cancellation of electoral results, as well as on the prohibition, dissolution and financing of political parties. The Commission has adopted more than forty studies or guidelines of a general nature in the field of elections, referendums and political parties. In 2010 it adopted in particular **guidelines on political party regulation** and a **report on the timeline and inventory of political criteria for assessing an election**.

The Commission has drafted more than 90 opinions on **national laws and practices relating to elections, referendums and political parties**, and these have had a significant impact on electoral legislation in the States concerned. Among the States which regularly co-operate with the Commission in the electoral sphere are Albania, Armenia, Azerbaijan, Georgia, Moldova, Serbia and

5. These two texts were approved by the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe, and are the subject of a solemn declaration by the Committee of Ministers encouraging their application.

Ukraine. The Commission has played a direct part in the drafting of electoral legislation, especially in Bosnia and Herzegovina.

The Council for Democratic Elections has developed **regular co-operation with election authorities in Europe and on other continents**. It organises annually the European Conference of Electoral Management Bodies, and is also in very close contact with other international organisations or bodies which work in the election field, such as ACEEEO (Association of European Election Officials), IFES (International Foundation for Electoral Systems) and, in particular, the OSCE (Organisation for

Security and Co-operation in Europe). Thus, in principle, opinions on electoral matters are drafted jointly with the OSCE/ODIHR, with which there is exemplary co-operation.

The Commission also holds **seminars** on subjects such as the preconditions for democratic elections or the supervision of the electoral process, as well as **training workshops** for those involved in the electoral process.

The Council for Democratic Elections has created the VOTA<sup>6</sup> database containing, inter alia, member States' electoral legislation.

## 2. The Commission in 2011

### Member States

#### Accession of new member States

Kazakhstan was invited to become a full member of the Commission in November 2011. The population "covered" by the Commission's expertise is now more than 1.4 billion people.

#### Voluntary contributions

In 2011 the governments of France, Italy, the Netherlands and Turkey supported the Commission's activities in the Arab countries as well as the organisation of the UniDem (Universities for Democracy) Campus. The *Organisation internationale de la francophonie* (OIF) contributed to the translations of the Commission's Bulletin on Constitutional Case-law into French.

6. VOTA is accessible on line: <http://www.venice.coe.int/VOTA>.

### Scientific Council

In 2011 the Scientific Council, chaired by Mr Jan Helgesen, First Vice President of the Commission held four meetings during which the members discussed the preparation of Conferences scheduled for 2012 (on the rule of Law, London, March 2012; on constitutional design, Helsinki, May 2012; on the linguistic rights of minorities, Oslo, Autumn 2012). The Scientific Council also prepared four thematic compilations of Venice Commission opinions and studies, in the fields of constitutional justice, ombudsman, freedom of association and the protection of minorities. These compilations, which contain extracts from the Commission's opinions and studies structured thematically around key words, are intended to serve as a reference to country representatives, researchers as well as experts who wish to familiarise themselves with the Venice Commission's "doctrine".

They are available on the Commission's web site and will be regularly up-dated.

## Main activities

### Key developments and figures

Since the adoption of its revised Statute in 2002 the Venice Commission has been working in a significant manner with non-European countries, primarily those of Central Asia. It has also established contacts with many other states, in particular in the Southern Mediterranean and Latin America. In 2011 the Arab spring and the subsequent adoption of a Council of Europe neighbourhood policy gave an entirely new dimension to the Commission's role in the Southern neighbourhood. There, the traditional topics of the Venice Commission such as constitution-making, free and fair elections, respect for freedom of association, expression and assembly and the rule of law administered by an independent judiciary are now at the top of the agenda. While there are clear differences between Central and Eastern Europe on the one hand and the Arab countries on the other, lessons can be learnt from the experience of the democratic transition in Europe. The Venice Commission is well placed to share this experience with countries which are members of the Commission (Algeria, Morocco, Tunisia) or which have worked in the past with the Commission in the field of constitutional justice.

In 2011 the Venice Commission therefore intensified its contacts with the countries of the Southern neighbourhood and started co-operation on practical issues especially with Tunisia on electoral matters. As from 2012, this co-operation will develop further and extend to other countries.

This does not mean that the Commission will abandon its focus on Europe. On the contrary, the Commission is more than ever in demand also on its home ground. As

the most notable example, in 2011 the Venice Commission contributed to constitutional reforms and debates not only in traditional partner countries such as Bosnia and Herzegovina, Moldova, Montenegro and Ukraine but also in Hungary and it continued its close co-operation with the Turkish authorities on judicial reform.

The key figures confirm this: over 50 opinions and texts of transnational interest were adopted, three UniDem Campus seminars for dozens of civil servants and about 30 other conferences and seminars were organised, some 30 comparative law research requests from European Constitutional Courts and equivalent bodies were dealt with through the Venice Forum and 7 publications were prepared.

### Democratic institutions and fundamental freedoms

#### *Constitutional reforms*

Constitutional reforms relating to the foundations of a democratic state remain at the core of the Venice Commission's activities. Requests for assistance and the Commission's participation in these processes bear witness to the trust and respect enjoyed by the Commission from the States concerned as well as from institutional partners.

Constitutional reforms are complex and lengthy processes. In some European States, these processes have stretched over several years, and have been accomplished through subsequent sets of amendments. Sometimes they are the result of a new positioning of political forces following elections and pushed by new majorities wishing to consolidate and, where appropriate, re-establish the institutional and constitutional architecture of the country.

In 2011, the Venice Commission worked on the constitutional reform process in Hungary, Moldova, and Ukraine. It was also involved in meetings on the revision

of the Constitution in Bosnia and Herzegovina and Montenegro.

In Moldova and Ukraine the Commission analysed previous reforms or attempts at reform and formulated recommendations. The two opinions adopted concerning the new Constitution of Hungary were widely reported both in Hungary and internationally. Work is continuing in the framework of a more ample assistance process linked to the legislative reforms entailed by the adoption of a new constitution.

*Functioning of democratic institutions  
and the protection of fundamental rights*

In 2011, the Commission provided 30 opinions on legislative reforms. Some of these related to highly sensitive and complex issues involving the protection of fundamental rights and democratic institutions such as: the opinion on the compatibility with universal human rights standards of a warning from the Ministry of Justice of Belarus addressed to the Belarusian Helsinki Committee; the draft law on alternative service of Armenia; the *amicus curiae* brief on the law of the Republika Srpska (Bosnia and Herzegovina) on the status of State property located on the territory of the Republika Srpska and under the disposal ban.

In its opinions concerning two drafts on the protection of languages in Ukraine, the Commission stated that, when adopting a legal framework guaranteeing the efficient protection of languages used in the country, it is fundamental to ensure a proper balance between the consolidation of the State language – which has an indisputable function of maintaining cohesion and integration in Ukrainian society – and the protection of minority languages with their specific needs.

In 2011 for the first time the Commission addressed the issue of replacement service for military service by

examining a draft law aimed at amending and completing the legislation in force in Armenia. In its opinion, the Commission stressed that civilian alternative service was a fundamental condition for ensuring the right of conscientious objectors to opt for an alternative to military service and analysed the conditions necessary – criteria for acceptance or reject of requests for such a service, its length, the specific conditions under which it can take place – to ensure that, as proposed by the State, alternative service is not a deterrent.

The Commission paid particular attention during 2011 to the questions of freedom of association. It adopted, at the request of the Parliamentary Assembly, two important opinions on this issue: the opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan and the opinion on the compatibility with universal human rights standards of Article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus.

In these two opinions, the Venice Commission stated that the manner in which this freedom is enshrined in national legislation and its practical application by the authorities reveals the level of democracy in the country concerned. Consequently, any restriction on this right, protected by virtue of Article 11 of the ECHR and Article 22 of the ICCPR, should meet strict conditions.

In addition the Venice Commission continued to address questions concerning freedom of assembly. In the two opinions which it adopted on this issue – an opinion on the amendments to the law on assemblies and manifestations of Georgia, and a joint opinion by the Venice Commission and the OSCE/ODIHR, on a new draft law on freedom of peaceful assembly of Ukraine – the Commission based itself on the Guidelines on freedom of assembly adopted jointly with the OSCE/ODIHR (2nd edition 2010) and identified two main ideas. Firstly,

the right to freedom of assembly should not be interpreted restrictively and any limitation should be construed in a restrictive manner; in addition, the rights should be “practical and effective” and not “theoretic and illusionary”. Secondly, the effective guarantee of the right to freedom of association depends on the way in which the law is implemented. Presumption in favour of meetings should become a part of the legal culture and influence the exercise of executive power by the authorities responsible for implementing the discretionary powers which the legislation gives them.

The Commission also continued its work on freedom of religion and conscience by co-operating with those States – such as Armenia – which are looking to improve, in the light of applicable standards, their legislation on this issue. A joint opinion by the Venice Commission and the OSCE/ODIHR on the draft law amending and completing the law on freedom of conscience and religious organisations of Armenia as well as draft amendments to the Code of administrative offences, the criminal code and the law on charitable associations concluded a series of opinions on this question.

## Constitutional and ordinary justice, ombudspersons

### *Strengthening constitutional justice*

The Venice Commission’s Joint Council on Constitutional Justice continued in 2011 to support constitutional courts and equivalent bodies with its Centre on Constitutional Justice, which publishes the Bulletin on Constitutional Case-Law (4 issues in 2011) and the CODICES database. The Commission’s Venice Forum received 30 comparative law research requests in 2011 from constitutional courts and equivalent bodies covering, among others, questions that concern the acquisition of nationality, identity papers, mental illness and hospital detention, EU

reverse discrimination, age discrimination, the suspensive effect of an appeal, *contra bonos mores*, restrictions on foreign ownership of farmland, expropriation, prohibition of foreign military bases, disciplinary responsibility of judges, integrity of candidates for judicial office and court fees.

The Venice Commission also published a Compilation on Constitutional Justice in June 2011. This compilation will be systematically up-dated by the Secretariat on the Commission’s web site following the adoption of relevant opinions and reports (CDL(2011)048).

In 2011, the Venice Commission adopted *amicus curiae* briefs for the Constitutional Courts of Bosnia and Herzegovina, Moldova and Peru.

Constitutional justice conferences and seminars were held in Armenia, Bolivia, Brazil, Bulgaria, Georgia, Kazakhstan, Latvia and Turkey. The topics covered a variety of themes in 2011, such as the legal consequences of constitutional court decisions in strengthening constitutionality in the country; constitutional mechanisms for the protection of human rights and freedoms; the leading principles of constitutional justice and the role of the constitutional court in the protection of constitutional values.

### *Ordinary judiciary*

The need to ensure the independence of the judiciary and the functioning of the judicial system in the interest of society has played an ever increasing role in the Venice Commission’s activities.

In 2011, the Venice Commission adopted opinions in this area for Montenegro, Serbia, Turkey and Ukraine and

participated in seminars and conferences in Montenegro, Turkey, Ukraine and Uzbekistan.

### *Ombudspersons*

The Venice Commission has, from the outset, encouraged the creation of the institution of the ombudsperson in its member states and believes that these institutions, in order to function properly, should be provided with a firm constitutional basis and endowed with full independence and broad competences. Over the years, the Venice Commission has assisted states in preparing laws on ombudspersons and has provided *amicus ombud* opinions. These opinions may be requested by ombudspersons directly on specific questions that are not necessarily related to their mandate, but can be of a general scope and are not binding.

In 2011, the Venice Commission adopted a Joint Opinion with the OSCE/ODIHR on the Law on the Protector of Human Rights and Freedoms of Montenegro and participated in a Round Table of Russian Regional Ombudsmen held in Samara, Russian Federation on 22-23 November 2011. A member of the Venice Commission made a presentation at this event on the "Relations between the Ombudsman and the judiciary".

The Venice Commission also published a Compilation on the Ombudsman institution in December 2011. This Compilation will be updated on a regular basis with future *amicus ombud* opinions and reports or studies adopted by the Venice Commission on this subject (CDL(2011)079).

### World Conference on Constitutional Justice

In co-operation with the Federal Supreme Court of Brazil, the Venice Commission organised the

2nd Congress of the World Conference on Constitutional Justice (Rio de Janeiro, Brazil, 16-18 January 2011). This event gathered 88 constitutional Courts, constitutional councils and supreme courts as well as 10 regional and linguistic groups of constitutional courts from Africa, the Americas, Asia and Europe. The Congress gave the Courts the opportunity to discuss issues relating to their independence in their relations with other state powers, especially on pressure from the executive or the legislative but also at times also from the media.

The purpose of the Congress was to enable judges to draw inspiration for such situations from their peers in other countries, especially at a time when constitutional justice is in danger in a number of countries. Reference to similar cases in other countries can give an added legitimacy to a judgement. This can be crucial in cases where a judge expects the decision to be disliked by the other state powers. Discussions among judges may provide the moral support necessary to remain faithful to the Constitution even in difficult situations.

The discussions focused on the independence of the constitutional court or equivalent body as an institution, the constitutional independence of individual judges and operating procedures of courts as a means to guarantee their independence. The discussions revealed that these aspects are closely linked.

The participants also discussed a draft Statute for the World Conference as a permanent body. This statute was adopted by the Bureau of the World Conference on 23 May 2011 in Bucharest, on the occasion of the XVth Congress of the Conference of European Constitutional Courts, and entered into force on 24 September 2011 on the accession of 30 constitutional courts or equivalent bodies, making the World Conference on Constitutional Justice a permanent body.

By the end of 2011, 49 Courts had joined the World Conference.<sup>7</sup>

The Third Congress of the World Conference on Constitutional Justice will be hosted by the Constitutional Court of Korea in Seoul in 2014.

### Elections, referendums and political parties

In 2011 the Commission continued its work on electoral matters and political parties. The Commission adopted upwards of a dozen documents in the field of elections and political parties, while at the same time continuing the drafting of documents of a general nature. A corpus of important guidelines now exists in the field: regarding legislation, even if improvements are desirable, even necessary in several States, the problems to be solved concern more and more the implementation rather than the content of the legislation. The Commission therefore continued to be very involved during 2011 in activities to assist in the implementation of international standards in the electoral field, while developing its co-operation in the electoral field outside Europe, in North Africa, Central Asia and in Latin America.

#### *Electoral legislation and practice*

The Commission adopted, mostly together with the OSCE Office for Democratic Institutions and Human

Rights (OSCE/ODIHR), opinions and recommendations on electoral laws or draft electoral laws in Albania, Armenia, Bulgaria, Georgia, Montenegro, Serbia, “the former Yugoslav Republic of Macedonia” and Ukraine.

The Commission also adopted a number of documents on electoral matters of a general nature, in particular, the report on out-of-country voting, the opinion on the need for a code of good practice in the field of funding of electoral campaigns and the revised interpretative declaration on the participation of people with disabilities in elections.

In addition, the Commission organised long-term assistance to the Central Electoral Commission of Albania.

The Venice Commission organised in Austria the 8th Conference of European Electoral Management bodies. It also organised several seminars on electoral issues in Moldova, Tajikistan and Tunisia.

Finally, the Commission provided legal assistance to seven Parliamentary Assembly electoral observation missions.

#### *Political parties*

The Commission adopted opinions on legislation in the field of political parties in Azerbaijan, Georgia and Serbia.

7. Membership status March 2012: Albania, Constitutional Court; Algeria, Constitutional Council; Angola, Constitutional Court; Armenia, Constitutional Court; Austria, Constitutional Court; Azerbaijan, Constitutional Court; Belarus, Constitutional Court; Belgium, Constitutional Court; Benin, Constitutional Court; Brazil, Federal Supreme Court; Bulgaria, Constitutional Court; Burkina Faso, Constitutional Council; Chad, Constitutional Council; Chile, Constitutional Court; Congo (Brazzaville), Constitutional Court; Congo, Democratic Republic, Supreme Court of Justice; Croatia, Constitutional Court; Denmark, Supreme Court; Egypt, Supreme Constitutional Court; Estonia, Supreme Court; Georgia, Constitutional Court; Germany, Federal Constitutional Court; Hungary, Constitutional Court; Israel, Supreme Court; Ivory Coast, Constitutional Council; Korea, Republic, Constitutional Court; Latvia, Constitutional Court; Lithuania, Constitutional Court; Lebanon, Constitutional Council; Mali, Constitutional Court; Mauritania, Constitutional Council; Mauritius, Supreme Court; Mexico, Supreme Court; Moldova, Constitutional Court; Mongolia, Constitutional Court; Montenegro, Constitutional Court; Morocco, Constitutional Council; Mozambique, Constitutional Council; Netherlands, Council of State; Niger, Constitutional Council; Norway, Supreme Court; Peru, Constitutional Court; Portugal, Constitutional Court; Romania, Constitutional Court; Senegal, Constitutional Council; Serbia, Constitutional Court; Slovakia, Constitutional Court; Spain, Constitutional Court; Sweden, Supreme Administrative Court; Switzerland, Federal Court; Tajikistan, Constitutional Court; Thailand, Constitutional Court; “the Former Yugoslav Republic of Macedonia”, Constitutional Court; Togo, Constitutional Court; Ukraine, Constitutional Court (55 courts in March 2012).

**Democratic development of public institutions  
and respect for human rights**



## II. Democratic development of public institutions and respect for human rights<sup>1</sup>

### 1. Country specific activities

#### Armenia

##### Opinion on the draft Law on Amendments and Additions to the Law on Alternative Service of Armenia

In September 2011 the Standing Committee on Defence, National Security and Internal Affairs of the National Assembly sought the Venice Commission's opinion on the draft law on amendments and additions to the Law on Alternative Service of Armenia.

While the draft law was a step in the right direction, the Venice Commission's opinion contained a list of recommendations for improving it in order to bring it in full compliance with international standards on conscientious objection to military service. These mainly concerned: the role of the military supervision and the need to replace it by a genuine civilian control; defining more strictly the grounds for rejecting an application for alternative service and reconsidering the duration of alternative service; enabling transfer from military service to alternative service and the partial deduction of the already completed alternative service time from the term of the up-coming military service (and vice-versa); changing certain specific conditions of alternative service to avoid the impression that alternative service is not civilian.

The opinion CDL-AD(2011)051 was adopted by the Venice Commission in December 2011.

##### Opinion on the draft Law on the Legal Regime of the State Emergency of Armenia

In December 2011, at the request of the Minister of Justice of Armenia, the Venice Commission adopted an opinion on the draft law on the legal regime of the state of emergency of Armenia (CDL-AD(2011)049).

The assessment of the draft law, which referred explicitly to the need always to respect international treaties and the principles of necessity and proportionality, was rather positive. The opinion nonetheless recommended strengthening parliamentary control on the decisions relating to the state of emergency and, more generally, the guarantees for the democratic oversight of the powers of the executive under the state of emergency (including the Presidential Decree declaring the state of emergency and any subsequent Presidential decisions). A specific recommendation regarded the power of the President to "terminate", under a state of emergency, the operation of political parties: this power was inappropriate and had to be removed; termination was a last resort measure which was unwarranted under a state of emergency, which is, by nature, a transitory situation.

##### Opinion on the draft Law on Making a Supplement to the Penitentiary Code of Armenia

The Venice Commission adopted the opinion on the draft law making a supplement to the Penitentiary Code

1. The full text of all adopted opinions can be found on the web site [www.venice.coe.int](http://www.venice.coe.int).

of Armenia – prepared at the request of the Armenian authorities – in June 2011 (CDL-AD(2011)024).

The Opinion considered commendable the initiative to regulate through a supplement to the Penitentiary Code, in the absence of specific domestic legislation in this field, the possible restriction by public authorities of the right to the respect of the correspondence of detainees. It welcomed the fact that the draft drew on the applicable international standards and that its underlying principles were those enshrined in Article 8 of the ECHR. It was positive in particular that, according to proposed provisions, intervention in the above right of the convicted person required a judicial decision.

The Venice Commission nevertheless considered that, to be fully in line with the ECHR requirements and the relevant ECtHR case law, further improvements of the draft law were needed. In particular, it was necessary for courts, in ruling on each proposed restriction of the privacy of correspondence, duly to take into account the requirements of necessity and proportionality, and this ought to be included explicitly in the new provisions.

**Joint Opinion with the OSCE/ODIHR on the draft Law on Freedoms of Conscience and Religion and on the Law Making Amendments and Supplements to the Criminal Code, the Administrative Offences Code and the Law on the Relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia**

The authorities of Armenia requested, on 23 August 2011, an assessment by the Venice Commission of a new draft law on freedoms of conscience and religion and several related draft laws.

According to the opinion (CDL-AD(2011)028), adopted by the Venice Commission in October 2011, the draft law

represented a marked improvement compared to both the Law in force and the previous draft laws from 2009 and 2010 (already assessed by the Venice Commission and the OSCE/ODIHR). In particular, the draft law expressly provided that freedom of religion or belief is guaranteed to every person in Armenia (and not only to Armenian citizens, as is currently the case). Furthermore, the draft law expressly guarantees the right to change one's religion or belief; the freedom to manifest religion or belief in public or private; the right to act according to one's religion in daily life; and the liberty of parents and guardians to ensure the religious education of their children in conformity with their own convictions all of which are fundamental aspects of freedom of religion or belief which were missing from the text of the Law currently in force and previous draft laws.

However, the Venice Commission considered that certain fundamental problems remained in the draft law, which it was essential to correct. Several of these had already been identified in the previous joint opinions. These included: the need for more a precise definition in the law, in line with the ECHR requirements, of any permitted limitations to freedom of religion; issues related to the definition, registration and operation of "religious associations"; the distinction between "religious associations" and "religious groups" and its impact; the conditions for the liquidation of religious associations; the prohibition of "proselytism" and related prohibitions; the "exclusive missions" of the Holy Armenian Apostolic Church.

Upon invitation by the First Deputy Minister for Justice of Armenia, a Venice Commission delegation travelled to Yerevan on 5 December 2011, to meet with the Minister and discuss ways of implementing the Commission's recommendations.

In this context, the delegation also held an exchange of views with the Armenian National Security Council. The

delegation was informed that the Council was preparing a national strategy for fighting totalitarian sects.

## Azerbaijan

### Opinion on the compatibility with Human Rights standards of the legislation of Azerbaijan on Non-Governmental Organisations

Following a request, dated 29 June 2011, by the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, the Venice Commission assessed the compatibility with Human Rights standards of the legislation of Azerbaijan on Non-Governmental Organisations.

The opinion focused on some problematic aspects of the Law on NGOs amended in 2009 and the 2011 Decree such as the registration of NGOs in general; the registration of branches and representatives of international NGOs specifically; the requirements relating to the content of the charters of NGOs and the liability and dissolution of NGOs.

With regard to registration, the opinion considered that the 2009 amended version of the Law on NGOs and the 2011 Decree had added further complications to an already complicated and lengthy procedure. Moreover, the requirement for international NGOs to have their local branches and representatives registered was in itself problematic.

As far as the liability and dissolutions of NGOs were concerned, the Law on NGOs posed problems of compatibility with Article 11 of the ECHR. There needed to be convincing and compelling reasons justifying the dissolution and/or temporary forfeiture of the right to freedom of association. Such interference must meet a pressing social need and be proportionate to the aims pursued.

The opinion indicated that the way in which the national legislation enshrines freedom of association and its practical application by the authorities revealed the state of democracy in the country concerned. The opinion reiterated that the Republic of Azerbaijan, as Party to the ECHR and the ICCPR, was required to take steps to give effect to the civil and political rights it had undertaken and to ensure these rights to all individuals within the territory of Azerbaijan.

The opinion's conclusions coincided with the Recommendations adopted by the INGO Conference and the Venice Commission invited the authorities to take due account of this text as well.

## Belarus

### Opinion on the compatibility with universal Human Rights standards of an official warning addressed by the Ministry of Justice of Belarus to the Belarusian Helsinki Committee

Following a request dated 9 March 2011 from the President of the Political Affairs Committee of the Parliamentary Assembly, the Commission studied the compatibility with universal Human Rights standards of an official warning addressed by the Ministry of Justice of Belarus to the Belarusian Helsinki Committee.

This opinion (CDL-AD(2011)026) follows on from a previous opinion adopted in December 2010 on a warning from the Ministry of Justice addressed to the Belarusian association of journalists (CDL-AD(2010)053rev).

The warning from the Ministry of Justice was twofold: firstly it reproached the Helsinki Committee for sending a communication to the Special Rapporteur of the United Nations concerning the impossibility or the difficulty for people who had protested following the Presidential

elections to have access to a lawyer. Secondly, the warning asked the association to issue a kind of counter statement.

On the domestic legal level, the warning had a strong impact to the extent that should a second warning be issued for the same offence, the Helsinki Committee, which is the only organisation defending human rights still registered in Belarus, could be dissolved.

The opinion analysed the warning in the light of the International Covenant on Civil and Political Rights (ICCPR) which Belarus ratified in 1973 and of the European Convention on Human Rights (ECHR). The opinion concluded that there was violation of Article 22 of the ICCPR, Article 11 of the ECHR relating to freedom of association, Article 19 of the ICCPR and Article 10 of the ECHR concerning freedom of expression. These rights were of crucial importance in a democratic society and any restriction on these rights should be strictly justified.

The opinion also stated that the warning constituted an unlawful threat to the existence and to the activities of an organisation charged to promote and to defend human rights and reminded that Belarus as a party to the ICCPR had a positive obligation not only to respect the rights of dissident voices but also to protect organisations defending human rights.

**Opinion on the compatibility with universal human rights standards of Article 193-1 of the Criminal Code of Belarus vis-à-vis the rights of non-registered associations in this country**

At the request of the Political Affairs Committee of the Parliamentary Assembly, the Venice Commission examined the compatibility with universal human rights

standards of Article 193-1 of the Criminal Code of Belarus vis-à-vis the rights of non-registered associations in this country.

The Venice Commission analysed the article in the light of the right to join or not to join an association, the rights of non-registered associations and freedom of expression and/or association. The opinion was adopted by the Commission in October 2011 (CDL-AD(2011)036).

The issues addressed included determining whether criminalising the legitimate exercise of freedom of association, activities of human rights defenders albeit members of non-registered associations and social protest or criticism of political authorities with fines or imprisonment may be considered legitimate with regard to international standards. In the Commission's opinion, criminalising actions linked to the organisation or the management of an association solely for the reason that the association concerned is not registered by the State as provided for by Article 193-1 of the Criminal Code, does not fulfil the strict criteria provided for by Article 22.2 of the ICCPR and Article 11.2 of the ECHR. This would make the activities of a non-registered association in fact impossible and, consequently, restrict the right to freedom of association in its essence.

In addition, the Commission considered that, taking into account the deteriorating situation of human rights defenders in Belarus along with the evolution of the legal framework in Belarus with regard to NGOs in the last decade, the adoption of Article 193-1 could serve the purpose of criminalising social protest and legalising government response to social unrest. An arbitrary use of the existing legal framework to criminalise civil society efforts in trying to have an impact on its own conditions and future was unacceptable from the standpoint of democratic principles and human rights.

## Bosnia and Herzegovina

Amicus curiae brief on the Law of the Republika Srpska (Bosnia and Herzegovina) on the Status of State Property located on the Territory of the Republika Srpska and under the disposal Ban

See chapter III.1 below.

Opinion on the draft Law on Internal Affairs of the Federation of Bosnia and Herzegovina and on the draft Law on Internal Affairs of the Canton of Sarajevo

The opinion, prepared by the Venice Commission at the request of the authorities of the Federation of Bosnia and Herzegovina (FBiH) and those of the Canton of Sarajevo, was adopted by the Venice Commission in December 2011 (CDL-AD(2011)048). Both these laws were to replace two existing laws dealing with internal affairs.

The opinion was limited in scope and could not be a comprehensive and detailed review of all the provisions of the two draft laws. Its purpose was to propose a general assessment of the legislative process aimed at providing the FBiH and the Canton of Sarajevo with a modern and coherent legal framework in the field of policing, and to highlight challenges and issues of concern in terms of inter-relation between the two draft laws and their future implementation, if adopted. The Commission found appropriate to consider this legislative/policy-making process in the light of the complex constitutional, institutional and legislative framework prevailing in Bosnia and Herzegovina (BiH) at the date of the preparation of its opinion.

The Venice Commission welcomed the efforts of the authorities to improve the legal framework in this field. At the same time, the two draft laws raised issues of feasibility/applicability, interrelations between the respective

police forces, efficiency and costs in the specific context of BiH. In particular, the improvements proposed to the legislation already in force did not solve the question whether the constitutional and institutional settings still in place in BiH constitute an adequate framework for an efficient and sustainable reform of the country's police system or whether this should be reconsidered. This remained a particular challenge for the implementation of an efficient and sustainable reform of the police in Bosnia and Herzegovina.

Conference "Is the Constitution of Bosnia and Herzegovina EU-compatible" (Cadenabbia, Italy, 26-29 November 2011)

The Secretary of the Commission took part in this Conference, which was attended by main leaders of political parties from the country, and made a presentation on the implementation of the *Sejdic and Finci* judgment of the European Court of Human Rights from the perspective of the Venice Commission.

## Bulgaria

Opinion on the sixth revised Draft Act on Forfeiture of Assets Acquired through Criminal Activity or Administrative Violations

In May 2011, the Bulgarian authorities submitted the sixth revised Draft Act on Forfeiture of Assets through Criminal Activity or Administrative Violations to the Venice Commission. This request was the result of more than one year of fruitful co-operation between the Commission and the Bulgarian authorities. The Commission had examined six versions of this important and complex piece of legislation, and taken part in three meetings – one in Strasbourg and two in Sofia. The main difference between the various versions of this Draft Law related to its scope of application i.e. the assets whose sources may be examined by the Commission for the

Establishment of Assets Acquired through Criminal Activity or Administrative Violations (CEACAV), and the grounds for initiating the examination phase before the CEACAV. The issue of the scope of application and the procedural guarantees during the proceedings was essential for the assessment of the compatibility of the Draft Law with human rights standards. Further important issues related to: the rules on the evidential threshold for requesting forfeiture before a Court; the requirement to establish the lack of correspondence between the assets and the net income of a person and his or her family members; and the right to defence in forfeiture proceedings.

The sixth revised Draft Law represented, in the Venice Commission's view, a great improvement, as most of the recommendations previously made had been taken into account. The Commission adopted this opinion in June 2011 (CDL-AD(2011)023).

## Georgia

### Opinion on the Law on Amendments and Supplements to the Law on Assembly and Manifestations of Georgia

The Commission adopted the opinion on the law on the amendments and supplements to the law on assembly and manifestations of Georgia, at the request of the Georgian authorities in October 2011 (CDL-AD(2011)029).

In the Venice Commission's view, the new amendments and supplements reflected several recommendations made by the Commission in its interim opinion on the Draft Amendments to the Law on assembly and manifestations of Georgia, adopted in March 2010 (CDL-AD(2010)009). In particular and importantly, the principles of proportionality, legality and necessity in a democratic society were now set out in the law. The provisions on the dispersal of assemblies and simultaneous and counter assemblies had been improved. In this

context, it was worth stressing that the Constitutional Court of Georgia, in its judgment of 18 April 2011, had struck down certain provisions in the law in force which the Venice Commission had previously criticised.

However, certain problems persisted, notably as concerned blanket restrictions, blocking of traffic and spontaneous assemblies, although in part they stemmed directly from the constitution. In all, the new law represented a significant improvement. Due implementation would be crucial in this field.

## Hungary

### Opinion on three legal questions arising in the framework of the preparation of a new constitution of Hungary

In February 2011, the Deputy Prime Minister, Minister of Public Administration and Justice of Hungary asked the Venice Commission to provide an opinion on three specific questions concerning the new Constitution: the possible incorporation in the new Constitution of provisions of the EU Charter of Fundamental Rights; the role and significance of the preliminary (*ex ante*) review among the competences of the Constitutional Court; the role and significance of the *actio popularis* in ex post constitutional review.

In its opinion, the Venice Commission underlined that the aim was not to examine the draft new Constitution of Hungary (which at the time of the request had not been disclosed) but, according to the request, to give its legal opinion on the above three specific issues. Due to potential problems of interpretation and overlapping competences between domestic ordinary courts, the Constitutional Court and the European Court of Justice, it was considered not advisable for Hungary to opt for the incorporation of the EU Charter of Fundamental Rights as such into its Constitution, but rather to consider the EU Charter as a source of inspiration. At the

same time, it was stressed that Hungary should ensure full compliance of the new constitutional and legislative provisions in the human rights field with the ECHR and other binding human rights treaties.

It was further recommended that the Constitutional Court's competence for *ex ante* review be retained and specifically laid down, as well as all other prerogatives of the Court, by the new Constitution. To avoid over-politicising the constitutional review, the right to initiate the *ex ante* review should be limited to the President of the country and should take place only after the adoption of the law and before its enactment and, for international treaties, before their ratification. Non-binding *ex ante* review could be conducted, if needed, by a parliamentary committee or by independent bodies or structures.

The Venice Commission also considered that the planned abolition of the *actio popularis* by the new Constitution should not be regarded as a violation of European standards, in particular if a fully-fledged constitutional complaint were introduced. The planned extension of the constitutional complaint to review also individual acts, in addition to normative acts, was welcomed. Hungary could however keep some limited elements of *actio popularis*, such as an indirect access to the Constitutional Court via the Ombudsman or other relevant bodies.

Finally, the opinion expressed concern with regard to the overall constitutional process, notably its lack of transparency and its very limited timeframe, shortcomings in the dialogue between the majority and the opposition and insufficient opportunities for an adequate public debate. The reported confirmation, by the new Constitution, of the serious limitation of the powers of the Constitutional Court (on budgetary matters) adopted in November 2010, was an additional concern.

The opinion was adopted by the Venice Commission after an exchange of views with the Deputy Prime

Minister, Minister of Public Administration and Justice of Hungary in March 2011 (CDL-AD(2011)001).

### Opinion on the new Constitution of Hungary

At the request of the PACE Monitoring Committee on 26 March 2011, the Venice Commission prepared an opinion on the new Constitution of Hungary, which was adopted in June 2011 (CDL-AD(2011)016).

The New Hungarian Constitution, adopted by the Hungarian Parliament on 18 April 2011 with the votes of the ruling coalition majority and enacted by the President of Hungary on 25 April 2011, would enter into force on 1 January 2012.

When the Commission adopted its Opinion on three legal questions arising from the process of drafting the new Constitution (see above), it had already expressed concern with regard to the lack of transparency of the constitution-making process and its very tight timeframe, the absence of dialogue between the majority and the opposition, and the insufficient opportunities for an adequate public debate.

A new Constitution was to be welcomed in Hungary, as it aimed to consolidate the constitutional order based on the principles of democracy, the rule of law and the protection of fundamental rights. However, while reinforcing positive features of the still valid Hungarian Constitution and introducing new positive developments, such as the individual constitutional complaint, the adoption of the new Constitution represented only the first step in a broader process to establish a comprehensive and coherent new constitutional order. This process included the adoption or amendment of numerous pieces of legislation, as well as new institutional arrangements. It was essential for Hungary to make sure that all subsequent legislative and other measures would be

fully in line with the applicable international standards and based on the largest consensus possible.

The Venice Commission expressed its concern, *inter alia*, with regard to: the Preamble and its legal significance, in particular for the interpretation of the Constitution; a number of important concepts and values underlying the Constitution (such as the concept of nation and the clause on the protection of Hungarians living abroad); the constitutional guarantees (and related limitations) for the protection of individual rights and freedoms; the lack of adequate guarantees for judicial independence in the text of the Constitution; the limitation of the powers of the Constitutional Court on taxation and budgetary matters and the prominent role given to the Budget Council in the adoption of the State budget, as well as the place of autonomous regulatory bodies in the Hungarian state's system of checks and balances; the new regulations for the functioning of local self-government. The Commission was critical of the extensive use of cardinal laws in the new Constitution. While the use of such laws requiring a qualified majority may be justified for the regulation of important issues, such as fundamental rights, or the electoral system, extensive recourse to such laws limits the scope for democratic decision-making and risks leading to the petrification of the legal system.

## Moldova

### *Amicus curiae* brief on three questions related to Article 78 of the Constitution of the Republic of Moldova

Despite repeated dissolutions of Parliament, several attempts to elect the president and an attempt to modify the Constitution by referendum, the political and institutional stalemate in Moldova, resulting mainly from the constitutional provisions on the procedure of the election of the President (Article 78), remained unresolved, and the President of the country still had to be elected.

The Constitutional Court of Moldova requested the Venice Commission to give an *amicus curiae* brief in April 2011 on the issues raised in the constitutional complaint brought by a group of deputies. Three questions were put to the Commission:

- (A) May Parliament be repeatedly dissolved for the same reason: the non-election of the President?
- (B) Must the procedure of electing the President of the Republic of Moldova foreseen by Article 78 of the Constitution be repeatedly applied after early elections of a new Parliament, dissolved because of the impossibility of electing the Head of State?
- (C) May Parliament develop by an organic law a mechanism which would institutionalise a procedure meant to ensure the election of the Head of State and would not admit repeated dissolution of the Parliament?

The Venice Commission was of the opinion that Article 78.5 of the Constitution allowed repeated dissolution of Parliament if it proved unable to elect the new President of the country and that it was possible and even desirable, in order to facilitate the effective election of the new President, to clarify some procedural aspects of the election procedure through an organic law.

As to the substantive requirement of a three-fifths majority for the new elections of the President organised after dissolution because of a failure to elect the President, the Commission was of the opinion that the most appropriate solution was to amend the relevant constitutional provisions explicitly, in accordance with the provisions of Title VI of the Constitution or to find a political compromise within the Parliament itself on the appropriate presidential candidate.

The Venice Commission stated that it was up to the Constitutional Court of Moldova to decide whether it was justified, under the present circumstances in the

country, which the Constitutional Court of Moldova considered unique, to proceed on the basis of a textual interpretation of Article 78 of the Constitution or rather to follow, based also on the comparative experience of other countries, a functional interpretation of the Constitution in order to avoid the continuing constitutional crisis.

The *amicus curiae* brief was adopted by the Venice Commission in June 2011 (CDL-AD(2011)014).

## Ukraine

### Opinion on the Concept Paper for the establishment and functioning of the Constitutional Assembly in Ukraine

This opinion was prepared at the request of the Chair of the Ukrainian Commission for Strengthening Democracy and the Rule of Law and adopted by the Venice Commission in March 2011 (CDL-AD(2011)002).

The Venice Commission had repeatedly called for a democratic constitution-making process as a precondition for a legitimate constitutional reform (see the Commission's Opinion on the constitutional situation in Ukraine, CDL-AD(2010)044).

The initiative to convene a specialised constitutional assembly was welcomed and the overall assessment of the Concept Paper was rather positive. In particular, the Venice Commission found commendable that the main guarantees for the respect of the regular constitutional procedure for constitutional amendments had been included in the text. The inclusion of civil society representatives in the composition of the future assembly and the possibility for it to instigate public debates on the constitutional reform was also welcomed.

Despite this overall positive evaluation, the opinion raised a number of issues of concern with regard to the mandate, the size of the future assembly, its internal structures and working methods and, notably, the

selection of its members. It noted, in this connection, the important role of the President of the country in the selection of its members and its potential impact on the independence and autonomy of the future assembly.

The parallel functioning, following the establishment of the above-mentioned Scientific Expert Group, of two bodies working on the constitutional reform, was an additional source of concern. While recommending increased clarity on the mandate of the two bodies, the Commission expressed its readiness to co-operate with these bodies and further assist the country in its constitutional reform.

### Opinion on the draft Law on Languages in Ukraine

The President of the Ukrainian Parliament asked the Venice Commission to provide an opinion on the draft law on languages in November 2010. The draft law had engendered heated discussions in Ukraine, within both the political sphere and the civil society. Although it had been submitted to Parliament in September 2010, it was not on the agenda of the current Ukrainian legislature. Further related legislative proposals had been reported, including a draft law on languages under preparation within the executive.

The opinion, adopted by the Venice Commission in March 2011 (CDL-AD(2011)008), examined the compatibility of the draft law with the applicable international standards on language and minority protection, its conformity with the Ukrainian Constitution, its internal consistency and its regulatory efficiency as part of the Ukrainian legislation. Particular attention was paid to the possible impact of the draft, if adopted, on the further development of the linguistic landscape in Ukraine.

In the Venice Commission's view, it was a legitimate aim to establish, as recommended by international monitoring bodies in the sphere of language and minority

protection, an up-to-date and modern legislation on language use. The opinion nevertheless underlined, in the light of Ukraine's historical, linguistic and political background, the need for an appropriate balance between the promotion and development of the Ukrainian language as Ukraine's constitutionally recognised state language, and the protection of the various regional and/or minority languages in use in Ukraine. In particular, the specific protection provided by the draft law to the Russian language was identified as one of the issues deserving, due to its very sensitive nature, careful consideration and a very cautious approach.

### Opinion on the draft Law on Principles of the State Language Policy in Ukraine

At the request of the Chair of the Committee on Culture and Spirituality of the Parliament of Ukraine, the Venice Commission gave an opinion on the Draft Law on the Principles of the State Language Policy. The Venice Commission adopted the opinion in December 2011 (CDL-AD(2011)051).

Despite its different title, the new draft law was clearly based and largely drawing on the provisions of the 2010 "Draft Law on Languages in Ukraine", which was assessed by the Venice Commission in March 2011.

The protection of languages in Ukraine remained a difficult, complex and highly sensitive issue, which required a careful approach. The efforts made by the authors of the new Draft Law to propose a more comprehensive framework for the Ukrainian policy of language protection were to be welcomed, as were the amendments made in respect of some key provisions of the previous draft law as a result of its recommendations. The new Draft Law represented, in general, a more balanced text, and the amendments introduced were going in the right direction. Ukrainian was confirmed as the sole

state language, which deserved specific promotion and protection, while the Russian language would enjoy the status of a regional language, protected under the norms governing the protection of regional or minority languages. This approach could be beneficial, in certain areas of public life, to the protection of other regional or minority languages as well. This might however lead to implementation problems, if a non-discriminatory treatment was to be applied to all relevant languages, and adequate financial, human and other resources to be provided.

More generally, more substantial changes to the normative content of the Draft and increased guarantees needed to be introduced in order to ensure a fair balance between the protection of the rights of minorities and their languages, including Russian, and the protection of the Ukrainian language as the sole State language and a tool for integration within the Ukrainian multilinguistic society.

### Joint Opinion on the draft Law on Freedom of Peaceful Assembly of Ukraine

The Venice Commission and the OSCE/ODIHR prepared an opinion on the draft Law on freedom of peaceful assembly of Ukraine, adopted by the 'Ukrainian Commission for Strengthening Democracy and the Rule of Law' at the request of this body in July 2011. The opinion was adopted by the Venice Commission in October 2011 (CDL-AD(2011)031).

The Venice Commission and the OSCE/ODIHR had already examined previous drafts pertaining to the exercise of freedom of assembly in Ukraine. In many respects, the Draft Law drew upon and in general reflected the principles enunciated in international standards and the OSCE/ODIHR-Venice Commission *Guidelines on Freedom of Peaceful Assembly* (CDL-AD(2010)020).

Nevertheless, further improvements were needed to ensure the coherence and the clarity of the Draft Law and to limit the potential for misinterpretation. The main concerns related to the following: definitions, such as that of spontaneous assembly, issues concerning the prior notification of an assembly and related court's procedure, the extent of possible limitations on freedom of assembly and the need to put the relevant provision of the draft in full conformity with criteria established by the applicable international standards (in particular the ECHR), the responsibility of assembly organisers and their cooperation with the competent authorities, obligations of competent authorities when deciding on restrictions, the possibility for anyone to freely record the actions of law enforcement officials during assemblies.

The opinion also stressed the importance of awareness-raising measures and training of relevant regulatory and enforcement authorities so as to ensure a full understanding of their responsibilities – in particular, the

## 2. Transnational activities

### Report on the rule of law

The Venice Commission started working on the issue of the rule of law in 2009, following Resolution 1594 (2007) of the Parliamentary Assembly of the Council of Europe on “The principle of the rule of law”.

In March 2011, the Commission adopted the report on the rule of law (CDL-AD(2011)003rev). The study explored at the outset the possibility of reading a consensual definition of the rule of law which may help international organisations in completing their task of disseminating this fundamental value.

obligation to protect and facilitate the enjoyment of the right to freedom of peaceful assembly.

### Conference on “Freedom of Assembly: European Standards for Ukraine” (Kyiv, 3-4 November 2011)

The Venice Commission was represented at the Conference by one of its rapporteurs on the joint opinion on the draft law on freedom of peaceful assembly of Ukraine who introduced the opinion to the participants and provided clarifications on the findings and recommendations contained therein.

The aim of the conference, jointly organised by the Ukrainian Commission on Strengthening Democracy and Asserting the Rule of Law and some local human rights NGOs, was to discuss national regulations and European standards for freedom of peaceful assembly protection, as well as the European Court of Human Rights' and national courts' practice on freedom of peaceful assembly.

The concept of the “rule of law” along with democracy and human rights makes up the three pillars of the Council of Europe and is enshrined in a number of international human rights instruments and other standard-setting documents.

After examining the historical origins of the concepts of *rule of law*, *Rechtsstaat* and *Etat de droit*, the report looked at these concepts in positive law. In international law, they appear in a number of treaties but also in soft law; in national law, they appear as a main feature of the state in the constitutions of Germany as well as of a number of former socialist countries of Central and Eastern Europe.

The notion of the rule of law is however often difficult to apprehend in former socialist countries, which were influenced by the notion of socialist legality.

The report then identified common features of the rule of law, *Rechtsstaat* and *Etat de droit*. The following aspects of the rule of law were generally recognised in legal provisions as well as in literature:

- (1) legality (supremacy of the law);
- (2) legal certainty;
- (3) prohibition of arbitrariness;
- (4) access to justice before independent and impartial courts;
- (5) respect for human rights;
- (6) non-discrimination and equality before the law.

A checklist for evaluating the state of the rule of law in single states, which details the six above-mentioned principles, was appended to the report.

### Study on the role of the extra-institutional actors in a democratic regime

In its Resolution 1744 (2010) the Parliamentary requested a study on the role of extra-institutional actors in a democratic system.

In March 2011, the Sub-Commission on Democratic Institutions decided to launch a comparative analysis on the legal framework for the regulation of lobbying in the Council of Europe member States.

In June 2011, the Sub-Commission on Democratic Institutions adopted a first outline of the forthcoming study based on the discussions among members and the comparative analysis prepared and presented to the Sub-Commission by an expert. The Sub-Commission discussed, among other aspects, the advantages and the potential dangers of institutionalised lobbying, a more

recent trend in European democratic societies. The adoption of the study is planned for 2012.

### Compilation of Venice Commission opinions and reports on the protection of minorities

In June 2011, the Venice Commission took note of the compilation of Venice Commission opinions and reports on the Protection of Minorities (CDL(2011)018). This type of document is extremely useful for both the Venice Commission itself, in that it enables consistency to be maintained in its approach, and for the public, in that it enables them to understand and follow the development of theories and standards by the Commission.

### UniDem Campus – legal training for civil servants

Aware that good laws are not sufficient to achieve democracy, and that implementation is as important an element of the democratic process as are appropriate political choices and good law-making, the Venice Commission launched, in 2001, its UniDem Campus Programme of training of civil servants from 16 countries: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Moldova, Montenegro, Romania, Russian Federation, Slovenia, Serbia, “the former Yugoslav Republic of Macedonia” and Ukraine. The seminars take place in Trieste (Italy) and are funded by the regional government of Friuli Venezia Giulia.

In 2011, thanks to the financial support of the joint programme between the Venice Commission and the European Commission “Rule of Law Initiative in Central Asia”, three UniDem seminars were also opened to civil servants from four Central Asia countries: Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. Moreover, in 2011 for the first time participants from Tunisia attended

two such seminars funded by a contribution from the Government of Turkey.

The main goal of this successful programme is to strengthen efficient administration and good governance, as well as democratisation and human rights, including the rights of persons belonging to national minorities, law enforcement and institution building. In 2011 three seminars were held on the following topics:

- “The independence of judges and prosecutors: perspectives and challenges”;
- “Information, (social) media and the civil service” and
- “The Council of Europe and the European Union: shared values and standards”.

In accordance with the established practice, the seminars were organised on the basis of an interactive method.

This mainly includes lectures introducing the subject, followed by questions from participants and discussion of practical examples proposed by the lecturer. The aim is to help civil servants from different countries to identify common European values that can be applied in their respective states and to exchange experience. National delegations often make short presentations of the specific situation prevailing in their respective countries in the field covered by the topic of the seminar.

“Training of trainers” is an important component of this programme. After the seminar, participants are requested to pass on the insights gained and the material acquired at the seminar to their colleagues in their respective countries. One session of the seminar is entirely dedicated to a practical workshop, designed to help participants become “trainers” themselves. In 2011, 76 participants took part in the three seminars, and over 300 civil servants were subsequently trained by the participants.



**Constitutional justice,  
ordinary justice and ombudsman**



## 1. Country specific activities<sup>2</sup>

### Armenia

#### XVth Yerevan International Conference

The Constitutional Court of Armenia, under the aegis of the Conference of Constitutional Control Organs of Countries of New Democracy (CCCOCND) organised, in co-operation with the Venice Commission, the Yerevan Office of the OSCE and the Deutsche Gesellschaft für internationale Zusammenarbeit (GIZ), the 16th Yerevan International Conference to celebrate the 15th anniversary of the Constitutional Court of Armenia. The topic discussed was the “Legal consequences of constitutional court decisions in strengthening constitutionality in the country”. The event was held in Yerevan and Jermuk on 5-8 October 2011.

The Conference gathered together judges from the European Court of Human Rights, the President and judges of the Constitutional Court of Armenia and members of its registry, the Ombudsman of Armenia, presidents and judges from the Constitutional Courts of Albania, Bulgaria, Croatia, Georgia, Latvia, Lithuania and Ukraine; judges from the Constitutional Courts and courts of equivalent jurisdiction of Belarus, Belgium, Denmark, Kazakhstan, Luxembourg, Moldova, the Netherlands, Norway, Poland, Russia, Tajikistan and Turkey; the Head of the OSCE Office in Armenia, the Head of the Council of Europe Office in Armenia, the Head of the GIZ Office in Armenia and law professors.

Discussions covered the implementation of constitutional court judgments, including the way in which judgments are drafted and the role of other state bodies in the implementation process. The representatives of the Venice Commission took the opportunity to encourage Armenia to introduce a full individual complaints procedure.

During these discussions, reference was made to the Venice Commission’s recommendations made in its Report on Individual Access to Constitutional Justice, adopted in December 2010 (CDL-AD(2010)039rev).

### Bolivia

Information on activities in the field of constitutional and ordinary justice in Bolivia can be found in chapter V.3 below.

### Bosnia and Herzegovina

*Amicus curiae* brief for the Constitutional Court of Bosnia and Herzegovina on the Law of the Republika Srpska on the Status of State Property Located on the Territory of the Republika Srpska and under the Disposal Ban

On 15 July 2011, the Constitutional Court of Bosnia and Herzegovina asked the Venice Commission to provide

1. The full text of all adopted opinions can be found on the web site [www.venice.coe.int](http://www.venice.coe.int).

2. Information on activities in the field of constitutional justice and ordinary justice concerning Bolivia, Chile and Peru can be found in Chapter V.

an *amicus curiae* brief in the case No. U 1/11 (request of the Deputy Chairman of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina for review of the constitutionality of the “Law on the status of state property located on the territory of the Republika Srpska and under the disposal ban”). This *amicus curiae* brief was adopted by the Commission at its 88th plenary session in October 2011 (CDL-AD(2011)030).

At the outset, in the absence of explicit constitutional provisions, the issue was the competence to decide about the distribution of state property between the State of Bosnia and Herzegovina and the two Entities (Republika Srpska and the Federation of Bosnia and Herzegovina). Taking into account the complex domestic context of this law, the issue of allocation of state property had to be seen in the context of primary powers and accessory or instrumental powers in a federal state. Instrumental powers are those which derive from the primary ones and are necessary to carry out the latter and they are normally explicitly set out in the constitution. When they are not – as is the case, for historical reasons, in Bosnia and Herzegovina – they may be implied from the primary ones. Accordingly, instrumental powers are not necessarily residual powers. This meant, in the Bosnian context, that instrumental powers do not automatically fall under the competence of the entities.

It was therefore up to the State of Bosnia and Herzegovina, which in the Commission’s opinion is clearly a federal state, to proceed with such distribution of powers pursuant to the basic principle that property must be allocated to each level, so as to enable every component of the State to carry out its constitutional functions. In a subsidiary manner, territorial and historical criteria may also be used in the allocation of state property.

## Bulgaria

### 20th anniversary of the Constitutional Court of the Republic of Bulgaria – Conference on “Classical and modern trends in constitutional review”

The Constitutional Court of Bulgaria, with the participation of the Venice Commission, organised a conference on “Classical and modern trends in constitutional review” to celebrate its 20th anniversary.

The participants discussed several issues relating to the evolution of constitutional law and presented the experience of over 20 countries, including Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, the Czech Republic, Georgia, Germany, Italy, Korea, Lithuania, Moldova, Montenegro, Poland, Portugal, Romania, Russia, Serbia, Turkey and the United Kingdom.

Several major developments were noted, such as the importance given to the individual in access to constitutional justice. The protection of the individual is now accepted as being the main task of constitutional justice. Discussions also covered the challenges that lie ahead for this task, such as in Turkey, where the new constitutional mechanism for individual access is complex.

Also discussed were the implications of the difficult constitutional situation in Moldova and a possible functional interpretation of the Constitution to solve the Presidential and governmental crisis.

Participants agreed that constitutional courts were the guardians of domestic law, but that they had also become the guardians, to a certain extent, of international and supranational law. They had, in addition, acquired a relatively new dimension as guardians of foreign case-law because of the opening of States to international co-operation and to the dialogue of judges and the use of foreign case-law in the reasoning of their judgments.

Other main topics of most of the interventions were the relationship between constitutional courts and the European courts (European Court of Human Rights and the European Court of Justice). If the binding character of international treaties was not under discussion, the attitude of constitutional courts to the case-law from these courts was varied and depended on many factors. Requests for preliminary rulings from the European Court of Justice were considered by some as a mechanism rarely used by constitutional courts, as most of the issues of EU Law should have already been raised and settled at a lower level.

The European Court of Human Rights and the European Convention on Human Rights are mechanisms more directly related to international law and, as such, should be integrated at the domestic level. The experience of dualistic countries, such as the United Kingdom, was much discussed, mainly on the complexity of a condemnation by the Strasbourg Court and whether Parliament remained sovereign in deciding whether to modify the impugned legislation.

## Georgia

### Conference on “The Past and the Future of the Constitutional Judicial Review in New Democracies”

The Constitutional Court of Georgia, in co-operation with the Deutsche Gesellschaft für internationale Zusammenarbeit (GIZ) and the Venice Commission organised a conference on “the past and the future of the constitutional judicial review in new democracies”. The Conference was organised to celebrate the 15th anniversary of the Court and took place on 25-26 June 2011 in Batumi, Georgia.

The participants included judges and members of the registry of the Constitutional Court of Georgia, representatives from Parliament, the Supreme Court, the Tbilisi

Appeals Court, the Batumi regional court, the Ministry of Justice, the High School of Justice, the Chancellery, the Supreme Council of Adjara, the Chamber of Control, the National Security Council, the Public Defender’s office, former presidents of the Constitutional Court of Georgia, law professors and students. The President of Georgia (Mr Saakashvili) greeted the participants of the Conference at the reception organised on the occasion.

International participants included presidents of the Constitutional Courts of Armenia and Azerbaijan, the Vice-President of the Constitutional Court of Turkey, the Chairman of the Kazakh Constitutional Council and judges from the Constitutional Courts of Andorra, Belgium, Bulgaria, Latvia, Lithuania, Moldova, Poland, Romania, Slovenia and Ukraine. The Head of the Council of Europe Office and the Head of the European Commission delegation also took part in the event along with the GIZ Country Director, USAID Head of Mission, representatives of the Norwegian mission of rule of law advisers to Georgia (NORLAG), the Judicial Independence and Legal Empowerment Project (JILEP), the American Bar Association and the British Council of Georgia.

Discussions revolved around the principles of constitutional justice in Georgia and recent key case-law; the interaction of constitutional courts and the European Court of Human Rights; constitutional control and recent constitutional developments in participating countries, notably in Bulgaria, Iceland, Kazakhstan and Moldova; new challenges in the development of constitutional review and the growing role of constitutional courts in modern society.

Participants also discussed the considerable constitutional justice developments that had occurred since the famous *Marbury v. Madison* judgment, rendered by the US Supreme Court, especially in new democracies. Constitutional justice was closely linked to the

development of democracy and societies; the latter constantly face new challenges which must be reflected in the development of democratic institutions, including the constitutional courts.

Participants underlined the role of the Constitutional Court of Georgia in contributing to the building of a basis for a modern State in Georgia.

## Kazakhstan

### Joint Opinion on the Constitutional Law on the Judicial System and the Status of Judges of Kazakhstan

In April 2011, the Chairman of the Supreme Court of the Republic of Kazakhstan requested the OSCE/ODIHR to carry out a review, together with the Venice Commission, of the Constitutional Law on the Judicial System and Status of Judges.

This request was made against the background of efforts made to enhance the independence and effectiveness of the judiciary and to strengthen the rule of law in the country. A new Law on the Judicial System and Status of Judges was to be drafted in 2011 and in order to increase its quality the request was made to receive expert opinions and assistance on the amendments and additions to the existing Constitutional Law.

The joint opinion (CDL-AD(2011)012) only dealt with the Law on the Judicial System and Status of Judges and did not constitute a full and comprehensive review of all available framework legislation governing the judicial system and related aspects in the Republic of Kazakhstan.

The OSCE/ODIHR and the Venice Commission welcomed a number of positive aspects in the Constitutional Law, which contributed to judicial independence. Nonetheless, in order to ensure the compliance of the Constitutional Law with international and domestic standards pertaining to the independence of the judiciary, a number of

recommendations were made, including that the High Judicial Council should be composed of a substantial number of judges, to be appointed, or at least proposed, by their peers, to limit the discretion of the executive authorities to appoint judge candidates nominated by the High Judicial Council. Recommendations also included that a decision to refuse appointment should be reasoned, that the decision of an authority of the executive to discharge a judge should only be made pursuant to a decision or recommendation by a disciplinary body after due process, to reform the system of suspension, termination of powers and discharge of a judge, under careful consideration of the principles of independence and irremovability and to clarify and distinguish between the disciplinary and evaluating functions respectively in relevant provisions of the Constitutional Law.

The joint opinion was adopted by the Venice Commission in June 2011.

### International Conference on “Safeguarding constitutional human rights in pre-trial criminal proceedings”

Within the context of Kazakhstan’s current reform of its criminal justice system (which started with the reform of the role of defence lawyers), the Constitutional Court of Kazakhstan together with the Venice Commission, the Deutsche Gesellschaft für internationale Zusammenarbeit (GIZ) and the Government of the Republic of Kazakhstan organised an international conference on “Safeguarding constitutional human rights in pre-trial proceedings”, in Akbulak, Kazakhstan, on 18-19 February 2011 within the framework of the joint programme EU-Central Asia Rule of Law Initiative (see Chapter V below).

## Kyrgyzstan

The Chairperson of the Committee on Constitutional Legislation, State Structure, Legality and Local Self-Governance of the Parliament of Kyrgyzstan requested

the Venice Commission's opinion on the following draft laws:

- the draft Constitutional Law on the Constitutional Chamber of the Supreme Court of Kyrgyzstan (CDL-AD(2011)018);
- the draft Law on the Introduction of Changes to the Constitutional Law on the Status of Judges of Kyrgyzstan (CDL-AD(2011)017);
- the draft Law on the Council for the Selection of Judges of Kyrgyzstan (CDL-AD(2011)019).

A Venice Commission delegation travelled to Bishkek in April 2011 to meet with the Kyrgyz authorities. The meetings and a round-table were organised by the EU-UNDP Parliament Project.

The three opinions were adopted by the Venice Commission in June 2011, following an exchange of views on the draft opinion with a joint delegation from the Kyrgyz authorities and the EU-UNDP Parliament Project.

#### Opinion on the draft Constitutional Law on the Constitutional Chamber of the Supreme Court of Kyrgyzstan

The Venice Commission welcomed this draft Law on the whole, notably for clarifying that constitutional justice was a separate, self-contained adjudication system even if constitutional control was exercised by the Constitutional Chamber, which was a part of the Supreme Court. The Venice Commission further welcomed the fact that this Chamber enjoyed a sufficient degree of independence and autonomy and wide enough jurisdiction in order to function as an effective judicial organ for constitutional review.

#### Opinion on the introduction of changes to the Constitutional Law on the Status of Judges of Kyrgyzstan

The Venice Commission welcomed the high standards for the qualification of judges and the degree of protection of the independence of the judiciary in the constitutional laws, but pointed out that the appointment method left open the possibility for a certain degree of politicisation. Detailed criteria for, *inter alia*, the appointment of judges would be welcome.

#### Opinion on the draft Law on the Council for the Selection of Judges of Kyrgyzstan

This draft Law received a generally positive assessment by the Venice Commission, although several points needed to be addressed, such as the composition of the Council (to ensure that a substantial part of its members are judges), as well as the need to ensure that there is a balanced representation of all levels of the judiciary, that Council members are independent, act in their personal capacity and do not represent the groups that have elected them. The Venice Commission also suggested that a fair procedure be included, allowing for a right to appeal in cases of dismissal due to repeated absences from meetings or failure to recuse and that the draft Law should provide for judicial review of Council decisions that relate to the appointment and transfer of judges.

The three laws were adopted by Parliament in May 2011.

#### Latvia

##### 15<sup>th</sup> anniversary of the Constitutional Court of Latvia – Conference on “The role of the Constitutional Court in the protection of constitutional values”

The Constitutional Court of Latvia organised a conference in co-operation with the Venice Commission,

to celebrate its 15th anniversary in Riga on 29 and 30 September 2011.

The event gathered together over 200 people to discuss the topic of the role of the constitutional court in the protection of constitutional values, which was divided into three subtopics.

The first subtopic dealt with the co-operation of different branches of power and mainly the relationship between the constitutional court and the other powers, the importance of the principle of the separation of powers, as well as the principle of the rule of law. Numerous references were made by the participants to the Venice Commission's Report on the Rule of Law and to the detailed list it contains as possible indicators to be taken into account.

The discussions also raised the issue of the possible clash between the establishment of the national interest by Parliament and the control of constitutionality exercised by courts and even the control of "conventionality" carried out by the European Court of Human Rights. The different views held by the national constitutional courts and the European Court of Human Rights and the issue of a possible clash between national and universal values was also raised.

The second subtopic dealt with crisis and constitutional courts, discussing the different definitions of what a constitutional crisis is: the institutional crisis, the financial crisis and the concerns on security in the face of terrorism were some of the issues that were discussed.

The third subtopic covered the comparative practice of different constitutional courts in protecting and strengthening constitutional values, and the challenges they have had to face (the ethnicisation issue in Bosnia and Herzegovina, the composition crisis of the Spanish constitutional court, the pensions issue and the position of the Latvian Constitutional Court, the election of

the President of the State in Moldova, the re-election of the President in Kazakhstan) raised important elements of debate on the role and the position the constitutional court holds in the constitutional order.

## Moldova

Information on the *amicus curiae* brief for the Constitutional Court of Moldova on three questions related to Article 78 of the Constitution of Moldova (CDL-AD(2011)014) can be found in Chapter II.1 above.

## Montenegro

Workshop on "The independence, impartiality and professionalism in the judiciary – European models and the case of Montenegro"

The Venice Commission participated in this Workshop organised by the European Union in Danilovgrad, Montenegro on 20 January 2011.

The Workshop was designed for decision makers within the three branches of power in Montenegro (government, parliament and the judiciary) and for representatives of key NGOs. The Workshop's aim was to examine solutions in order to improve the independence and impartiality of the judiciary.

Opinion on the draft amendments to the Constitution of Montenegro as well as on the draft amendments to the Law on Courts, the Law on the State Prosecutor's Office and the Law on the Judicial Council of Montenegro

In April 2011, the Minister for Justice of Montenegro requested an opinion from the Venice Commission on the draft amendments to three Laws: the Law on Courts, the Law on the High Judicial Council and the Law on the Public Prosecutor's office.

A Venice Commission delegation travelled to Podgorica in June 2011, to attend meetings with the different stakeholders concerned, including the civil society.

In its opinion on the Constitution of Montenegro in 2007 (CDL-AD(2007)047), the Venice Commission had taken into account that the country had experienced problems relating to the effectiveness and impartiality of the judiciary and taken note at the time that the political class had been of the firm belief that these problems could be overcome by giving Parliament the power to oversee the judiciary. This led to Parliament having been given the power to elect the President of the Supreme Court, the President of the Constitutional Court, as well as the Supreme State Prosecutor and State Prosecutors. These provisions concerning the judiciary were considered as transitional provisions.

In 2011, the time had come for the Montenegrin authorities to accomplish the aim of guaranteeing full independence to the judiciary and to the Constitutional Court, according to European standards and the suggestions of the 2007 Venice Commission opinion. The proposed amendments to the Constitution and to the three laws were steps in the right direction and attempted to truly improve the existing situation.

The Venice Commission stated, in its opinion, that in order to achieve the goal of building a solid and independent judiciary, a few changes were recommended, such as providing that the election of the President of the Supreme Court be done by the Judicial Council alone, to change the composition of the Judicial Council in order to create an adequate balance and to change the composition of the Constitutional Court. It went on to say that changes to the legislation were also needed, notably concerning the transparency and effectiveness of disciplinary proceedings against judges and prosecutors, the composition of the disciplinary panel inside the Judicial Council and the prosecutorial Council, the existence of

better remedies for victims of judicial misbehaviour, the competencies of the Judicial and Prosecutorial Councils and improving the process of the appointment of judges and prosecutors.

The opinion was adopted by the Venice Commission in June 2011 (CDL-AD(2011)010).

### Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro

The Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe requested an opinion, in June 2011, on the Draft Law on the Protector of Human Rights and Freedoms of Montenegro; the Speaker of Parliament also requested an opinion on the same draft in July 2011.

The Venice Commission had adopted an opinion on a former draft of the Law on the Protector of Human Rights and Freedoms of Montenegro in October 2009 (CDL-AD(2009)043).

The Law on the Protector of Human Rights and Freedoms of Montenegro was adopted by Parliament on 29 July 2011; the scope of the joint opinion was therefore focused on the adopted Law. The joint opinion therefore does not constitute a full and comprehensive review of all available framework legislation governing human rights protection mechanisms in the Montenegro.

This joint opinion was prepared by the Venice Commission and the OSCE /ODIHR.

The joint opinion stated that the new Law contained several positive steps in order to ensure the independence of the Human Rights Protector of Montenegro, such as in the field of financial independence concerning the possibility for the Protector to submit the proposal on his/her own budget and to participate in the debate at Parliament; it also enabled an annual report of

activities to be presented to Parliament; the Protector was endowed with specific competences in the field of prevention of torture and inhuman or degrading treatment or punishment and in the field of combating discrimination, etc. However, several recommendations were made, including the need for constitutional amendments in order to strengthen the independence of the Human Rights Protector, which would provide for the election of the Human Rights Protector by a broad consensus in Parliament, strengthen the Protector's independence, impartiality and legitimacy and ensure the public trust in the institution. Moreover, the dismissal of the Human Rights Protector should also be regulated at the constitutional level and in a detailed manner by the Law on the Protector.

The joint opinion was adopted by the Venice Commission in October 2011 (CDL-AD(2011)034).

## Peru

Information on the *amicus curiae* brief on the case of *Santiago Bryson de la Barra et al* (on crimes against humanity) for the Constitutional Court of Peru can be found in chapter V.3 below.

## Russian Federation

### Round Table with the Russian Commissioners for Human Rights

The Venice Commission participated in the Round Table on "Promoting independent national non-judicial mechanisms for the protection of human rights, especially for the prevention of torture" in Samara, Russian Federation on 22-23 November 2011. The discussions focussed on international and Russian experiences of co-operation of judicial and non-judicial bodies in the protection of human rights. This event was organised

within the framework of the Joint EU-Council of Europe Programme "Peer-to-Peer II Project".

### First all-Russian moot-court competition on constitutional justice, among student teams, on "Battle with Psychics or the Case on the Constitutionality of Witchcraft"

The Institute for Law and Public Policy, under the aegis of the Constitutional Court of the Russian Federation and in co-operation with the Venice Commission and the St. Petersburg State University, organised the first all-Russian moot-court competition on constitutional justice for student teams entitled "Battle with psychics or the case on the constitutionality of witchcraft". The final stage of this moot-court competition took place in St. Petersburg on 24-25 November 2011.

The event was open to the public and was attended, *inter alia*, by the President of the Constitutional Court, judges and staff from this Court and participants from the HESP (International Higher Education Support Programme) educational project for young constitutional law teachers "Comparative constitutional law: theory and methodology in the context of constitutional reforms".

The following four best teams from four Russian universities, which passed a preliminary round of the Moot-Court competition with the highest grades for their written memorandums, met each other in oral hearings: the Saratov State Legal Academy team, the Saint-Petersburg State University team, the Immanuel Kant Baltic Federal University team (Kaliningrad) and the National Research University «High School of Economics» team (Moscow). The main prize of the Moot-Court competition – the *Chrystal Themis* – went to the National Research University «High School of Economics» team – the winner of the 2011 Moot-Court.

The case for this moot-court competition dealt with the constitutionality of an – of course fictional – regional ban on extra-sensory (psychic) practices. The case also covered several other constitutional issues, such as the equality of citizens and foreigners and the distribution of competences between the federal centre and the regions. According to the rules, each party had 20 minutes to present their arguments, show their knowledge of facts and the law, including relevant foreign examples and the case-law of the European Court of Human Rights and answer the questions from the moot-court judges as well as demonstrate their oral skills.

This was the first moot-court on constitutional justice ever held in Russia and the results of this event show that there is a great demand from the new generation of Russian lawyers for such a professional competition. The participants wrote in a joint statement that they would like this type of event for law students from all over Russia to be organised on a yearly basis.

## Serbia

### Interim Opinion on the draft decisions of the High Judicial Council and of the State Prosecutorial Council on the Implementation of the Laws on the Amendments to the Laws on Judges and on the Public Prosecution of Serbia

The Serbian Ministry of Justice asked in March 2011 for an opinion on (1) the draft Decision “on determination and execution of the activities of the Standing composition of the High Judicial Council for the implementation of the Law on Amendments and Supplements to the Law on Judges, election of Deputy of High Judicial Council and execution of the procedure for the nomination of candidates for the court presidents” and on (2) the draft Decision “on determination and execution of the activities of the Standing composition of the State Prosecutorial Council for the implementation of the Law on Amendments and Supplements to the Law on Public

Prosecution, election of the Deputy President of the State Prosecutorial Council”.

The Venice Commission was of the opinion that the draft decision of the High Judicial Council and the draft decision of the State Prosecutorial Council were, in general, in line with Serbian legislation and European standards. The former was based on the Law on amendments and supplements to the Law on Judges (December 2010) and these raised doubt with respect to the principle of the separation of powers. The Venice Commission recommended that the legislator should refrain from intervening in already commenced judicial proceedings and it would be up to the Constitutional Court to decide whether or not legislative changes should cause termination of appeals lodged with the Court. With respect to the latter, instead of terminating already commenced proceedings, the proceedings should simply be suspended pending the new examination by the High Judicial Council and the State Prosecutorial Council, but enable the appeals to continue in the event of an unfavourable decision in relation to an individual judge or prosecutor.

The Venice Commission underlined in its interim opinion (CDL-AD(2011)015) that the criteria and standards for the election of judges and court presidents should be redrafted in accordance with the observations expressed in the Venice Commission’s opinion CDL-AD (2009)023.

The interim opinion was adopted by the Venice Commission in June 2011.

### Opinion on draft amendments and additions to the Law on the Constitutional Court of Serbia

The Minister of Justice of Serbia asked in October 2011 the Venice Commission to provide an opinion on draft amendments to the Law on the Constitutional Court of Serbia.

In November 2011, a Delegation of the Commission visited Belgrade and met with the President and a judge of the Constitutional Court of Serbia, the Minister and Assistant Minister of Justice, as well as with representatives of the OSCE Mission to Serbia.

In its opinion (CDL-AD(2011)050), the Venice Commission stated that the draft amendments provided a good basis for the improvement of the work of the Court and that, although they were mostly technical, they were important for the functioning of the Constitutional Court of Serbia. This notably applied to the decisions on the admissibility of individual complaints, which currently overburden the Court. The Venice Commission welcomed, among others, the obligation to publish the judgments of the Constitutional Court on the Court's Internet site and the introduction of further filters for individual complaints, including the inadmissibility of "manifestly ill-founded" cases. Recommendations for improvement included that restrictions to access to files in cases brought by judges and prosecutors should only be allowed in specific cases, upon decision by the Constitutional Court; that in order to protect their independence, the salaries of the president and the judges of the Constitutional Court (and the ordinary judges) should be determined by law and not submitted to an annual vote in Parliament on the budget. The coefficient applied should be fixed in the Constitutional Court Law itself and furthermore, following the withdrawal of a submission, the Court should be able to continue the proceedings when it found this to be in the public interest in all types of procedures.

The Venice Commission also referred to problems stemming directly from the Constitution and which should be considered by the Serbian authorities. This included the reduction of the unusually wide jurisdiction of the Constitutional Court, the postponement of the date on which decisions of the Constitutional Court took effect

and the possible extension of a retiring judge's mandate until his or her successor took office. The Venice Commission also recommended giving the Court of Cassation jurisdiction to deal with cases of excessive length of proceedings. This would help towards reducing the backlog of the Constitutional Court and provide an effective acceleratory remedy in these cases.

The opinion was adopted by the Venice Commission in December 2011.

## Turkey

The Minister for Justice of Turkey requested opinions from the Venice Commission in September 2010 on a package of several draft laws implementing the constitutional amendments approved by referendum on 12 September 2010. One opinion on the draft Law on the High Council for Judges and Prosecutors had already been adopted by the Venice Commission in December 2010 (CDL-AD(2010)042).

The following opinions were adopted in 2011:

### Opinion on the draft Law on Judges and Prosecutors of Turkey

This draft Law amended a substantial number of provisions of the Law on Judges and Prosecutors (February 1983) and the amendments ranged from relatively trivial changes to very technical ones. An important element in the amendments consisted of provisions transferring powers of supervision from the Ministry of Justice to the High Council for Judges and Prosecutors. Other amendments concerned the strengthening of the rights of judges and prosecutors to answer disciplinary charges and complaints. Although these amendments were welcomed by the Venice Commission, they did not amount to a systematic and fundamental reform of the Law. Among matters which gave some concern to

the Venice Commission, was the relationship between the executive in the form of the Ministry of Justice and the judiciary and prosecutors, which in some respects seemed too close in a manner which may pose a risk to independence, in particular through the transfer of judges and prosecutors to work in the Ministry of Justice.

The opinion CDL-AD(2011)004 was adopted by the Venice Commission in March 2011.

#### Opinion on the Law on the Establishment and Rules of Procedure of the Constitutional Court of Turkey

The major change brought about by this Law was the introduction of the individual complaints procedure, based on the 2010 amendments to the Constitution. While ordinary courts may have feared that the Law would elevate the Constitutional Court to the rank of a “super-court”, this seemed not to have been the case as the scope of the review by the Constitutional Court was limited to constitutional issues.

Although the Law was generally in line with European standards, the Venice Commission made a few recommendations, which included the general criteria of age, education and eligibility for the office of a member of the Court, which should be applicable to all categories of candidates; that the composition of the Constitutional Court’s Chambers should be clearly regulated, taking into account the mixed composition of the Court by providing for members from different branches in each Chamber; that in order to ensure continuity of membership at the Constitutional Court, a member whose term had expired should remain in office until his or her successor took office and that the elements constituting misbehaviour worthy of disciplinary sanctions should be spelled out more clearly. The Venice Commission regretted that the draft constitutional amendment, which would have made the dissolution of a political party more difficult, failed to be approved by Parliament in

2010 and recommended that this issue be taken up again in future constitutional amendments.

The opinion CDL-AD(2011)040 was adopted by the Venice Commission in March 2011.

#### International Symposium on “Reforms in the Turkish judicial system, High Council of Judges and Prosecutors (HCJP) from the past to the present and a comparison with European practice”

The Venice Commission was invited to take part in an International Symposium organised by the High Council of Judges and Prosecutors (HCJP), held in Istanbul, Turkey on 25-26 October 2011. This event gathered together around 200 people. The Minister for Justice and President of the HCJP and the President of the Constitutional Court, opened the event. Participants included: the President of the Court of Cassation; the President of the State Court; the Vice-President of the European Network of Councils for the Judiciary; the President of the International Association of Judges; the President of the European Association of Judges; the President of *Magistrats européens pour la démocratie et les libertés* (MEDEL); the chairmen of the Council for the Judiciary of Hungary, Lithuania and of the Netherlands; representatives of the High Judicial Councils of Belgium, Bosnia and Herzegovina, Bulgaria, France, Hungary, Italy, Kosovo, Poland, Portugal, Romania, Slovakia, Slovenia, Spain; judges from Ireland, Malta, Montenegro, Scotland, Serbia, Sweden; law professors and journalists.

The aim of the symposium was to discuss the reforms predominantly affecting the HCJP, which celebrated its first anniversary on the occasion of this symposium. Discussions focused on the HCJP reforms, but also dealt with the more general reform of the judiciary which resulted in an increase in the number of judges and prosecutors as well as the recruitment of more court

staff. The Constitutional Court, for example, obtained more judges in view of the introduction of the individual complaints procedure. As regards the general structure of the judicial system, participants were reminded that the structure rests on 4 pillars: (1) constitutional system, (2) administrative system, (3) civil/penal system and (4) military system. The current question occupying the Turkish authorities was whether or not these 4 pillars should be brought together to some extent. The ever present problem in Turkey of the courts' overwhelming caseloads was raised, saying that there were 9674 magistrates (5487 judges and 4187 prosecutors) that had to deal with the aggregated caseload (civil and criminal) which had increased from around 3 500 000 cases in 1995 to 6 000 000 in 2010. With respect to the media and the judiciary, the main problems raised were: the lack of editorial independence, the lack of an autonomous public broadcasting agency and the general reluctance of the judiciary to inform the press. But this was changing with a pilot project at the HCJP to train media spokespersons, which should be completed in January 2012 and should improve the situation.

## Ukraine

### Joint Opinion on the draft Law amending the Law on the Judiciary and the Status of Judges and other legislative acts of Ukraine

The Chairman of the National Commission for Strengthening Democracy and the Rule of Law in Ukraine requested the Venice Commission, in July 2011, for an opinion on the draft Law amending the Law on the Judiciary and the Status of Judges. This draft Law was a revised version of the Law on the Judiciary and the Status of Judges of Ukraine, adopted on 7 July 2010 by the *Verkhovna Rada* (Parliament) and signed by President Yanukovich on 27 July 2010.

The joint opinion was prepared by the Venice Commission and the Directorate of Justice and Human Dignity within the Directorate General of Human Rights and Rule of Law of the Council of Europe, within the framework of the Transparency and Efficiency of the Judicial System of Ukraine (TEJSU) Project.

The draft Law submitted included a number of important improvements as compared to the existing law, in particular the strengthening of judicial independence in a number of areas, the restoration of a number of important competences of the Supreme Court, and the organisation of disciplinary proceedings. The transfer of control over the State Judicial Administration to the Judiciary was welcomed by the Venice Commission, as was judicial control over training of judges.

A number of recommendations were made, including further improvement of the appointment and removal of judges, pointing out that the role of the *Verkhovna Rada* was deeply problematical, as well as the existence of temporarily appointed judges and the role of the President in the creation and abolition of courts.

The opinion acknowledged that many of the issues stemmed from the Constitution and in this context, reference was made to recommendations in previous joint opinions, in particular that the Constitution should be amended in several respects: 1) on the role of the *Verkhovna Rada* in relation to the appointment and removal of judges, which should be excluded; 2) on the composition of the High Judicial Council, which should provide that a majority or at least a substantial part of the members were judges elected by their peers and should provide guarantees for a pluralistic composition of the members not belonging to the judiciary and 3) on the judges' immunity, which should be lifted not by the *Verkhovna Rada*, but by a truly independent judicial authority.

The joint opinion was adopted by the Venice Commission in October 2011 (CDL-AD(2011)033).

### Joint Opinion on the draft Law on the Bar and Practice of Law

The Chairman of the Commission for Strengthening Democracy and the Rule of Law sought the Venice Commission's opinion in April 2011, on the draft Law on the Bar and Practice of Law, within the framework of the Transparency and Efficiency of the Judicial System of Ukraine (TEJSU) Project.

This joint opinion was prepared by the Venice Commission and the Directorate of Justice and Human Dignity within the Directorate General of Human Rights and Rule of Law of the Council of Europe.

The TEJSU Project Office in Kyiv and the Venice Commission organised meetings in Kyiv in September 2011 on this draft Law.

The joint opinion stated that the draft Law was coherent and provided a good basis for regulating the "advocates" profession. However, a number of recommendations were made, which included that the right to practice should not depend on whether an advocate had already selected a legal and organisational form of practice; that the Law should refer to the three fundamental ethical principles of advocates: independence, confidentiality and loyalty; in disciplinary proceedings, the advocate should benefit from a fair trial, in particular by giving him or her the time to defend him or herself and present the appropriate evidence in his or her defence and with the necessary transparency.

The joint opinion CDL-AD(2011)039 was adopted by the Commission in October 2011.

### Conference celebrating the 15th anniversary of the Constitutional Court of Ukraine on «The protection of human rights by bodies of constitutional justice: possibilities and problems of individual access»

The Constitutional Court of Ukraine organised, in cooperation with the Venice Commission and the German Foundation for International Legal Co-operation (IRZ) a conference dedicated to the 15th anniversary of the Constitutional Court of Ukraine, on the topic "The protection of human rights by bodies of constitutional justice : possibilities and problems of individual access" in Kyiv, Ukraine on 16 September 2011.

The Conference gathered together around 100 participants and was opened by the Chairman of the Constitutional Court, the Speaker of the *Verkhovna Rada* (Parliament) of Ukraine, the President of the Venice Commission and the Director of IRZ.

Participants included representatives of the President's Administration, representatives from the *Verkhovna Rada*, the Minister for Justice, the Prosecutor General, the Authorised Human Rights Representative of the *Verkhovna Rada* (ombudsman), chairmen of courts of general jurisdiction, academics, the current and former Presidents and Judges from the Constitutional Courts of Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Georgia, Germany, Kazakhstan, Lithuania, Moldova, Romania, Russia, Serbia, Tajikistan, "the former Yugoslav Republic of Macedonia" and Turkey.

The President of the Constitutional Court of Armenia presented the Venice Commission's study on Individual Access to Constitutional Justice, which covers various forms of access to constitutional justice in more than 50 countries.

In their opening speeches, both the Chairman of the Constitutional Court of Ukraine and the Speaker of Parliament announced that Ukraine was on the eve of

introducing an individual complaint procedure before the Constitutional Court.

In his opening speech, the President of the Venice Commission insisted that in order to be seen as an effective remedy by the European Court of Human Rights, a full individual complaint, including against final judgments by the ordinary courts, should be introduced. The Venice Commission's study on individual access to the Constitutional Court could provide guidance in this respect.

The Conference covered the following issues:

- the characteristics of the individual complaint procedure where it exists ;
- the difficulties met by some States in introducing individual complaint procedures;
- the positive effect of the setting-up of an individual complaints procedure on the number of cases brought to the European Court of Human Rights where this procedure has been introduced in order to be accepted as an effective remedy by the Strasbourg Court;
- the impact of the introduction of such a procedure on the workload of Constitutional courts and how these courts deal with this problem (filtering systems).

#### Round Table on the “Role of the Supreme Court in the mechanism of honouring obligations by the state in the field of human rights”

The Secretary of the Venice Commission participated in a Round Table on the “Role of the Supreme Court in the mechanism of honouring obligations by the state in the field of human rights” organised within the framework of the Ukrainian Chairmanship of the Committee of Ministers of the Council of Europe, held in Kyiv on 22 September 2011. He underlined the importance of

supreme courts in order to ensure the uniformity of case-law in a country. The Supreme Court of Ukraine can no longer fulfil this role following the adoption of the judicial reform laws in 2010. This event brought together the presidents of supreme courts of the 47 member states of the Council of Europe.

#### Round Table on “International standards for judicial Independence in Ukraine”

The Venice Commission participated in a Round Table on “International standards for Judicial Independence in Ukraine”, co-organised by the OSCE/ODIHR and the USAID project on 20 and 21 December 2011 in Kyiv, Ukraine.

The conference gathered together over 30 Ukrainian judges and experts, as well as members of Parliament, NGOs and the Chair of the National Commission for the Strengthening of Democracy and the Rule of Law. The topic was divided into four subtopics. Two international experts, from the Venice Commission and the OSCE/ODIHR, presented the European and international standards in each of the subtopics; these reports were followed by a presentation of the current situation in Ukraine and by discussions and debates.

The first subtopic concerned the issue of the judicial selection and training of judges. The selection criteria were discussed as was the importance of objective and uniform tests as well as the continuing education and training of judges. Particular attention was paid to the appointment process and the shortcomings of the present situation, which had been criticised in earlier opinions by the Venice Commission because of the important role played by the *Verkhovna Rada* in this process. Other topics discussed included the selection for administrative positions as well as the important role played by chairs of courts in Ukraine in the light of the Kyiv recommendations adopted by the OSCE/ODIHR, which are

aimed at the countries from Eastern Europe, Central Asia and North Caucasus.

The second subtopic dealt with the judicial professionalism of judges and the quality and coherence of judgments. A lively debate was held on the issue of reasoning in judgments and the need to improve this in order to increase the quality and coherence of judgments. Ukrainian judges, mainly the President of the High Judicial Council, expressed their reluctance to include reasons, saying this would “weaken” judgments as it would set the ground to better attack them and increase the risk of having them overturned. Judges from the appellate courts also expressed their concern in this respect, as overturning a judgment was difficult in the Ukrainian judicial culture. The international experts stated how important reasoning was to build trust in the judiciary and to legitimise and support the compulsory character of judgments. In doing so, they referred to the case-law of the European Court of Human Rights with respect to the requirement, under Article 6 of the European Convention on Human Rights, of providing reasons.

The third subtopic related to judicial self-governance and the composition of judicial bodies. The composition of the High Judicial Council and of the High Qualification Commission was discussed, and the complexities of the present composition of the High Judicial Council of Ukraine, in which there were only three judges elected by their peers. While the composition cannot be changed without changing the Constitution, a limitation in the competences of the High Judicial Council with its present composition was discussed.

The issue of the accountability of judges and the due process of law in disciplinary proceedings was debated. The importance of guaranteeing a fair trial for judges undergoing disciplinary proceedings should be ensured, as well as the possibility to appeal before a court. The

objectiveness of the disciplinary bodies and their impartiality was another issue that should be clearly stated in the law.

## Uzbekistan

Seminar on the “Independence of the judiciary and its relationship with the prosecution service”

See Chapter V below.

## Compilations of Venice Commission documents

Compilation of Venice Commission opinions and reports on constitutional justice

At its 87th plenary session, the Venice Commission took note of the compilation of Venice Commission opinions and reports on constitutional justice (CDL(2011)048). This compilation aims to provide an overview of the doctrine of the Venice Commission in this field and is intended to serve as a source of reference for drafters of constitutions and of legislation on constitutional courts, researchers as well as the Venice Commission’s members, who are requested to prepare comments and opinions on such texts. This compilation will be systematically up-dated by the Secretariat on the Commission’s web site following the adoption of relevant opinions and reports.

Compilation on the Ombudsman Institution

In October 2011, the Venice Commission took note of the compilation on the Ombudsman Institution (CDL(2011)079). The aim of this compilation is to provide an overview of the Venice Commission’s doctrine on this topic. It is structured in a thematic manner to facilitate the reader’s access to topics dealt with by the Venice Commission over the years and will continue to be updated regularly with extracts of newly adopted opinions or reports/studies by the Venice Commission.

## 2. Transnational activities

### World Conference on Constitutional Justice

In co-operation with the Federal Supreme Court of Brazil, the Venice Commission organised the 2nd Congress of the World Conference on Constitutional Justice (Rio de Janeiro, Brazil, 16-18 January 2011). This event gathered together 88 Constitutional Courts, Constitutional Councils and Supreme Courts as well as 10 regional and linguistic groups of Constitutional Courts from Africa, the Americas, Asia and Europe. The Congress gave the Courts the opportunity to discuss issues relating to their independence in their relations with other state powers, especially on pressure from the executive or the legislative but also at times also from the media.

The purpose of the Congress was to enable judges to draw inspiration for such situations from their peers in other countries, especially at a time when constitutional justice in danger in a number of countries. Reference to similar cases in other countries can give an added legitimacy to a judgement. This can be crucial in cases where a judge expects the decision to be disliked by the other

state powers. Discussions among judges may provide the moral support necessary to remain faithful to the Constitution even in difficult situations.

The discussions focused on the independence of the constitutional court or equivalent body as an institution, the constitutional independence of individual judges and operating procedures of courts as a means to guarantee their independence. The discussions revealed that these aspects are closely linked.

The participants also discussed a draft Statute for the World Conference as a permanent body. This Statute was adopted by the Bureau of the World Conference on 23 May 2011 in Bucharest, on the occasion of the XVth Congress of the Conference of European Constitutional Courts, and entered into force on 24 September 2011 on the accession of 30 constitutional courts or equivalent bodies, making the World Conference on Constitutional Justice a permanent body.

By the end of 2011, 49 Courts had joined the World Conference.<sup>3</sup>

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3. Membership status March 2012: Albania, Constitutional Court; Algeria, Constitutional Council; Angola, Constitutional Court; Armenia, Constitutional Court; Austria, Constitutional Court; Azerbaijan, Constitutional Court; Belarus, Constitutional Court; Belgium, Constitutional Court; Benin, Constitutional Court; Brazil, Federal Supreme Court; Bulgaria, Constitutional Court; Burkina Faso, Constitutional Council; Chad, Constitutional Council; Chile, Constitutional Court; Congo (Brazzaville), Constitutional Court; Congo, Democratic Republic, Supreme Court of Justice; Croatia, Constitutional Court; Denmark, Supreme Court; Egypt, Supreme Constitutional Court; Estonia, Supreme Court; Georgia, Constitutional Court; Germany, Federal Constitutional Court; Hungary, Constitutional Court; Israel, Supreme Court; Ivory Coast, Constitutional Council; Korea, Republic, Constitutional Court; Latvia, Constitutional Court; Lithuania, Constitutional Court; Lebanon, Constitutional Council; Mali, Constitutional Court; Mauritania, Constitutional Council; Mauritius, Supreme Court; Mexico, Supreme Court; Moldova, Constitutional Court; Mongolia, Constitutional Court; Montenegro, Constitutional Court; Morocco, Constitutional Council; Mozambique, Constitutional Council; Netherlands, Council of State; Niger, Constitutional Council; Norway, Supreme Court; Peru, Constitutional Court; Portugal, Constitutional Court; Romania, Constitutional Court; Senegal, Constitutional Council; Serbia, Constitutional Court; Slovakia, Constitutional Court; Spain, Constitutional Court; Sweden, Supreme Administrative Court; Switzerland, Federal Court; Tajikistan, Constitutional Court; Thailand, Constitutional Court; "the Former Yugoslav Republic of Macedonia", Constitutional Court; Togo, Constitutional Court; Ukraine, Constitutional Court (55 courts).

The Third Congress of the World Conference on Constitutional Justice will be hosted by the Constitutional Court of Korea in Seoul in 2014.

## Centre on Constitutional Justice

The Venice Commission's Centre on Constitutional Justice promotes the exchange of experience, information and case-law through the publication of the Bulletin on Constitutional Case-Law, the CODICES database and the on-line Venice Forum.

## Bulletin on Constitutional-Case Law/CODICES database

The Venice Commission provides a number of services to constitutional courts and equivalent bodies, including the publication of the Bulletin on Constitutional Case-Law, which presents *précis* of important constitutional cases from the member and observer countries of the Venice Commission. In 2011, three regular issues and one special issue "Basic texts 8 – extracts from Constitutions and Laws on Constitutional Courts", were published. The Bulletin is highly appreciated by courts because it enables them to regularly exchange case-law between one another, which would otherwise be very difficult in the absence of this wide network. Moreover, the Venice Commission tries to gather the most important case-law which is of common interest to the constitutional courts. Finally, it provides translations to facilitate communication.

All regular and special issues of the Bulletin are included in the CODICES database ([www.CODICES.coe.int](http://www.CODICES.coe.int)), which at the end of 2011 contained more than 7 000 cases. Non-European decisions are included on the basis of the full member or observer status of the respective countries or on the basis of co-operation agreements between the Venice Commission and regional partners

(see below). The CODICES database is easily accessible for a full text search or a thematic search by using the Venice Commission's Systematic Thesaurus, an index that is updated once a year by the Joint Council on Constitutional Justice.

## Venice Forum

The Venice Forum provides a system that enables a quick exchange of information between constitutional courts and equivalent bodies. Liaison officers from one court may ask questions about specific topics to all the other courts and receive replies in time for the preparation of a case pending before their court. The Forum exists in three forms:

1. the Classic Forum, which enables exchanges of information via e-mail, moderated by the Secretariat (in 2011, 30 requests were made via the Classic Forum);
2. the Forum Newsgroup, which enables the courts to post their requests directly on a restricted site;
3. a new Venice Monnet web forum has been created, the purpose of which is to enable academic discussion on case law, being open to members of the Commission, researchers, in particular those of the International Association of Constitutional Law and liaison officers at the constitutional courts and equivalent bodies.

The Classic Forum is open to courts of member and observer states of the Venice Commission, whereas the Newsgroup and the Venice-Monnet Forum are also open to courts of regional partnerships (see below).

## Observatory

An Observatory of constitutional justice was created in 2010, which provides information on the case-law of

constitutional courts within the framework of the World Conference on Constitutional Justice.

## United Nations-High Commissioner for Human Rights

Workshop on “ A human rights compliant framework for vetting of members of the security and justice sectors”

The Venice Commission participated in a workshop organised by the Office of the High Commissioner for Human Rights (OHCHR) in Geneva, Switzerland on

15-16 November 2011. The workshop brought together experts and practitioners with experience in the human rights aspects of vetting, UN human rights field personnel and representatives of other UN agencies and regional organisations. This workshop gave the OHCHR Geneva unit the possibility of gathering information and experience that will be used to prepare OHCHR’s tool on *A human rights compliant framework for vetting*.

Co-operation with international bodies involving Constitutional Courts and equivalent bodies is dealt with in Chapter V.

**Elections, referendums  
and political parties**



### 1. Country specific activities

#### Albania

##### Opinion on electoral legislation and practice

On 24 August 2011 the Secretary General of the Council of Europe asked the Venice Commission for an opinion on the modifications to be made to the electoral law and the electoral practice in Albania in the light of recent experience, and in particular problems which occurred during the municipal elections on 8 May 2011. The Council for Democratic Elections and the Venice Commission adopted a joint opinion with the OSCE/ODIHR in December 2011 (CDL-AD(2011)042).

In the framework of the preparation of this opinion a Venice Commission-OSCE/ODIHR delegation, which included the four rapporteurs, travelled to Albania on 24-25 October 2011. The delegation met the main political and electoral actors, in particular the Prime Minister, the President of the National Assembly, the Minister of Foreign Affairs, the heads of the Democratic Party, the Socialist Party and the Socialist Movement for Integration as well as the President and the Vice President of the Central Electoral Commission.

In its conclusions the draft opinion stated that the Albanian Electoral Code provided a thorough technical foundation for elections. However, recent experience in the implementation of the code had shown that a number of improvements are still required in electoral legislation and practice.

The recurring problems with the conduct of democratic elections in Albania could not be resolved merely through changes in electoral legislation. Any meaningful improvement in the quality of the electoral process would not be achieved without a change of attitudes and practices of the main political groupings and their leaders. Nonetheless, existing weaknesses in the Code that were exposed during the recent elections in Albania needed to be addressed. Key amendments could include in particular: the appointment of members of electoral commissions and the possibility to remove them without due motive, and more generally, their partisan nature; changes in and clarification of the vote counting procedures, especially concerning miscast ballots; the absence of specificities on local elections in the Code; provisions relating to media access and campaign financing; other gaps and ambiguities regarding the application of the electoral threshold in local elections or gender equality, rules relating to appeals.

##### Assistance to the Central Electoral Commission

In the framework of the preparation of the local elections on 8 May 2011, the Central Electoral Commission of Albania requested the Venice Commission's assistance. The Commission therefore sent a long-term electoral expert to assist the Central Electoral Commission for 2 months from 14 March to 14 May 2011.

1. The full text of all adopted opinions can be found on the web site [www.venice.coe.int](http://www.venice.coe.int).

## Armenia

### Opinion on the new draft electoral code

Following a request from the President of the National Assembly of Armenia, the Venice Commission and the OSCE/ODIHR examined the draft new Electoral Code. In this framework, a delegation from the two organisations travelled to Yerevan on 5 May 2011.

The Council for Democratic Elections and the Venice Commission endorsed a joint opinion with the OSCE/ODIHR on the draft new Code in June 2011 (CDL-AD(2011)021) before adopting in October 2011, a joint opinion on the Code as adopted on 26 May 2011 by the National Assembly of Armenia (CDL-AD(2011)032).

The opinion highlighted several positive points. In particular, the new composition of the electoral commissions, which meant that the Central Electoral Commission (CEC) and the Constituency Electoral Commissions (CSECs) changed from a partisan model to a non-partisan model, constituted progress towards a completely independent and impartial electoral administration. Innovations, such as the possibility of appeal before law for all electoral complaints, the inclusion of quotas for women in the CEC and CSECs, clarification on providing assistance to voters in the polling station, and broadening the definition of what may be cause for an election to be invalidated, all improved the legal framework for elections. Another positive point was that the electoral code had been modified almost one year prior to the next elections, scheduled for May 2012.

Although the new code had the potential necessary to guarantee the conduct of elections, legislation alone was not enough. It was the political will of all stakeholders which remained the key challenge for the organisation of genuinely democratic elections in the Republic of Armenia.

Furthermore, it was of particular importance that legislation regulating fundamental rights such as the right to genuinely democratic elections be adopted openly, following debate, and with the broadest support in order to ensure confidence and trust in electoral outcomes. This approach, absent during previous revisions of the electoral code, had been improved in the process leading to the current Code.

The Electoral Code could still be improved to ensure full respect of the European electoral heritage. Areas which could be addressed in particular included:

- removing excessive restrictions on candidacy rights;
- ensuring a separation of state and party/candidate structures;
- improving the distribution of seats in the marzes (provinces);
- evaluating in a discerning manner, the use of new voting technologies for out-of-country voters;
- improving provisions for the count and tabulation process, including the determination of election results; and
- improving complaint and appeal procedures to ensure effective remedy.

### Workshop on the latest amendments to the Electoral Code of Armenia

On 12-13 December 2011, a Venice Commission expert participated at the invitation of the Central Electoral Commission, in a Workshop on the 2011 amendments to the Electoral Code of Armenia. The discussions concentrated on campaign regulations and the count, tabulation, reconciliation of results, re-counting invalid ballots, new elections and e-voting; the main concerns raised were how to exercise a fair judgement when considering violations of the Code.

## Azerbaijan

### Opinion on the draft Law amending the Law on Political Parties

Following a request from the Azeri authorities dated 26 May 2011, the Venice Commission adopted an opinion on the draft law amending the law on political parties of Azerbaijan at its December 2011 session (CDL-AD(2011)046). The draft law amended the law on political parties on which the Venice Commission had given an opinion in 2004 (CDL-AD(2004)025). A certain number of amendments were examined in the light of the recommendations made by the Commission in 2004.

The opinion stated that the proposed amendments try to give a more detailed regulation of certain aspects of operation of political parties without addressing other lacunae in the law. For example, there was an absence of control over how political parties spend their funds as well as of private donations and an absence of effective measures to prevent corruption. There was a lack of clarity concerning what financial information must be put into the public domain. Amongst the problems raised were the proposed increase in the minimum membership of a political party from 1,000 to 5,000, the fact that the law could make it difficult to establish political parties whose aim would be to represent, support and defend the rights of ethnic minorities, the risk of a disproportionate use of the rules on the dissolution of political parties as well as the ineffective measures to prevent donations for corruption. Moreover, the law clearly stated that only those parties which were for a forcible change of the constitutional order could be prohibited.

The law relating to the dissolution of political parties did not specify what “body of executive power” was to enforce the law. Such a body should be impartial and independent.

## Bulgaria

### Opinion on the Electoral Code

Following a request from the President of the Congress of Local and Regional Authorities of the Council of Europe, the Council for Democratic Elections and the Venice Commission adopted, in June 2011, a joint opinion prepared with the OSCE/ODIHR, on the Electoral Code of Bulgaria (CDL-AD(2011)013). In the framework of the preparation of this opinion, a Venice Commission delegation met the President of the National Assembly of Bulgaria, the Legal Affairs Committee and the main political parties as well as the President of the Constitutional Court, the Central Electoral Commission and the National Association of Municipalities of the Republic of Bulgaria.

The opinion concluded that the harmonisation of previous electoral laws into one single, comprehensive Code of remarkable quality, made the Election Code of Bulgaria a sound legal basis for the conduct of democratic elections. Certain technical provisions would have benefited from being adopted by regulation or by instructions from the Central Electoral Commission.

There was, however, still room for further improvement in areas where public trust is much needed as sensitivities may be high. This was the case with regard to the independence of election commissions, the right to vote and the right to stand for elections and the remedies available for challenging decisions and actions of election commissions and the results of elections.

The opinion recommended that the modifications that did not require constitutional amendments be made ahead of the Autumn 2011 elections. The draft opinion stressed that in the longer term, constitutional amendments would be required to clarify the voting rights of persons serving prison sentences and of citizens with

dual citizenship. Finally, it underlined that it was essential that the code be implemented in good faith.

Following the Local and Presidential Elections on 23 October 2011, the Congress of Local and Regional Authorities of the Council of Europe along with the Parliamentary Assembly referred to the Venice Commission's opinion in their observation reports.

### Legal Assistance to an electoral observation mission

In the framework of the Presidential election on 23 October 2011, a Venice Commission member participated, from 20-24 October 2011, as legal adviser to the Parliamentary Assembly election observation mission in Bulgaria. His task consisted of giving advice to the delegation on all legal aspects of the election.

## Georgia

### Opinion on the draft Electoral Code

Following a request from Mr Mikheil Machavariani, First Deputy Chairman, Parliament of Georgia, the Council for Democratic Elections and the Venice Commission adopted, in December 2011, a joint opinion, prepared with the OSCE/ODIHR, on the draft Electoral Code of Georgia (CDL-AD(2012)043).

In the framework of the preparation of this opinion a Venice Commission-OSCE/ODIHR delegation travelled to Georgia on 25-26 October 2011 to meet the different parties involved in the electoral reform: Parliamentary Commission for drawing up the Code, parliamentary majority and opposition, extra-parliamentary opposition, Central Electoral Commission, the international community and the civil society.

The opinion underlined that overall, the draft new Election Code was conducive to the conduct of democratic elections and had many positive features. However

a certain number of points needed to be re-examined: the too rigorous restrictions on the passive suffrage rights of citizens; long residency requirements for candidates; lack of effective mechanisms to facilitate the participation of women in elections; remaining shortcomings in the regulation of political party and campaign finances; and shortcomings in the complaints and appeals process. The most important among these issues was the notable inequality in the size of electoral districts, which for the parliamentary elections ranged between some 6,000 and some 160,000 registered voters.

In addition, the opinion reiterated that, apart from improving the legal framework itself, full and effective implementation of the law was necessary in order to ensure conduct of elections in line with international standards.

The law adopted at the end of 2011 took into account some of the recommendations made by the Venice Commission and the OSCE/ODIHR.

### Opinion on draft amendments to the Law on Political Unions

At the request of the first deputy Chairman of the Parliament of Georgia, the Council for Democratic Elections and the Venice Commission adopted in December 2011 a joint opinion with the OSCE/ODIHR on the draft Law on amendments and additions to the Organic Law on Political Unions of Citizens of Georgia (CDL-AD(2011)044rev).

The opinion pointed out that most provisions of the draft amendments to the Organic Law were commendable. In particular the following positive points should be highlighted: a ban on corporate donations; the introduction of a requirement for bank wire transfers of donations, and the inclusion of the Control Chamber (Auditing Office) as a body controlling the reports of the parties.

A certain number of changes were nevertheless recommended to help ensure that the Organic Law was fully in line with international law and best practices. In particular, replacing the ban on the delivery of goods to voters with a cap on party expenditures and prescribing with greater precision the powers of the Chamber of Control compared with the Central Electoral Commission should be considered.

The law as adopted introduced some amendments compared with the draft submitted to the Commission. In particular, it extended the powers to the Chamber of Control and made a number of new restrictions concerning the possibilities of funding of political parties.

## Kazakhstan

### Assistance to an electoral observation mission

In the framework of the early Presidential election on 3 April 2011, the Venice Commission participated, from 1-4 April 2011, as legal adviser to the Council of Europe's Parliamentary Assembly election observation mission in Kazakhstan. Its task consisted of giving advice to the delegation on all legal aspects of the election.

## Kyrgyzstan

### Draft laws on the presidential and parliamentary elections, on local elections and on electoral commissions

In March 2011 the authorities of the Kyrgyz Republic asked the Venice Commission and the OSCE/ODIHR to provide an opinion on the draft Law on Presidential and Parliamentary Elections, the draft Law on Elections to Local Governments and the draft Law on Election Commissions of the Kyrgyz Republic.

In their joint opinion adopted in June 2011 (CDL-AD(2011)025), the Commission and the

OSCE/ODIHR noted that while a number of amendments to the draft laws marked certain progress, some concerns remained, including significant limitations to certain civil and political rights. Areas in which further improvement was required included, notably, limitations on voting rights, rights to be a candidate, rights to freedom of expression and association that were contrary to OSCE commitments, numerous recommendations of the OSCE/ODIHR and the Venice Commission in the electoral field, good practices, notably the Code of Good Practice in Electoral Matters and other international standards. The two institutions also pointed out that certain provisions regulating the formation of election commissions at various levels could benefit from clearer delineation.

The opinion welcomed some improvements aimed at strengthening provisions for transparency of election processes, the elimination of provisions for voting with absentee certificates and the introduction of the inking of voters' fingers.

The joint opinion was provided by the Venice Commission and the OSCE/ODIHR with the goal of assisting the authorities in the Kyrgyz Republic in their stated objective to improve the legal framework for elections, meet OSCE commitments and other international standards, and develop good practices for the administration of democratic elections. The conclusions of the opinion expressed the readiness of the OSCE/ODIHR and the Venice Commission to assist the authorities in their efforts and expressed the hope that the authorities of the Kyrgyz Republic would fully and effectively implement the election legislation in the 2011 presidential elections.

### Assistance to an electoral observation mission

In the framework of the early Presidential election on 30 October 2011, the Venice Commission participated,

on 28-31 October 2011, as legal adviser to the Council of Europe's Parliamentary Assembly election observation mission in Kyrgyzstan. Its task consisted of giving advice to the delegation on all legal aspects of the election.

## Moldova

### Post Electoral Review Workshop

At the invitation of the Central Electoral Commission of Moldova, the Venice Commission participated in Chisinau on 3-4 February 2011 in a Post Electoral Review Workshop the objective of which was to learn from the early parliamentary elections of November 2010. Representatives of the Central Electoral Commission as well as of local and district Commissions participated in this workshop. The main issues developed were the counting of results and their publication, the training of electoral staff and how to deal with electoral appeals.

### Eastern Partnership Meeting on the management of voters' lists and solving electoral disputes

On 22-23 September 2011, the Venice Commission organised in co-operation with the Central Electoral Commission of Moldova the second meeting of the Eastern Partnership Facility Programme, funded by the European Commission. This meeting dealt with the management of voters' lists and electoral disputes.

Presidents and other members of the Central Electoral Commissions of Armenia, Azerbaijan, Georgia and Moldova participated in this event. Venice Commission experts presented reports on the two topics of the seminar.

## Montenegro

Following a request from the Speaker of the Parliament of Montenegro the Council for Democratic Elections

and the Venice Commission adopted in June 2011 a joint opinion with the OSCE/ODIHR on the draft law, drawn up by a multi-party working group, on amendments to the law on the election of councillors and members of parliament (CDL-AD(2011)011). An opinion on a previous version of this draft law had been adopted in June 2010 (CDL-AD(2010)023).

The opinion concluded that overall, the amendments introduced by the draft law were positive, representing improvements to both the technical nature of voting and the protection of basic fundamental rights, such as that of non-discrimination.

Regarding the authentic representation of minorities, the use of a general model for all minority nations or other minority national communities without reserved seats was introduced by the draft law, with a lower quorum requirement which partially takes into account the actual population of minorities. This model was original and balanced, in conformity with the Constitution and applicable international standards, and therefore deserved a positive assessment.

The draft law under consideration took into account several previous Venice Commission and OSCE/ODIHR recommendations and generally represented a positive development. Some further amendments were however recommended.

The Parliament of Montenegro adopted the revised electoral law on 8 September 2011. This text took into account the Commission's recommendations, notably clarifying some provisions relating to the electoral system. In particular, certain amendments were introduced: a limit of 15% of the population was set for the definition of "national minorities"; the need to prove Montenegrin citizenship before 31 December 2012 was introduced; the maximum number of seats to which "aggregated" lists are eligible was increased to three.

## Russian Federation

### Legal assistance to an electoral observation mission

In the framework of the parliamentary elections on 4 December 2011, a Venice Commission delegation participated, from 1-5 December 2011, as legal adviser to the Council of Europe's Parliamentary Assembly election observation mission in Russia. Its task consisted of giving advice to the delegation on all legal aspects of the election.

## Serbia

### Opinion on the electoral legislation

Following a request from the Speaker of the Parliament of Serbia the Council for Democratic Elections and the Venice Commission adopted in March 2011 a joint opinion with the OSCE/ODIHR on the draft law "altering and amending the law on election of Members of Parliament" of the Republic of Serbia (CDL-AD(2011)005).

The aim of the draft Law was to change the practice of distribution of mandates between the candidates without being bound by any order of presentation of the list and to restrict the practice of blank resignation letters handed by the elected MPs to their respective parties. The draft introduced some changes limiting the possibility by political parties to select candidates at their will and to exercise control over their mandates. However, the parties still kept part of their discretionary powers as regards the appointment of half of the elected MPs from the list, which was contrary to European standards.

As had been already stressed in previous Venice Commission opinions and in recommendations of other international bodies, notably those of the Parliamentary Assembly of the Council of Europe, parliamentary seats belong to elected MPs and not to their parties. The national legislation should be further improved in order

to meet fully the democratic standards. In the short term, the inclusion of modalities for organising blank resignations in the election law should be reconsidered as it risked replicating a constitutional provision that had previously been criticised, as well as reinforcing the imperative mandate. In the middle or long term an amendment to paragraph 2 of Article 102 of the Constitution of the Republic of Serbia seemed indispensable.

The opinion noted that other important recommendations previously made by the Venice Commission and the OSCE/ODIHR remained unaddressed.

On 26 May 2011 the Serbian Parliament adopted the amendments to the electoral legislation abolishing the practice of blank resignations of MPs. The new law also introduced a rule by which, should a seat become vacant in Parliament, it would be filled by the next candidate on the list. In the previous version the political parties had the power to decide which candidate would take a vacant seat.

However, these legislative amendments did not affect the constitutional provision which authorised blank resignations.

### Revised draft law on financing political activities

At the request of the Ministry of Justice of Serbia, the Venice Commission adopted at its 86th plenary session in March 2011 a joint opinion with the OSCE/ODIHR on the Revised draft law on financing political activities of the Republic of Serbia (CDL-AD(2011)006).

In December 2010, the Venice Commission had already adopted a joint opinion with the OSCE/ODIHR on the previous version of the Draft Law of the Republic of Serbia on Financing Political Activities (CDL-AD(2010)048). The Commission noted with satisfaction that the assessed Draft Law constituted a step forward in creating a modern and comprehensive system of financing political

activities in Serbia, while providing for a number of recommendations which would further improve regulation in this area. Nevertheless, the Commission and the OSCE/ODIHR made some recommendations that would further improve the draft. Among other issues, the Draft Law would benefit from an adjustment of the provisions to focus more on the prevention of possible abuse, infringements and violations, rather than the imposition of sanctions following their occurrence. It should also address the issue of the provision of in-kind services by qualifying and quantifying them in detail and create incentives for improving the participation of women in political parties. It would also benefit from some further revision of the section on sanctions in order to ensure that they are proportionate; moreover, the sanctioning regime should be completed.

On 13 June 2011, the Parliament of the Republic of Serbia adopted the Law on Financing Political Activities. According to the information received by the Commission, the new version of the law integrated a number of recommendations made in the Joint Opinion of the Venice Commission and the OSCE/ODIHR.

### “The former Yugoslav Republic of Macedonia”

#### Legal assistance to an electoral observation mission

In the framework of the parliamentary elections on 5 June 2011, the Venice Commission participated, from 2-6 June 2011, as legal adviser to the Council of Europe’s Parliamentary Assembly election observation mission in “the former Yugoslav Republic of Macedonia”. Its task consisted of giving advice to the delegation on all legal aspects of the election.

#### Opinion on the Electoral Code

Following the adoption of a revised version of the Electoral Code of “the former Yugoslav Republic of

Macedonia” in April 2011, the Council for Democratic Elections and the Venice Commission adopted in October 2011, a joint opinion with the OSCE/ODIHR on this text (CDL-AD(2011)027).

The amendments to the code were an improvement and provided a solid basis for holding democratic elections in conformity with international standards. Many of the recommendations previously made by the Venice Commission and the OSCE/ODIHR had been taken into account.

The most important amendments adopted after the last joint opinion touched upon the procedure of voting abroad, provisions on electoral campaign, reporting of campaign costs, voting procedure for military personnel, and clarifications on the right to vote and to be elected.

Some issues would still need further consideration. This was specifically the case with regard to thresholds for campaign donations, publication of election results, complaints and appeals procedures, and the system and arrangements for out-of-country voting.

### Ukraine

#### Opinion on the Draft Law of Ukraine on Election of the People’s Deputies

Following a request from the Minister of Justice of Ukraine, the Council for Democratic Elections and the Venice Commission adopted in October 2011 an opinion on the draft Law of Ukraine on Election of the People’s Deputies of Ukraine (CDL-AD(2011)037). In the framework of the preparation of the opinion, a delegation of the Venice Commission and the OSCE/ODIHR travelled to Ukraine on 21-23 September 2011 and met with the Minister of Justice, a group of experts of the working group in charge of the draft law on parliamentary elections, representatives of political parties, civil society

and international organisations and embassies present in Ukraine. A number of elements discussed during the visit were later incorporated into the text of the final opinion.

The Commission pointed out that its joint recommendation with the OSCE/ODIHR, supported by the Parliamentary Assembly, that all electoral rules should be unified in a Single Electoral Code had not been followed.

The opinion by the Venice Commission and the OSCE/ODIHR pointed out that some important issues could be reconsidered before the draft law was adopted. These issues included:

- Lack of clear criteria and deadlines for defining boundaries of electoral districts;
- Lack of clarity on the possibility of challenging election results;
- Deadlines for registration of candidates in the constituencies;
- Removal of the right of parties to form electoral blocs;
- The maximum number of voters allowed per precinct was maintained at 2,500;
- PEC members had to sign the ballot before giving it to the voter in order for it to be valid;
- The draft contained provisions allowing the PECs to declare the results invalid based on arbitrary standards of impermissible abuse, which may establish an acceptable level of fraud.

The opinion regretted that the choice of the mixed system as well as the threshold for gaining mandates and

the banning of electoral blocs was made by the majority unilaterally and without consultations with the representatives of the other political parties and civil society. The Venice Commission and the OSCE/ODIHR also regretted the fact that the working group on reforming and codifying the electoral legal framework had not followed its advice to base its work on the Draft Election Code prepared by the working group of the Verkhovna Rada in 2010, which had been positively assessed by the Venice Commission in its opinion adopted in December 2010 (CDL-AD(2010)047).

On 31 October 2011 a Venice Commission delegation participated in the hearing of the Verkhovna Rada Committee on State Development and local government on the theme “discussions on draft laws of Ukraine on the election of the people’s deputies of Ukraine”.

After the adoption of the opinion, the Committee of State building and local democracy of the Verkhovna Rada organised a hearing on the reform of the electoral legislation. Representatives of the Commission attended this hearing and presented the main remarks and recommendations of the joint opinion by the Venice Commission and the OSCE/ODIHR.

After the hearing the Verkhovna Rada created a working group in charge of the preparation of the final draft law on the election of MPs. On 17 November 2011 the Verkhovna Rada adopted the draft law by a majority of 366 MPs out of 450. The adopted law introduced a system of the election of people’s deputies under a mixed system (50% under party lists and 50% under constituencies), as well as a 5% election threshold and banned the participation of blocs of political parties. The recommendations of the Venice Commission were only partially taken into account.

## 2. Transnational Activities

### Studies and reports

#### Out of country voting

During 2011 the Council for Democratic Elections and the Venice Commission continued their work on the study on out of country voting. They adopted the report on out of country voting in June 2011 (CDL-AD(2011)022).

This report, based on a comparative study of the situation in the member States of the Venice Commission, mainly addressed the right to vote (and not eligibility). First of all it should be determined whether the right to vote is reserved to residents. This was no longer the case in a minority of the States concerned. The principle questions included, who had the right to vote, whether it was necessary to have lived in the country or whether the right to vote was lost following a long absence. It should also be determined in which elections expatriates had the right to vote; national elections are easier to open up to citizens resident abroad, while local elections are generally closed to them. Then the means of voting should be established (at the Consulate, or, to obtain a higher participation, by correspondence, by proxy, by internet). The report concluded that States should adopt a positive approach to the right to vote of citizens living abroad.

#### Funding of electoral campaigns

Following a request from the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, the Council for Democratic Elections and the Venice Commission adopted an opinion on the need for a code of good practice in the field of funding of electoral campaigns (CDL-AD(2011)020).

The report considered that, taking into account the previous work of the Council of Europe and in particular

the Venice Commission, the adoption of a code of good practice in this field would not add much to existing documents. On the other hand, it would seem necessary to carry out a study on the wrongful use of administrative resources during electoral campaigns; the Commission will do this in 2012. The Commission informed the Parliamentary Assembly of this decision.

#### Participation of people with disabilities in elections

In October 2010, the Council for Democratic Elections and the Venice Commission adopted a declaration on the participation of people with disabilities in elections (CDL-AD(2010)036).

Following the adoption of Recommendation CM/Rec(2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life, a new version of the interpretative declaration was adopted by the Council for Democratic Elections and the Venice Commission in December 2011 (CDL-AD(2011)045).

#### Measures to improve the democratic character of elections in the Council of Europe member States

At its meeting on 14 December 2011, the Political Affairs Committee of the Parliamentary Assembly dealt with measures to improve the democratic character of elections in the Council of Europe member States, with a view to the adoption, by the Assembly, of a report on this issue in 2012. The Venice Commission representative presented the Commission's work in this field. The Political Affairs Committee then requested a written contribution on this question from the Venice Commission, which will be adopted in 2012.

## Conferences et seminars

### 8th European Conference of Electoral Management Bodies “Elections in a changing world” (Vienna, 12-13 May 2011)

The eighth European Conference of Electoral Management Bodies “Elections in a changing world” was organised by the Venice Commission in co-operation with the Federal Ministry of the Interior of the Republic of Austria on 12-13 May 2011. The issues which were addressed during the conference included the recent elections in member States, as well as a range of issues concerning the role of modern technology and social media in elections, the transparency of the electoral process and the latest developments in the field of electronic voting.

Around 80 participants from national electoral management bodies of the following countries attended the conference: Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Brazil, Estonia, Finland, France, Georgia, Germany, Hungary, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Mexico, Moldova, Netherlands, Portugal, Russian Federation, Serbia, Slovak Republic, Slovenia, Switzerland, Tajikistan, Ukraine, United Kingdom, United States, Uzbekistan as well as members of the Venice Commission and representatives of the Parliamentary Assembly of the Council of Europe, the Congress of Local and Regional Authorities of the Council of Europe and representatives of the Council of Europe’s Directorates General of Democracy and Political Affairs and the Head of the Council of Europe Office in Vienna.

Also represented were the Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights; the United Nations; International IDEA, and the Inter-American Union of Electoral Organisations (UNIORE). Several international

NGOs active in the electoral field also participated in the conference.

The conference discussed such issues as the social media and the secrecy of the vote, the modern media influence on the electorate, the right to free vote and the impact of the digital age, the ways modern technology improves the election cycle, new approaches for organising smooth elections, the future of polling stations in the light of new voting channels, e-voting in the year 2011, how to tackle concerns and to maintain trust and possible steps to observe e-enabled elections.

In parallel to this event, representatives from the Electoral Commissions of Armenia, Azerbaijan, Georgia, Moldova and Ukraine held the first meeting in the framework of the Eastern Partnership Facility, funded by the European Commission. This meeting discussed and established the next steps to be taken in the organisation of co-operation activities between the Venice Commission and the States concerned by the European Union Eastern Partnership programme.

### 20th Anniversary (Jubilee) conference of the ACEEEO (Association of European Election Officials) (Budapest, 17 June 2011)

On 17 June 2011 the Venice Commission participated in the 20th Anniversary (Jubilee) Conference of ACEEEO (Association of European Election Officials) and presented a report on the theme of the Conference “the independence of electoral administrations”.

### 6th Summer University of Democracy on Ethics and Politics (Strasbourg, 27-29 June 2011)

The Venice Commission participated in the 6th Summer University of Democracy on Ethics and Politics and presented a report entitled “Introducing Ethics and restoring citizens’ confidence in the Electoral Process” in the

framework of the Round Table “Ethics and political legitimacy”.

Conference on Guidelines on the regulation of political parties (Istanbul, 5-6 September 2011)

On 5-6 September 2011 Venice Commission representatives participated in a Conference on the joint OSCE/ODIHR/Venice Commission Guidelines on the regulation of political parties as well as at an expert meeting on political parties, organised by the OSCE/ODIHR in Istanbul. During the Conference the Guidelines, adopted in 2010 (CDL-AD(2010)024) were distributed to Universities, journalists and representatives of Turkish political parties. The expert meeting led to the setting up of an ODIHR group of experts on political parties as a consultative body of the OSCE/ODIHR responsible for replying to requests for assistance on issues concerning political parties from participating countries.

## VOTA, the Venice Commission’s electoral database

The VOTA database was set up as part of the joint Venice Commission and European Commission programme “Democracy through Free and Fair Elections” in 2004. It contains the electoral legislation of the Venice Commission’s member states and other states involved in the Commission’s work. Over 100 laws and statutes from about 50 states, as well as Venice Commission opinions in the field of elections, are already available in the database, in English and French (<http://www.venice.coe.int/VOTA>).

In 2011 the Secretariat of the Venice Commission agreed with the Federal Electoral Tribunal of Mexico to start co-operation on the VOTA database. New functionalities would be added to the database in 2012.

### **3. International co-operation in the field of elections and political parties**

Activities in the Electoral field in the Council of Europe neighbourhood and outside Europe are dealt with in Chapter V.

Co-operation with the European Union and other international organisations is dealt with in Chapter VI.

**Co-operation in the Council of Europe neighbourhood  
and outside Europe**



### 1. Mediterranean basin

#### Tunisia

In 2011, following the “Jasmine Revolution” in Tunisia, the Venice Commission indicated its willingness to share its experience with the Tunisian people on the question of constitutional and legislative reforms in the transitional period towards democracy. Tunisia has been a member of the Venice Commission since March 2010.

Following initial contacts with the transitional authorities by the President and a Commission delegation in March 2011, with the support of the Secretary General, the Commission closely followed political and legal developments in Tunisia and carried out a series of co-operation activities. The Commission was able to carry out this work thanks in particular to financial support from France, the Netherlands and Turkey.

These activities were organised with the Tunisian civil society as well as international organisations present in Tunisia, in particular the European Union delegation.

Venice Commission experts also participated in several Conferences and Seminars organised by the civil society on the subject of future constitutional reforms.

Several Venice Commission texts (in particular the Code of good practice in electoral matters, the report on constitutional amendment, the reports on electoral systems and on the representation of women, the study on individual access to constitutional justice, the report on the rule of law) were distributed during these Conferences. In addition, thanks to a contribution from the Norwegian Government these texts have been translated into Arabic

so as to ensure their wide distribution not only in Tunisia and Morocco, countries which are largely francophone, but also in other countries such as Egypt and Libya.

Finally, Tunisian civil servants participated in seminars in the framework of the UniDem Campus programme “Training for Trainers”.

Details concerning seminars on constitutional questions and electoral activities are given below.

#### Seminars on constitutional questions

The Venice Commission participated on 28-30 June 2011 in Tunis in an international seminar on “gender equality in constitutional and legislative reforms”, organised by the European Inter-University Centre for Human Rights and Democratisation (EIUC), the German Ministry for Economic co-operation and development and the Centre of Arab Women for Training and Research (CAWTAR). Experts from all the Maghreb countries as well as several international experts including Venice Commission representatives (Ms Slavica Banic, Ms Lydie Err and Ms Finola Flanagan) debated in particular constitutional guarantees for gender equality as well as the legislative reforms necessary so that these countries conform to European standards.

Tunisian civil servants participated, thanks to a contribution from the Turkish Government, in the training for trainers programme “UniDem Campus Trieste” in seminars on the themes: “Information (social) media and the civil service” (May 2011) and “the Council of Europe

and the European Union: shared values and standards” (June 2011).

A training programme for trainers was organised by the Venice Commission and the Media Department of the Council of Europe, in co-operation with the Centre of Arab Women for Training and Research (CAWTAR) on the theme “for a fair media coverage of the electoral campaign in Tunisia”. During 4 days of training in Strasbourg from 6-9 September 2011, 6 Tunisian experts in the media sector were able to familiarise themselves with Council of Europe standards in this field, as well as good practices in Council of Europe countries. Following this, during 5 training days held in Tunisia on 17 September, 24 September, 1 October, 8 October and 15 October 2011, these experts in turn trained around 40 Tunisian journalists, representatives of the written press and electronic and audio-visual medias. Amongst the questions dealt with during the training session, the following should be highlighted: the Constituent National Assembly: historical, legal and political perspectives; media and political context, traditional and new actors (surveys, social networks, control institutions); electoral systems; electoral law; electoral campaign and polling day (each person’s roles, rights and duties); media coverage (deontology of the press, press law, protection of journalists). This activity was financed by a contribution from the Dutch government.

## Electoral Issues

The Venice Commission’s activities concerning the elections in Tunisia were diverse, and included:

- training activities, in particular on electoral disputes;
- participation in seminars;
- legal assistance to observation missions of the Parliamentary Assembly of the Council of Europe.

## *Training activities*

On 5-8 July 2011, at the invitation of the Administrative Tribunal of Tunis, the Venice Commission organised in Tunis a training session for forty magistrates on electoral disputes with a view to the forthcoming election of the Constituent National Assembly (scheduled for 23 October 2011). This seminar addressed possible appeals concerning:

- validity of nominations
- respect of electoral campaign rules, and
- election results.

This activity was financed by a contribution from the Turkish government. The Venice Commission was represented by specialists in particular from Universities, the Bench and the Bar.

From 20-23 September 2011, at the invitation of the Tunisian Bar, the Venice Commission organised in Tunis a training seminar on electoral disputes for around forty lawyers. The seminar addressed the following issues:

- the basic essential features of electoral disputes,
- the role of election observers,
- disputes related to compliance with the rules of the election campaign (especially media neutrality and neutrality of places of worship, work, schools and universities),
- impact of infringements on the election results,
- proceedings for offences relating to campaign financing.

During this Conference, as during the previous one, the Venice Commission was represented by specialists in particular from Universities, the Bench and the Bar.

*Participation in seminars*

On 8 October 2011, the Venice Commission participated in Strasbourg in an awareness session for people responsible for running the polling stations for the elections to the Constituent Assembly of Tunisia in North East France.

On 17 October 2011, at the request of the Administrative Tribunal of Tunis, a judge, Venice Commission electoral expert, intervened in a Round Table, held in Tunis on appeals which could be filed after the announcement of the preliminary results of the election of a Constituent National Assembly. Tunisian experts as well as the European Union participated in this event.

*Legal assistance to the Parliamentary Assembly missions in the framework of the election of the Constituent National Assembly*

At the request of the Parliamentary Assembly of the Council of Europe, the Venice Commission participated, in the framework of the election of the Constituent National Assembly (23 October 2011), first on 15-16 September 2011 in a pre-election observation mission and then on 20-25 October 2011 as legal adviser to the Parliamentary Assembly election observation mission. Its task consisted of giving advice to the delegation on all legal aspects of the election.

**Morocco**

In Morocco, member of the Venice Commission since 2007, the Commission placed its experience at the disposal of the King and the new Government in order to implement the constitutional amendments adopted in June 2011.

**Ombudsman Institution**

The Commission started fruitful co-operation with the Ombudsman Institution of Morocco. At its invitation first of all, on 17-19 May 2011, the Commission participated in the 7th training session for staff of institutions which are members of the Association of Ombudsmen/Mediators of “La Francophonie” (AOMF) on the theme “methods of enquiry and investigation in the framework of dealing with claims”. It was with great interest that the Commission contributed to the organisation of two further training sessions. The first on “the role of the Mediator in access to services and the protection of social rights” took place on 11-13 October 2011; the other on “powers of the Mediator and the Ombudsman in the defence of human rights” organised for staff of institutions which are members of the Association of Ombudsman of the Mediterranean took place on 13-15 December 2011

**Electoral issues**

In the framework of the parliamentary elections on 25 November 2011, a Venice Commission member participated, from 22-26 November 2011, as legal adviser to the Parliamentary Assembly election observation mission in Morocco. Her task consisted of giving advice to the delegation on all legal aspects of the election.

**Egypt****Electoral issues**

On 2 April 2011 the Venice Commission participated in an international Conference entitled “Free and Fair Elections: Lessons Learnt from other Transitioning

Countries on Managing Elections”, organised by the American University in Cairo. The Commission representatives presented reports on election observation and monitoring.

On this occasion the President of the Commission established contacts with the Egyptian authorities with a view to future co-operation.

## 2. Central Asia

### EU-Central Asia Rule of Law Initiative

Between 16 December 2009 and 15 December 2011 the Venice Commission established good co-operation with the national institutions of the Central Asian countries in the framework of the Project “EU-Central Asia Rule of Law Initiative” funded by the European Commission. The Project aimed at contributing to the development of the judicial system, law enforcement and reform of legislation in Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. It offered tools to further develop the rule of law, comprising assistance to judicial systems and legal professions, as well as advisory services and regional exchange in the field of legislation.

The objectives of the Programme were as follows:

- furthering the development of constitutional mechanisms aimed at strengthening the principles of the rule of law, the separation of powers and legal certainty through reform of the existing legislation and its effective implementation;
- enhancing the efficiency and independence of the judiciary in general and Constitutional Councils and Courts in particular;

### Union of Arab Constitutional Courts and Councils (UACCC)

The Venice Commission’s President participated in the 7th Colloquium of the UACCC on “Constitutional justice and the separation of powers”, hosted by the Constitutional Court of Lebanon in Beirut on 24-25 October 2011.

- assistance in the reform of the institution of public prosecution and other investigative bodies;
- furthering the integration of international law into national legal systems;
- assistance in the reform of electoral systems and improvement of election administration;
- training of public administration officials, judges and lawyers.

As a result of positive interaction between partners in the initial country-specific phase of the project in 2010 and the gradual building of trust between the Central Asian project partners and the Venice Commission in some highly sensitive areas, it was possible to carry out co-operation activities at the regional level in 2011.

Very good progress was made towards the achievement of the objective to develop further the constitutional mechanisms aimed at strengthening the principles of the rule of law, separation of powers and legal certainty through reform of the existing legislation and its effective implementation. To this end, the project organised

a number of activities in 2 project countries (Kazakhstan and Uzbekistan), notably:

- A conference on “Safeguarding constitutional human rights in pre-trial criminal proceedings”, Astana, Kazakhstan, 18-19 February 2011;
- A regional conference on “Administrative Law: current situation and perspectives for reform”, Tashkent, Uzbekistan, 13-14 September 2011;
- Legal support to the election observation mission of the Parliamentary Assembly of the Council of Europe for the Presidential elections in Kazakhstan, held on 3 April 2011.

The conference on “Safeguarding constitutional human rights in pre-trial criminal proceedings”, organised by the Constitutional Court of Kazakhstan together with the Venice Commission, the Deutsche Gesellschaft für internationale Zusammenarbeit (GIZ) and the Government of the Republic of Kazakhstan, was held within the context of Kazakhstan’s current reform of its criminal justice system (which started with the reform of the role of defence lawyers). This event gathered together approximately 80 people, including the Deputy Prime Minister of Kazakhstan, the Chairman and members of the Constitutional Council, representatives of the Administration of the President, representatives of Parliament, of Government, including the Minister for Internal Affairs and the Minister for Justice, the Chairman of the Supreme Court and chairmen and judges from the local courts of Almaty, representatives of state bodies, the Ombudsman, representatives of local executive bodies and academics from Kazakhstan.

Presentations covered the role of prosecutors and defence lawyers in criminal proceedings, the practice of pre-trial detention in France, Germany and Italy and the developments in the judicial system of Kazakhstan in this respect. Topics such as reforming investigative bodies to improve pre-trial proceedings in Kazakhstan, the

case-law of the Constitutional Council of Kazakhstan on this issue and the reform of the law-enforcement system in Kazakhstan were discussed. The introduction of alternative dispute resolution, notably mediation for misdemeanours in Kazakhstan was also mentioned.

Misuse of the media by politicians during criminal proceedings pre-empting a verdict of a suspect and the need to find a balance between speeding-up proceedings and the protection of human rights, were discussed.

Participants also raised the problem of conflicts that occur between different laws defining certain offences and how investigations are to be carried out, which need urgent attention as does the fact that there is a serious lack of defence lawyers in Kazakhstan (currently only 4000 in the entire country).

Finally, the problem of the excessive coercive powers of the prosecution and the problem that defendants cannot be properly defended in a system that has already condemned them were raised. In such a system, defendants are often prevented from appealing a decision made against them and this needs to be addressed urgently. In this respect, the participants were told that a bill was being discussed in Parliament to improve the situation and work of defence lawyers and increase their numbers in the country.

To enhance the efficiency and independence of Constitutional Councils and Courts as well as the judiciary in general the project organised a number of activities in 2 project countries (Kazakhstan and Uzbekistan), notably a seminar in Tashkent, Uzbekistan on “The Independence of the judiciary as a main guarantee for the democratic development of the society”, 28-29 April 2011, and a regional conference on “International experience in reinforcing and respecting the constitutional norms guaranteeing the independence and effectiveness of courts”, Dushanbe, 28-29 September 2011. Venice Commission

representatives also took part in a conference on judicial reform in Kazakhstan following the adoption of a joint opinion with the OSCE/ODIHR on the Kazakh Constitutional law on the Judicial System and the Status of Judges, in Astana on 11 November 2011.

Assistance was provided to the authorities of Kazakhstan in the reform of the institution of public prosecution and other investigative bodies. A regional conference on “The mechanisms of providing legal assistance in criminal matters with non-member States of the Council of Europe” which took place in Astana on 18-19 April 2011 brought together prosecutors from Kazakhstan, Kyrgyzstan and Tajikistan as well as experts from several European countries to share their knowledge and experience by providing mutual legal assistance in criminal matters, extradition of criminals and other related issues.

The Project supported the authorities of Kazakhstan in identifying legal gaps by preparing, upon request from the authorities and in co-operation with the OSCE/ODIHR, a joint opinion on the constitutional law on the judicial system and status of judges of the Republic of Kazakhstan (CDL-AD(2011)012).<sup>1</sup> The Venice Commission’s legal opinion was a starting point for establishing a list of concrete practical problems affecting the democratic functioning of institutions in the country and proposed changes to the current legislation.

Very good progress towards the achievement of the objective to assist in reforming the electoral systems and improvement of election administration was made in 2011. The representatives of the Kyrgyz, Tajik and Uzbek authorities took part in the 9th European Conference of Electoral Management Bodies “Elections in a Changing World” on 12-13 May 2011 in Vienna, Austria (see Chapter IV above).

1. For further information on the opinion see Chapter V above.

2. For further information see Chapter IV above.

The project started co-operation with the Central Electoral Commission of Tajikistan by organising a Roundtable on “Development and improvement of the electoral system of Tajikistan – International standards of elections” on 22-23 November 2011 in Dushanbe.

A joint opinion by the Venice Commission and the OSCE/ODIHR on the draft law on Presidential and Parliamentary Elections, on the draft law on elections to local governments of Kyrgyzstan as well as on the draft law on Electoral Commissions as was adopted in June 2011 in the framework of the project (CDL-AD(2011)025).<sup>2</sup> This opinion was presented to the representatives of the Parliamentary Committee on Constitutional Law of the Kyrgyz Republic at the Round Table which took place in Bishkek on 2 May 2011.

Special attention was paid to training public officials and judges in the framework of the “EU-Central Asia Rule of Law Initiative”. In 2011 two activities were completed in four project areas (Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan). The representatives of the Central Asian states participated in the UniDem Campus training seminar on “The independence of judges and prosecutors: perspectives and challenges”, on 28 February-3 March 2011 in Trieste. The approach proposed by the well-established UniDem interactive programme of training for civil servants reinforced the mechanisms and procedures for inter-agency co-operation and information exchange within the relevant bodies of the judiciary in Central Asia in the field of the protection of human rights, access to justice and the rule of law.

The Venice Commission organised a seminar on the “Independence of the judiciary and its relationship with the prosecution service: perspective for developing a relationship and establishing the principle of the rule

of law” in Tachkent on 28-29 April 2011, in co-operation with the Research Centre to the Supreme Court of the Republic of Uzbekistan.

The activities and discussions held during the implementation of the project “EU-Central Asia Rule of Law Initiative” highlighted the critical need for further focused support with regard to constitutional justice, electoral reform and access to justice in order to underpin the rule of law reform efforts. Central Asia project participants repeatedly indicated their interest to learn more about the experience of European countries in the above-mentioned areas. The growing necessity to provide quality training programmes for judges and representatives of other legal professions was also repeatedly underscored by the Central Asian side. Having regard to the traditions of the Central Asian countries, special attention should be paid to co-operation with Constitutional and Supreme Courts. A number of additional areas of possible co-operation were identified, notably in the field of the judiciary focussing on the protection of procedural rights of individuals. The promotion of the rights of groups that are easily excluded and discriminated, particularly children, women and persons with disabilities, and the promotion of equal opportunities for participation are largely unaddressed by reform efforts.

Work in Central Asia will continue in 2012 in the framework of a joint project entitled “Support to the election process in Kazakhstan” funded by the European Union and implemented by the Venice Commission as well as the Wider Europe Initiative launched by Finland on access to justice for vulnerable groups in Central Asia.

## Kyrgyzstan

The Venice Commission also co-operated with the authorities of the Kyrgyz Republic in the framework of

a separate project entitled “Assistance to the authorities in reforming the legislation of Kyrgyzstan following the constitutional referendum of 27 June 2010” and also financed by the European Commission. This Project was aimed at facilitating the electoral legislation reform, assisting the Ministry of Justice in the law-making process and providing professional training to the bodies of public administration.

The co-operation in the framework of this project mainly focused on the preparation of legal opinions on draft laws as well as training activities for the staff of the Ministry of Justice.

During 2011, at the request of the authorities of the Kyrgyz Republic the Venice Commission provided the following legal opinions on draft legislation on:

- the draft constitutional law on the constitutional chamber of the Supreme Court of Kyrgyzstan (CDL-AD(2011)018);
- the draft law on the introduction of changes to the constitutional law on the status of judges of Kyrgyzstan (CDL-AD(2011)017);
- the draft law on the Council for the selection of judges of Kyrgyzstan (CDL-AD(2011)019).<sup>3</sup>

The opinions on the judiciary were presented to the authorities at the Round Tables organised in Bishkek on 27-29 April 2011 and adopted by the Venice Commission in June 2011 following an exchange of views with the members of the delegation from the Parliament present at the plenary session.

Following the adoption of the Opinion on the draft law on the Council for the Selection of Judges of Kyrgyzstan, the Commission took part in a training seminar for the members of the Council for the Selection of Judges of

3. For further information on the opinions on these draft laws see Chapter III above.

the Kyrgyz Republic on “Judicial Independence through Selection Procedures” on 27-29 April 2011. The participants formulated a number of recommendations addressed both to the Council itself and to the legislator in view of amendments to the legislation.

The project continued supporting the Ministry of Justice in training its staff. A seminar on “Law-making techniques and practices” organised in Bishkek on 28 February-1 March 2011 gave an opportunity to discuss matters raised during the project activities in 2010.

A number of translations of documents into Russian were made in the framework of the project. The documents dealt with the standards in the electoral field and in particular the Council of Europe standards in the field of electoral systems, the right to vote, election observation and assessment and the electoral process. The translations contributed to the achievement of the project objective – to facilitate reforms of the electoral legislation; they also helped to provide professional training

to the bodies of public administration. The documents were made available to the project partner, the Central Election Commission. They could serve as a useful source of further training of the Commission’s staff.

Finally, the Venice Commission provided legal assistance to the observation mission of the Parliamentary Assembly of the Council of Europe with regard to the Presidential elections of 30 October 2011.<sup>4</sup>

The Venice Commission will continue its work in the Kyrgyz Republic in 2012 in the framework of the Wider Europe Initiative launched by Finland on access to justice for vulnerable groups in Central Asia. Further actions in the fields of constitutional justice and electoral reform are foreseen in the framework of the project “Supporting Constitutional Justice, Access to Justice and Electoral Reform in the Countries of Central Asia” that is due to start at the end of 2012 upon completion of negotiations on funding with the European Union.

### 3. Latin America

#### Sub-Commission on Latin America

In 1995 the Venice Commission had established a Sub-Commission on Latin America which had ceased to exist in 2006 due to lack of activity. In recent years Brazil, Chile, Mexico and Peru became member States and their individual members have participated regularly in the plenary sessions. In addition, in 2010 the Commission started co-operation with Bolivia in the framework of a Joint Programme with the European Union.

On 16 June 2011, representatives of Brazil, Chile, Mexico and Peru and several other member States of

the Commission met in Venice and decided to ask the Plenary to re-establish the Sub-Commission on Latin America.

In June 2011, the Commission took the decision to re-establish the Sub-Commission on Latin America. Ms M. C. Alanis Figueroa was elected Chair of the Sub-Commission during the December 2011 plenary session of the Venice Commission. The Sub-Commission met for the first time on 15 December 2011.

During the meeting the Sub-Commission was informed about the follow-up to the *amicus curiae* brief on crimes

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4. The Joint Programme came to an end on 31 January 2012.

against humanity (CDL-AD(2011)041) prepared for the Constitutional Court of Peru and on the Opinion (CDL-AD(2011)038) on the draft code on constitutional proceedings of Bolivia.

Members of the Sub-Commission took note of the results of the Extraordinary meeting of UNIORE, which took place in Mexico on 10-11 November 2011, and expressed their interest in a regular exchange of information about different activities in the electoral field between the two organisations. They also adopted a list of Venice Commission documents to be translated into Spanish and decided to conduct a study on the incorporation of international treaties into domestic legal systems.

The Sub-Commission decided to hold one of its 2012 meetings in Mexico and to organise in this framework an exchange of views with representatives of Latin American countries, which were interested in Venice Commission activities.

## Bolivia

**Training Workshop on the role of prosecutors in a democratic society: challenges and perspectives and institutional meetings with Bolivian authorities (Sucre, 17-18 May 2011)**

This event brought together over 30 prosecutors from all over the country and from different levels, as well as representatives of all the main judicial authorities: the Minister for Justice of Bolivia, the Vice-Minister for Justice of Bolivia, the Prosecutor General, the President of the Constitutional Court and representatives of other authorities (Supreme Court, Agro-Environmental Court, Parliament) as well as law professors. Conclusions were reached during the general debate and presented to Parliament representatives attending the meeting in a process of exchange concerning the new draft Law on the Public Prosecution service, which was under discussion in Parliament at the time.

**Seminar on “Leading Principles of the Constitutional Justice – Reflections on the Constitutional Court of Bolivia” (Santa Cruz, 7-8 July 2011)**

This seminar was organised jointly with the Constitutional Court of Bolivia.

The main topics of the seminar were indigenous justice and the control of regional statutes by the Constitutional Court. Presentations of the Peruvian/Latin American and South African experience with indigenous rights and indigenous justice helped to place the Bolivian situation in perspective. Indigenous justice has persisted throughout the history of Bolivia but the plurinational Constitution now recognises it on the same level as ordinary justice. Only the Constitutional Court can arbitrate between the two. The system of ordinary justice is weak in large parts of the country. Sometimes acts of torture are accepted as part of indigenous justice. The Commission insisted on the respect for human rights, which have to be the limit for indigenous justice on the basis of the international obligations of Bolivia.

**Opinion on the draft Organic Law on the Public Prosecutor’s Office of Bolivia**

The Vice-Minister for Justice and Fundamental Rights of Bolivia asked the European Union Delegation in Bolivia to forward a request to the Venice Commission in February 2011, for an opinion on the draft Organic Law of the Public Prosecutor’s Office. The preliminary draft Law was prepared by the Ministry of Justice in conjunction with the State Prosecutor General, the Plural Justice Commission of the Chamber of Deputies of the Plurinational Legislative Assembly of Bolivia with the participation of civil society.

In its opinion, the Venice Commission stated that the Law was drafted in a consistent manner based on a series of solid principles that include victims’ rights, alternative

dispute resolution, human rights protection, permanent appointment and transparency. However, it did make a few recommendations, notably that trials of the highest judicial bodies should not be instituted by Parliament, that a prosecutor must not “co-ordinate” civil society and that any instruction to reverse the opinion of a lower-rank prosecutor must be motivated and in the event of an allegation that an instruction is illegal an independent court or a body such as the National Council for the Public Prosecutor’s Office should decide on the legality of the instruction. The Venice Commission also stated that in disciplinary procedures, the accused prosecutor must have the right to legal representation and an appeal should be open before an ordinary court.

The opinion (CDL-AD(2011)007) was adopted by the Venice Commission after an exchange of views with the Vice-Minister for Justice and Fundamental Rights of Bolivia and the Prosecutor General of Bolivia in March 2011.

### Opinion on the draft Code of Constitutional Procedure of Bolivia

In September 2011, the President of the Chamber of Deputies of Bolivia requested the European Union Delegation in Bolivia to forward to the Venice Commission a request for an opinion on the draft Code on Constitutional Procedure of Bolivia. The Venice Commission received the request from the European Union Delegation in La Paz in September 2011.

The draft Law had been prepared by the Chamber of Deputies of the Plurinational Legislative Assembly of Bolivia with the participation of the Constitutional Court and experts on the topic. The European Union had sent the Venice Commission the legislation within the framework of the joint programme of co-operation between the European Union and the Venice Commission on the development of constitutional reforms in Bolivia.

In this opinion, the Venice Commission stated that the powers conferred on the Constitutional Court were too broad and that the Court was under serious risk of being overburdened. This was mainly due to the high number of competences it was attributed, covering not only national acts, but also those of territorial entities and that it was often faced with extremely short time-limits to exercise these competences. The Venice Commission made a number of recommendations and concluded that it was important that the Constitutional Court effectively control all jurisdictions and, in particular, the indigenous peasant original jurisdiction, which had to respect the right to a fair trial and the prohibition of cruel and unusual punishment. More severe punishments than those in the ordinary system of justice would violate the right to equal access to justice enshrined in the Constitution.

The opinion was adopted by the Venice Commission October 2011 (CDL-AD(2011)038).

## Chile

### 40th anniversary of the Constitutional Court of Chile

The President of the Venice Commission participated in the event organised to celebrate the 40th anniversary of the Constitutional Court of Chile in Santiago de Chile on 8 September 2011.

## Peru

*Amicus curiae* brief on the case of *Santiago Bryson de la Barra et al* (on crimes against humanity) for the Constitutional Court of Peru

In June 2011, the Constitutional Court of Peru requested an *amicus curiae* brief from the Venice Commission on the case *Santiago Brysón de la Barra et al.* (case

No. 1969-2011-PHC/TC) concerning the punishment of crimes against humanity. The Court asked three questions:

1. What case-law has been issued on crimes against humanity by other courts and constitutionally equivalent bodies?
2. How have crimes against humanity been defined and established?
3. On the basis of this case-law, what types of facts have been considered as constituting crimes against humanity?

The Venice Commission provided the following opinion:

As regards the definition of crimes against humanity, there was a general consensus that the category of crimes against humanity emerged in international law (at the latest) by the middle of the 20th century. The case-law indicated a gradual disappearance of the war nexus requirement in the second half of the 20th century, a hesitation over the general policy requirement and an uncertainty about the notion of civilians. Most prosecutions involved murder charges, forced disappearances, extra-judicial killings or deportation, which seemed relatively clear.

As regards legality – *nullum crimen sine lege* –, the Venice Commission explained that the prosecution of past crimes is not considered retroactive or in violation of the principle of legality if it is proved that at the time of their commission, those crimes could have been qualified as crimes against humanity under applicable rules of international law. In that case, prosecution and punishment were foreseeable for perpetrators. Past crimes may also be prosecuted under common criminal legislation.

With respect to statutory limitations for crimes against humanity, the Venice Commission explained that crimes against humanity are largely seen as not having statutory limitations. Finally, the Venice Commission noted that various countervailing factors play a role in the determination of the severity of sentences to be imposed upon perpetrators of past crimes against humanity. Usually, the decision has to be made on an *ad hoc* basis, taking into account the concrete circumstances of the individual case. Yet, there is a clear tendency in Europe and in the international criminal courts' case-law to distinguish between those who ordered the crimes and those who merely executed them and to impose harsher penalties on members of the former group.

The *amicus curiae* brief was adopted by the Venice Commission in October 2011 (CDL-AD(2011)041).



**Co-operation between the Commission  
and organs and bodies of the Council of Europe,  
the European Union and other international organisations**



# VI. Co-operation with organs and bodies of the Council of Europe, the European Union and other international organisations

## 1. Council of Europe

### Committee of Ministers

Representatives of the Committee of Ministers participated in all the Commission's plenary sessions during 2011. The following ambassadors, Permanent Representatives to the Council of Europe, attended the sessions in 2011 (in order of attendance):

- Ambassador Daryal Batibay, Chair of the Ministers' Deputies, Permanent Representative of Turkey;
- Ambassador Gediminas Šerkšnys, Permanent Representative of Lithuania;
- Ambassador Vladimir Ristovski, Permanent Representative of "the former Yugoslav Republic of Macedonia";
- Ambassador Laurent Dominati, Permanent Representative of France;
- Ambassador Aiga Liepina, Permanent Representative of Latvia;
- Ambassador Tomáš Boček, Permanent Representative of the Czech Republic;
- Ambassador Damjan Bergant, Permanent Representative of Slovenia;
- Ambassador Mykola Tochytskyi, Chair of the Ministers' Deputies, Permanent Representative of Ukraine;
- Ambassador Claus von Barnekow, Permanent Representative of Denmark;
- Ambassador Carl Henrik Ehrenkrona, Permanent Representative of Sweden;

- Ambassador Eleanor Fuller, Chair of the Ministers' Deputies, Permanent Representative of the United Kingdom;
- Ambassador Mamuka Jgenti, Permanent Representative of Georgia.

In the framework of the Ukrainian Chairmanship of the Committee of Ministers of the Council of Europe, the President of the Commission discussed with the Ukrainian President Yanukovych the future of the constitutional process in the country (9 June 2011, Kyiv). The Commission also co-organised together with the Constitutional Court of Ukraine, a conference on "the Protection of Human Rights by Bodies of Constitutional Justice: Possibilities and Problems of Individual Access" (15-17 September 2011, Kyiv).

In addition, the Commission started preparing a conference on the rule of law under the United Kingdom Chairmanship to be held on 2 March 2012.

### Parliamentary Assembly

During 2011 the following members of the Assembly attended the plenary sessions of the Venice Commission:

- Mevlüt Çavuşoğlu, President of the Parliamentary Assembly;
- Anne Brasseur, President of the Alliance of Liberals and Democrats for Europe, Rapporteur on Tunisia;
- Andreas Gross, Chair of the Socialist Group;

- Serhiy Holovaty, Member of the Committee on Legal Affairs and Human Rights;
- Lluís Maria de Puig, former President of the Parliamentary Assembly;
- Luca Volonte, Chairperson of the Group of the European People's party.

A number of texts were adopted at the request of the Parliamentary Assembly in 2011, including the opinions on:

- the new Constitution of Hungary;
- the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan;
- the compatibility with universal human rights standards of the Warning addressed by the Ministry of Justice of Belarus to the Belarusian Helsinki Committee;
- the compatibility with universal human rights standards of Article 193-1 of the Criminal Code of Belarus on the rights of non-registered associations in Belarus.

In addition, an opinion on the need for a Code of good practice in the field of funding of electoral campaigns was adopted at the request of the Parliamentary Assembly in 2011 (CDL-AD(2011)020). A study on the rule of law adopted by the Commission in 2011,<sup>1</sup> took as a background Resolution 1594 (2007) of the Parliamentary Assembly of the Council of Europe on "The principle of the rule of law".

In December 2011 the Commission received requests from the PACE to give opinions on five Federal Laws of the Russian Federation and on the law on mass events of Belarus; these will be dealt with by the Commission in 2012.

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1. CDL-AD(2011)003rev, cf. Chapter II.

The Parliamentary Assembly continued to participate actively in the Council for Democratic Elections created in 2002 as a tripartite organ of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. During 2011 a member of the Parliamentary Assembly, M. Andreas Gross chaired the Council for Democratic Elections, and several of its activities were launched at the initiative of the Parliamentary Assembly representatives.

In accordance with the co-operation agreement concluded between the Venice Commission and the Parliamentary Assembly, representatives of the Commission participated in PACE election observation missions in Bulgaria, Kazakhstan, Kyrgyzstan, Morocco, the Russian Federation, "the former Yugoslav Republic of Macedonia" and Tunisia.

The Commission and the PACE exchanged views on the situation in Hungary and Ukraine and discussed questions of mutual interest in Central Asia and North Africa. The complementarity between the Parliamentary Assembly and the Venice Commission's work was noted as an important aspect of the co-operation between the two institutions.

## Congress of Local and Regional Authorities

Mr Lars O. Molin, Chair of the Monitoring Committee of the Congress represented the Congress at the plenary sessions of the Commission in 2011.

The Congress also continued to participate in the Council for Democratic Elections, established in 2002 as a tripartite body of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe.

## European Court of Human Rights

In 2011, the European Court of Human Rights continued to refer to the work of the Venice Commission in its judgments. In the case of *Republican Party of Russia v. Russia* of 12 April 2011 the Court referred to the Guidelines of the Venice Commission on the prohibition and dissolution of political parties and analogous measures (CDL-INF(2000)001), where the Venice Commission found the requirement of regional or territorial representation for political parties to be problematic and recommended that legislation should provide for the possibility of creating parties on a regional or local level. The judgment contains further references to the following Venice Commission documents:

- Joint Recommendations on the electoral law and the electoral administration in Moldova (CDL-AD(2004)027);
- Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev);
- Guidelines and explanatory report on legislation on political parties: some specific issues (CDL-AD(2004)007rev);
- Report on Participation of Political Parties in Elections (CDL-AD(2006)025);
- Comments on the Draft law on political parties of Moldova (CDL-AD(2007)025).

In the Grand Chamber case *Paksas v. Lithuania* of 6 January 2011, the Court also referred to the Code of Good practice on electoral matters and its explanatory report (CDL-AD(2002)023rev).

The case of *United Macedonian Organisation Ilinden-Pirin and others v. Bulgaria* (No. 2, 18 October 2011, referral to the Grand Chamber pending) contains

references to the Guidelines and explanatory report on legislation on political parties: some specific issues (CDL-AD(2004)007rev) and to the Report on the establishment, organisation and activities of political parties (CDL-AD(2004)004). The Commission's opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria (CDL-AD(2009)035) was cited in the judgment concerning the case of *Singartiyski and others v. Bulgaria* of 18 October 2011.

Further, the Report on the Effectiveness of National Remedies in Respect of Excessive Length of Proceedings (CDL-AD(2006)036rev) and the Report on the Consequences of State Succession for Nationality (CDL-NAT(1996)009), were quoted by the Court in the case of *Mc Farlane v. Ireland* of 10 September 2010 and in the case of *Kurić and others v. Slovenia* of 13 July 2010 (referral to the Grand Chamber on 21 February 2011) respectively.

The case of *HADEP and DEMIR v. Turkey* of 14 December 2010 contains references to the Guidelines on the prohibition and dissolution of political parties and analogous methods (CDL-INF(2000)001) and to the opinion on the Constitutional and Legal Provisions Relevant to the Prohibition of Political Parties in Turkey (CDL-AD(2009)006). The Joint Opinion on the Law on the Judicial System and the Status of Judges of Ukraine (CDL-AD(2010)026) was quoted in the case of *Bulanov and Kupchuk v. Ukraine* of 9 December 2010.

In its decisions as to the admissibility of application No. 4588/11 by *Volodymyr Mykolayovych Korzachenko* and of application No. 21722/11 by *Oleksandr Fedorovych Volkov*, both against Ukraine, the Court referred to the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Law Amending Certain Legislative Acts of Ukraine in Relation to the Prevention of Abuse of the Right to Appeal (CDL-AD(2010)029). In the decision

as to the admissibility of application No. 24096/05 by *Vefa Holding sh.p.k and Alimuçaj* against Albania, the European Court of Human Rights quoted Opinion 9/1998 of the Sub-commission on Constitutional Reform of the Venice Commission of 15 April 1998 (CDL-INF(98)9). In a decision as to the admissibility of application No. 3840/10 *Demokratik Toplum Partisi against Turkey and 6 other applications* the Court referred to the Guidelines on political party regulation (CDL-AD(2010)024), to the Opinion on the Constitutional and Legal Provisions relevant to the Prohibition of Political Parties in Turkey (CDL-AD(2009)006) and to the Guidelines of the Venice Commission on prohibition and dissolution of political parties and analogous measures (CDL-INF(2000)001).

## 2. European Union

In 2011 the co-operation between the Venice Commission and the European Union intensified, especially with the European Parliament. The Venice Commission participated in meetings organised by the European Parliament on Hungary, Turkey and the Arab countries. The Venice Commission maintained close co-operation with the European Union in particular with respect to constitutional issues in Bosnia and Herzegovina, Moldova and Ukraine and judicial reforms in Serbia and Turkey. Technical consultations with the European Commission were held on the developments in the Balkans, Moldova, and Turkey as well as in Central Asia and North Africa. The European Union repeatedly invited States to follow the Venice Commission's recommendations.

The President and the Secretary of the Commission participated in the **Turkey-EU Joint Parliamentary Committee** meetings and informed the Committee on the state of legal and constitutional reform in Turkey

### Committee of experts on the participation of people with disabilities in political and public life (CAPAH)

During 2011 the Venice Commission continued its co-operation with the Committee of Experts on the participation of people with disabilities in political and public life (CAPAH). In particular, the Commission exchanged views with the Committee in the framework of the preparation of a revised Interpretative Declaration to the Code of Good Practice in Electoral Matters on the participation of people with disabilities in elections. This revised interpretative declaration was adopted by the Council for Democratic Elections and the Venice Commission in December 2011 (CDL-AD(2011)045).

(21-22 February in Antakia and 29 November in Brussels, respectively).

The Secretary of the Venice Commission made a presentation to the EU Working Party on the OSCE and the Council of Europe (COSCE) about activities of the Venice Commission in the Western Balkans, Central Asia and North Africa (20 May 2011, Brussels). He also presented the Commission's then forthcoming opinion on the new Hungarian constitution to the **European Parliament Committee on Civil Liberties, Justice and Home Affairs** (25 May 2011, Brussels). The Commission was represented at a round table organised by the **Group of the Progressive Alliance of Socialists & Democrats** in the European Parliament on "Elections and democratic transition in Tunisia: An historic opportunity?" (Brussels, 21 September 2011).

**The European Commission**, represented by its Legal Service, as well as the President of the Committee for

citizenship, governance, institutional and external affairs of the Committee of the Regions (CIVEX) participated in all plenary sessions of the Venice Commission during 2011.

## Joint European Union-Council of Europe Programmes<sup>2</sup>

Throughout the year 2011 the Venice Commission continued to implement the joint programmes concerning the implementation of the new Constitution in **Bolivia**, the EU Rule of Law Initiative for **Central Asia** and on the constitutional reform in **Kyrgyzstan**. Also, in 2011 the Commission started implementing a part of the **Eastern Partnership Programme**, funded by the European Union, on the strengthening of electoral administrations of the six beneficiary countries – Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. In December 2011 a new Joint Programme for **Kazakhstan** was also launched.

## Eastern Partnership Facility

Within the framework of the Council of Europe Eastern Partnership Facility programme which aims to provide

support to the reform processes in the six partner countries – Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine –, in 2011 the Venice Commission started implementing one of the specific objectives of the programme, namely facilitating the co-operation regarding the administration of elections and, in particular taking concrete action aimed at the further integration of Council of Europe electoral standards into the legislation and practice of the six beneficiary countries. The Programme covers core areas covered by the EU Eastern Partnership Platform 1 “Democracy, good governance and stability” and is financed by the European Commission.

Two activities took place in the framework of this programme (see *supra* chapter IV):

- A launching meeting at the occasion of the 8th European Conference of Electoral Management Bodies (Vienna, 13 May 2011);
- A meeting on voters’ lists management and the electoral disputes’ resolution, in Chisinau on 22-23 September 2011.

## 3. OSCE

On 18-20 May 2011, the Venice Commission took part at the OSCE Human Dimension Meeting (HDIM) on the Role of Political Parties in the Electoral Process.

The Deputy Secretary of the Commission moderated a working session during a Human Dimension Implementation Meeting (HDIM) (Warsaw, 27 September 2011).

## OSCE/ODIHR

### Fundamental rights and freedoms

In 2011, the Venice Commission pursued its close co-operation with the OSCE/ODIHR through the preparation and adoption of several joint opinions:

- Joint opinion on the draft law on freedoms of conscience and religion and on the laws making

2. Further information on these Joint Programmes can be found in Chapter V.

amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of **Armenia** and the Holy Armenian Apostolic Church of the Republic of Armenia (CDL-AD(2011)028); Representatives of both the Venice Commission and the OSCE/ODIHR participated in two series of working meetings with the Armenian authorities prior to and after the adoption of the above-mentioned opinion;

- Joint opinion on the law on the protector of human rights and freedoms of **Montenegro** (CDL-AD(2011)034);
- Joint opinion on the draft law on freedom of peaceful assembly of **Ukraine** (CDL-AD(2011)031).

Work on the revision of the joint OSCE/ODIHR **Guidelines on Freedom of Religion** continued in 2011.

#### Joint work on the judiciary

Apart from participating in seminars on the judiciary organised in several member states in 2011, the Commission and the OSCE/ODHIR, have jointly prepared the opinion on the constitutional law on the judicial system and status of judges of Kazakhstan. The request came from the Chairman of the Supreme Court of Kazakhstan; the opinion (CDL-AD(2011)012) was adopted in June 2011.

#### Elections, Referendums and Political parties

During 2011 the Venice Commission continued its close co-operation with the OSCE/ODIHR in the field of elections and political parties. All opinions in the electoral field (concerning Albania, Armenia, Bulgaria, Georgia, Kyrgyzstan, Montenegro, Serbia, « the former Yugoslav

Republic of Macedonia », and Ukraine) were drawn up jointly as well as the opinions on the legislation on political parties in Georgia and in Serbia. The OSCE/ODIHR regularly participated in the meetings of the Council for Democratic Elections.

#### Conference on Guidelines on the regulation of political parties (Istanbul, 5-6 September 2011)

*See IV.2 above.*

#### OSCE High Commissioner on National Minorities

Co-operation between the OSCE High Commissioner on National Minorities (HCNM) and the Venice Commission was pursued, in particular through informal consultation and co-ordination in the context of the assessment of country specific legislation, such as the two Ukrainian draft laws relating to language protection examined by the two bodies in 2011.

#### Other issues

The President of the Commission participated in the celebration of the 20th anniversary of the OSCE/ODIHR and the opening of its new premises (Warsaw, 17 May 2011). The OSCE/ODIHR participated in:

- all plenary sessions of the Commission in 2011 as well as all meetings of the Council for Democratic Elections;
- the 8th European Conference of Electoral Management Bodies – “Elections in a changing world” co-organised by the Venice Commission and the Ministry of Internal Affairs of Austria on 12-13 May 2011 in Vienna.

## 4. United Nations

The Venice Commission participated in the Special Meeting of the United Nations Security Council Counter-Terrorism Committee (CTC) with international, regional and sub-regional organisations (19-21 April 2011, Strasbourg). A member of the Commission presented its work on “Counter-terrorism measures and human rights”.

The Venice Commission was represented at a workshop on a human rights compliant framework for vetting of members of the security and justice sectors (Geneva, 15-16 November 2012).

## 5. Other International bodies

### Constitutional justice, ordinary justice and ombudsman

#### Association of Constitutional Courts using the French Language (ACCPUF)

The Venice Commission participated in the 6th Conference of Heads of Institution of ACCPUF on the “Status of the Constitutional Court Judge”, which took place in Niamey, Niger, on 2-4 April 2011.

#### Conference of Constitutional Control Organs of Countries of Young Democracy

As part of its co-operation with the Conference of Constitutional Control Organs of Countries of Young Democracy, the Venice Commission co-organised the XVIth Yerevan International Conference to celebrate the 15th anniversary of the Constitutional Court of Armenia, held in Yerevan and Jermuk, Armenia on 5-8 October 2011.

#### Conference of European Constitutional Courts

The Venice Commission participated in the XVth Congress of the Conference of European Constitutional Courts in Bucharest, Romania, on

23-25 May 2011. The Statute for the World Conference on Constitutional Justice as a permanent body was adopted by its Bureau at this Congress.

#### Association of African Constitutional Courts and Councils

The Venice Commission participated in the founding congress of the Association of African Constitutional Courts and Councils held in Algiers, Algeria on 7-8 May 2011.

#### European Network of Councils for the Judiciary (ENCJ)

The Venice Commission participated in a meeting of the ENCJ Project team in Brussels on 24-25 January 2011.

#### Union of Arab Constitutional Courts and Councils (UACCC)

The President of the Venice Commission participated in the 7th Colloquium of the UACCC on “Constitutional justice and the separation of powers”, hosted by the Constitutional Court of Lebanon in Beirut on 24-25 October 2011.

### Conference of Constitutional Jurisdictions using the Portuguese Language

The Venice Commission participated in a seminar organised by the Conference of Constitutional Jurisdictions using the Portuguese Language on the “Right to access to constitutional justice”, held in Luanda, Angola, on 24 March 2011.

### International Organisation of the Francophonie (OIF)

The OIF kindly supports the Venice Commission by financing a part of the translation into French of contributions to the Bulletin on Constitutional Case-Law from member and observer states of the OIF.

### Elections, referendums and political parties

#### Association of European Election Officials (ACEEEO)

On 17 June 2011 the Venice Commission participated in Budapest in the 20th Anniversary (Jubilee) Conference

of ACEEEO (Association of European Election Officials) which addressed the independence of electoral administrations and presented a report on this subject.

#### Inter-American Union of Electoral Bodies (UNIORE)

The President of the Venice Commission participated in the extraordinary session of the Inter-American Union of Electoral Bodies which took place on 9-10 November 2010 in Mexico City, Mexico.

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Further information on the member States of the Enlarged Agreement, individual members of the Commission, Meetings held and opinions adopted as well as the list of the Commission’s publications is available on the Venice Commission’s web site at : <http://www.venice.coe.int>

**Appendices**



## List of member countries

### Members

Albania (14.10.1996)  
 Algeria (01.12.2007)  
 Andorra (01.02.2000)  
 Armenia (27.03.2001)  
 Austria (10.05.1990)  
 Azerbaijan (01.03.2001)  
 Belgium (10.05.1990)  
 Bosnia and Herzegovina (24.04.2002)  
 Brazil (01.04.2009)  
 Bulgaria (29.05.1992)  
 Chile (01.10.2005)  
 Croatia (01.01.1997)  
 Cyprus (10.05.1990)  
 Czech Republic (01.11.1994)  
 Denmark (10.05.1990)  
 Estonia (03.04.1995)  
 Finland (10.05.1990)  
 France (10.05.1990)  
 Georgia (01.10.1999)  
 Germany (03.07.1990)  
 Greece (10.05.1990)  
 Hungary (28.11.1990)  
 Iceland (05.07.1993)  
 Ireland (10.05.1990)  
 Israel (01.05.2008)  
 Italy (10.05.1990)

Kazakhstan (09.11.2011)  
 Republic of Korea (01.06.2006)  
 Kyrgyzstan (01.01.2004)  
 Latvia (11.09.1995)  
 Liechtenstein (26.08.1991)  
 Lithuania (27.04.1994)  
 Luxembourg (10.05.1990)  
 Malta (10.05.1990)  
 Mexico (03.02.2010)  
 Moldova (25.06.1996)  
 Monaco (05.10.2004)  
 Montenegro (20.06.2006)  
 Morocco (01.06.2007)  
 Netherlands (01.08.1992)  
 Norway (10.05.1990)  
 Peru (11.02.2009)  
 Poland (30.04.1992)  
 Portugal (10.05.1990)  
 Romania (26.05.1994)  
 Russian Federation (01.01.2002)  
 San Marino (10.05.1990)  
 Serbia (03.04.2003).  
 Slovakia (08.07.1993)  
 Slovenia (02.03.1994)  
 Spain (10.05.1990)  
 Sweden (10.05.1990)  
 Switzerland (10.05.1990)  
 "the former Yugoslav Republic of

Macedonia" (19.02.1996)  
 Tunisia (01.04.2010)  
 Turkey (10.05.1990)  
 Ukraine (03.02.1997)  
 United Kingdom (01.06.1999)

### Associate member

Belarus (24.11.1994)

### Observers

Argentina (20.04.1995)  
 Canada (23.05.1991)  
 Holy See (13.01.1992)  
 Japan (18.06.1993)  
 United States (10.10.1991)  
 Uruguay (19.10.1995)

### Participants

European Union  
 OSCE/ODIHR  
 International Association of  
 Constitutional Law (IACL)

### Special co-operation status

Palestinian National Authority  
 South Africa

## List of members<sup>1</sup>

Mr Gianni BUQUICCHIO (Italy), President, Former Director, Council of Europe

(Substitutes: Mr Sergio BARTOLE, Former Professor, University of Trieste

Mr Guido NEPPI MODONA, Professor, University of Turin)

\*\*\*

Mr Jan HELGESEN (Norway), First Vice-President, Professor, University of Oslo

(Substitute: Mr Fredrik SEJERSTED, Professor, University of Oslo)

Ms Finola FLANAGAN (Ireland), Coordinator of EU and ECHR Law, Office of the Attorney General

(Substitute: Mr James HAMILTON, Former Director of Public Prosecutions, President, International Association of Prosecutors)

Mr Peter PACZOLAY (Hungary), President, Constitutional Court

(Substitute: Mr Laszlo TROCSANYI, Ambassador of Hungary to France, Judge, Constitutional Court, Professor of Constitutional Law, University of Szeged)

\*\*\*

Mr Ergun ÖZBUDUN (Turkey), Professor, Department of Political Science, University of Bilkent, Vice-President of the Turkish Foundation for Democracy

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

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

Mr Aivars ENDZINS (Latvia), Head of Department of Public Law, Turība School of Business Administration, Former President, Constitutional Court

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

(Substitute: Ms Tuula MAJURI, Counsellor on Legislation, Ministry of Justice)

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

(Substitute: Mr Ben VERMEULEN, Professor of Constitutional, Administrative and Education Law, University of Amsterdam)

Mr Gagik HARUTUNIAN (Armenia), President, Constitutional Court

(Substitute: Mr Grigor MURADYAN, First Deputy Minister of Justice)

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

Ms Lydie ERR (Luxembourg), Member of Parliament

(Substitute: Mr Marc FISCHBACH, Mediator)

Mr Ugo MIFSUD BONNICI (Malta), President Emeritus

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1. By order of seniority.

Mr Vojin DIMITRIJEVIC (Serbia), Professor of Public International Law, Union University School of Law, Director, Belgrade Human Rights Centre

(Substitute: Mr Vladimir DJERIC, Lawyer)

Mr Lätif HÜSEYNOV (Azerbaijan), Professor of Public International Law, Baku State University

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

(Substitute: Mr Christophe SOSSO, Defence Lawyer, Court of Appeal)

Mr Nicolae ESANU (Moldova), Former Deputy Minister of Justice

(Substitute: Ms Rodica SECRIERU, Adviser, Ministry of Justice)

Mr Oliver KASK (Estonia), Judge, Tallinn Court of Appeal

(Substitute: Ms Berit AAVIKSOO, Lecturer in Constitutional Law, University of Tartu)

Mr Valeriy ZORKIN (Russia), President of the Constitutional Court

(Substitute: Mr Sergey MAVRIN, Vice-President, Constitutional Court)

Mr Jean-Claude COLLIARD (France), President of the Université Paris 1 – Panthéon-Sorbonne, Former Member of the Constitutional Council

(Substitutes: Ms Jacqueline DE GUILLENCHMIDT, State Councillor, Member, Constitutional Council

Mr Hubert HAENEL, Member, Constitutional Council)

Mr Christoph GRABENWARTER (Austria), Judge, Constitutional Court

(Substitutes: Ms Gabriele KUCSKO-STADLMAYER, Professor, University of Vienna)

Mr Kurt HELLER, Honorary Professor of the University of Linz, Former Justice of the Constitutional Court

Ms Gret HALLER (Switzerland), Former Speaker of the Swiss Parliament

(Substitute: Ms Monique JAMETTI GREINER, Vice-Director, Head of the international relations Department, Federal Office of Justice)

Ms Kalliopi KOUFA (Greece), Former Professor of International Law, Aristote University, Thessaloniki

(Substitute: Ms Fani DASKALOPOULOU-LIVADA, Director, International Law Department, Ministry of Foreign Affairs)

Mr Frixos NICOLAIDES (Cyprus), Supreme Court Judge

(Substitute: Mr Myron NICOLATOS, Supreme Court Judge)

Mr Jan VELAERS (Belgium), Professor, University of Antwerp

(Substitute: Mr Jean-Claude SCHOLSEM (Belgium), Professor, Law Faculty, University of Liège)

Mr Lucian MIHAI (Romania), Professor, Faculty of Law, University of Bucharest, Former President of the Constitutional Court

(Substitute: Mr Bogdan AURESCU, Secretary of State for Strategic Affairs, Ministry of Foreign Affairs)

Mr Srdjan DARMANOVIC (Montenegro), Ambassador of Montenegro to the United States of America

(Substitute: Mr Zoran PAZIN, Lawyer)

Mr Harry GSTÖHL (Liechtenstein), Former President of the Constitutional Court, Princely Justice Counsellor, Attorney at Law

(Substitute: Mr Wilfried HOOP, Partner, Hoop and Hoop)

Ms Maria Fernanda PALMA (Portugal), Professor, University of Lisbon, Former Judge, Constitutional Court

(Substitute: Mr Pedro BACELAR de VASCONCELOS, Professor of Constitutional Law, Minho University)

Mr Jorgen Steen SORENSEN (Denmark), Parliamentary Ombudsman, Former Director of Public Prosecutions

(Substitute: Mr Michael Hansen JENSEN, Professor, University of Aarhus)

Ms Ivetta MACEJKOVA (Slovakia), President, Constitutional Court

(Substitute: Mr Drahoslav STEFANEK, Director General for Global Challenges, Human Rights, UN, International Organisations and Culture, Ministry of Foreign Affairs)

Mr Wolfgang HOFFMANN-RIEM (Germany), Former Judge, Federal Constitutional Court

(Substitute: Ms Anne PETERS, Chair of public international law and Swiss constitutional law, Basel University)

Mr George PAPUASHVILI (Georgia), President, Constitutional Court

(Substitute: Mr Konstantin VARDZELASHVILI, Deputy President, Constitutional Court)

Mr Klemen JAKLIC (Slovenia), Professor of constitutional law

(Substitute: Mr Peter JAMBREK, 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)

Mr Viktor GUMI (Albania), General Director of Codification, Ministry of Justice

Mr Abdellatif MENOUNI (Morocco), Adviser to His Majesty the King, Professor, Law Faculty, Rabat University

(Substitute: Mr Abdelaziz LAMGHARI, Professor, Public Law Department, Rabat)

Ms Gordana SILJANOVSKA-DAVKOVA (“the former Yugoslav Republic of Macedonia”), Professor of law, University “Ss Cyril and Methodius”

(Substitute: Ms Tanja KARAKAMISHEVA, Professor, Law Faculty, University St. Cyril and Methodius, Judge, Constitutional Court)

Mr Evgeni TANCHEV (Bulgaria), President, Constitutional Court

(Substitute: Mr Plamen KIROV, Judge, Constitutional Court)

Mr Dan MERIDOR (Israel), Deputy Prime Minister, Minister of Intelligence and Atomic Energy

(Substitute: Mr Eyal BENVENISTI, Professor, Tel Aviv University)

Ms Marina STAVNIYCHUK (Ukraine), Deputy Head of the Presidential Secretariat

(Substitute: Mr Sergii KIVALOV, Chairman, Committee on Justice, Verkhovna Rada of Ukraine)

Mr Iain CAMERON (Sweden), Professor, University of Uppsala

(Substitute: Mr Johan HIRSCHFELDT, Former President, Svea Court of Appeal)

Mr Carlos MESIA RAMIREZ (Peru), Vice-President, Constitutional Tribunal

(Substitute: Mr Ernesto FIGUEROA BERNARDINI, Secretary Rapporteur, Constitutional Tribunal)

- Mr Gilmar Ferreira MENDES (Brazil), Justice, Former President, Federal Supreme Court  
(Substitute: Mr Antonio PELUSO, President, Federal Supreme Court)
- Mr Boualem BESSAÏH (Algeria), President, Constitutional Council  
(Substitutes: Mr Mohamed HABCHI, Member, Constitutional Council  
Mr Hachemi ADALA, Member, Constitutional Council)
- Ms Maria del Carmen ALANIS FIGUEROA (Mexico), Justice, Federal Electoral Tribunal  
(Substitute: Mr Manuel GONZALEZ OROPEZA, Magistrate, Federal Electoral Tribunal)
- Mr Fathi ABDENNADHER (Tunisia), Former President, Constitutional Council  
(Substitute: Mr Rfaaa BEN ACHOUR, Ambassador of Tunisia to Morocco, Professor of Law)
- Mr Kestutis JANKAUSKAS (Lithuania), Director of Law Department, Constitutional Court  
(Substitute: Ms Vygante MILASIUTE, Head of International Agreement Law Division, Ministry of Justice)
- Mr Miquel Àngel CANTURRI MONTANYA (Andorra), Ambassador of Andorra to the Holy See
- Mr Young Joon MOK (Republic of Korea), Justice, Constitutional Court  
(Substitute: Mr Boohwan HAN, Attorney at Law, Former Vice-Minister of Justice)
- Ms Herdis THORGEIRSDOTTIR (Iceland), Professor, Faculty of Law, Bifrost School of Business  
(Substitutes: Mr Hjörtur TORFASON, Former Judge, Supreme Court of Iceland  
Mr Pall HREINSSON, Supreme Court Judge)
- N.N. (Kyrgyzstan)<sup>2</sup>.
- Ms Jasna OMEJEC (Croatia), President, Constitutional Court  
(Substitute: Ms Slavica BANIC, Judge, Constitutional Court)
- Ms Paloma BIGLINO CAMPOS (Spain), Full Professor of Constitutional Law, Valladolid University, Director, Centre for Political and Constitutional Studies
- Ms Veronika BILKOVA (Czech Republic), Lecturer, Law Faculty, Charles University  
(Substitute: Ms Katerina SIMACKOVA, Judge, Supreme Administrative Court)
- Mr Francesco MAIANI (San Marino), Assistant Professor, Swiss Graduate School of Public Administration  
(Substitute: Ms Barbara REFFI, State Attorney)
- Mr Hernan VODANOVIC SCHNAKE (Chile), Judge, Constitutional Court  
(Substitute: Ms Marisol PENA TORRES, Judge, Constitutional Court)
- Mr Richard CLAYTON QC (United Kingdom), Barrister at Law  
(Substitute: Mr Paul CRAIG, Professor of Law, University of Oxford)

## Associate members

- Mr Alexander V. MARYSKIN (Belarus), Deputy Chairman, Constitutional Court

<sup>2</sup>. Member resigned on 7 July 2010. A new member has not yet been appointed.

## Observers

N.N. (Argentina)

N.N. (Canada)

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

Mr Hideaki GUNJI (Japan), Consul, Consulate General of Japan, Strasbourg

Mr Almaz N. KHAMZAYEV (Kazakhstan), Ambassador of Kazakhstan in Rome

Ms Sarah CLEVELAND (United States of America), Professor, Columbia Law School

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

## Special Status

### European Commission

Mr Lucio GUSSETTI, Director, Legal Department

Mr Esa PAASIVIRTA, Legal Adviser

### Palestinian National Authority

Mr Ali KHASHAN, Minister of Justice, Ministry of Justice

### South Africa

N. N.

### Secrétariat

Mr Thomas MARKERT, Director, Secretary of the Commission

Ms Simona GRANATA-MENGHINI, Deputy Secretary of the Commission

Mr Pierre GARRONE, Head of the Division on Elections and Referendums

Mr Rudolf DÜRR, Head of the Division on Constitutional Justice

Ms Artemiza-Tatiana CHISCA, Head of the Division on Democratic Institutions and Fundamental Rights

Mr Serguei KOUZNETSOV, Legal Officer

Ms Charlotte de BROUDELLES, Legal Officer

Ms Caroline MARTIN, Legal Officer

Ms Tanja GERWIEN, Legal Officer

Ms Dubravka BOJIC, Legal Officer (until August 2011)

Mr Gaël MARTIN-MICALLEF, Legal Officer

Ms Amaya UBEDA DE TORRES, Legal Officer

Ms Tatiana MYCHELOVA, Public Relations Officer

Ms Svetlana ANISIMOVA, Project Manager

Ms Sandra MATRUNDOLA, Project Manager (until July 2011)  
Ms Helen MONKS, Financial Officer  
Ms Brigitte AUBRY  
Ms Marian JORDAN  
Mrs Brigitte RALL  
Ms Ana GOREY  
Mrs Caroline GODARD  
Mrs Marie-Louise WIGISHOFF  
Ms Théa CHUBINIZE  
Ms Rosy DI POL (until July 2011)  
Ms Isabelle SUDRES

## Offices and sub-commissions

President: Mr Buquicchio

First Vice-President and Chair of the Scientific Council: Mr Helgesen

Vice-Presidents: Ms Flanagan, Mr Paczolay

Bureau: Mr Endzins, Ms Koufa, Mr Lee and Mr Zorkin

Conseil scientifique: Mr Helgesen (Chair), Mr Buquicchio, Ms Flanagan, Mr Paczolay, Mr Dimitrijevic, Mr Esanu, Mr Hoffmann-Riem, Mr van Dijk and Mr Jowell

### Council for Democratic Elections:

President: Mr Gross (Parliamentary Assembly)

Vice-President: Mr Colliard

Venice Commission – Members: Mr Mifsud Bonnici, Mr Paczolay, Mr Torfason

(Substitutes: Ms Alanis Figueroa, Mr Darmanovic, Mr Jaklic, Mr Kask)

Parliamentary Assembly – Members: Ms Josette Durrieu, Mr Andreas Gross, Ms Karin Woldseth

(Substitutes: Mr Michael Hancock, Ms Marietta de Pourbaix-Lundin)

Congress of local and regional authorities – Members: Mr Ian Micallef, Mr Keith Whitmore

(Substitute: Mr Jean-Claude Frécon)

### Joint Council on Constitutional Justice:

Chair: Mr Grabenwarter: Members : Ms. Aaviksoo, Ms Alanis Figueroa, Ms Banic, Mr Barany, Mr Bradley, Mr Gonzalez Oropeza, Ms de Guillenchmidt, Mr Gumi, Mr A. Harutunian, Mr G. Harutunian, Mr Jankauskas, Mr Kask, Mr Lee, Ms Macejkova, Mr Mendes, Mr Mihai, Mr Neppi Modona, Ms Omejec, Ms Palma, Mr Papuashvili, Mr Pazin, Ms Pena Torres, Ms Siljanovska-Davkova, Ms Simackova, Ms Stavnychuk, Ms Thorgeirsdottir, Mr Torfason, as well as 90 liaison officers from 65 Constitutional Courts or Courts with equivalent jurisdiction

### Federal State and Regional State:

Chair: Mr Hoffmann-Riem: Members: Mr Scholsem, Mr Velaers

### International Law:

Chair: Mr Dimitrijevic: Members: Mr Aurescu, Mr Cameron, Mr Hüseyinov, Ms Koufa, Mr Mifsud Bonnici, Ms Milasiute, Ms Peters, Ms Simackova

## Protection of Minorities:

Chair: Mr Velaers : Members: Mr Aurescu, Mr Bartole, Mr Bessaïh, Mr Habchi, Mr Hamilton, Ms Koufa, Mr Mifsud Bonnici, Ms Peters, Mr Scholsem, Ms Siljanovska-Davkova, Mr Tuori

## Fundamental Rights:

Chair: Mr Tuori: Members: Ms Aaviksoo, Ms Alanis Figueroa, Mr Aurescu, Ms Banic, Mr Bradley, Mr Cameron, Mr van Dijk, Ms Err, Mr Esanu, Mr Gonzalez Oropeza, Mr Gstöhl, Mr Haenel, Ms Haller, Mr Heller, Mr Hirschfeldt, Mr Huseynov, Mr Kask, Ms Koufa, Mr Mifsud Bonnici, Ms Milasiute, Ms Omejec, Mr Papuashvili, Mr Pazin, Ms Thorgeirsdottir, Mr Torfason, Mr Velaers, Mr Zorkin

## Democratic Institutions:

Chair: Mr Jowell: Members: Mr Bartole, Mr Cameron, Mr Darmanovic, Ms Err, Mr Esanu, Mr Gstöhl, Ms Haller, Mr Hamilton, Mr A. Harutunian, Mr Hirschfeldt, Mr Jensen, Mr Kask, Mr Mendes, Mr Nicolatos, Mr Özbudun, Mr Papuashvili, Mr Scholsem, Mr Sejersted, Ms Siljanovska-Davkova, Ms Thorgeirsdottir, Mr Torfason, Mr Tuori

## Judiciary:

Chair: Ms Suchocka: Members: Mr Bartole, Mr Bessaïh, Mr Bradley, Mr Canturri Montanya, Mr van Dijk, Ms Err, Mr Esanu, Mr Gstöhl, Ms de Guillenchmidt, Mr Habchi, Mr Hamilton, Mr Hirschfeldt, Mr Kask, Mr Mendes, Mr Mihai, Mr Neppi Modona, Mr Nicolatos, Mr Papuashvili, Mr Pazin, Ms Simackova, Mr Torfason

## External Relations:

Chair: Mr Mifsud Bonnici

## Working Methods

Chair: Mr van Dijk: Members: Mr Dimitrijevic, Ms Haller, Mr Hoffmann-Riem, Mr Mifsud Bonnici, Mr Sejersted

## Latin America

Chair: Ms Alanis Figueroa: Members: Messrs Buquicchio, Darmanovic, Ms Flanagan, Messrs Gonzalez Oropeza, Hirschfeldt, Ms Palma, Mr Paczoly, Messrs Mendez, Mesia Ramirez and Ms Siljanovska-Davkova

## List of publications of the Venice Commission

### Series – Science and Technique of Democracy<sup>1</sup>

- No.1 Meeting with the presidents of constitutional courts and other equivalent bodies<sup>2</sup> (1993)
- No.2 Models of constitutional jurisdiction\* <sup>3</sup> (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\* (1993)
- No.7 Rule of law and transition to a market economy<sup>2</sup> (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\* (1995)
- No.13 Implementation of constitutional provisions regarding mass media in a pluralist democracy<sup>2</sup> (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 21<sup>st</sup> 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)

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1. Publications are also available in French unless otherwise indicated.

2. Speeches in the original language (English or French).

3. Publications marked with \* are also available in Russian.

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- 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 resolution<sup>2</sup> (2000)
- No.30 European Integration and Constitutional Law (2001)
- No.31 Constitutional implications of accession to the European Union<sup>2</sup> (2002)
- No.32 The protection of national minorities by their kin-State<sup>2</sup> (2002)
- No.33 Democracy, Rule of Law and Foreign Policy<sup>2</sup> (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 Court<sup>2</sup> (2003)
- No.36 Constitutional Courts and European Integration<sup>4</sup> (2004)
- No.37 European and U.S. Constitutionalism<sup>4</sup> (2005)
- No.38 State Consolidation and National Identity<sup>4</sup> (2005)
- No 39 European Standards of Electoral Law in Contemporary Constitutionalism<sup>1</sup> (2005)
- No 40 Evaluation of fifteen years of constitutional practice in Central and Eastern Europe\* (2005)
- No 41 Organisation of elections by an impartial body<sup>4</sup> (2006)
- No 42 The status of international treaties on human rights<sup>4</sup> (2006)
- No 43 The preconditions for a democratic election<sup>4</sup> (2006)
- No 44 Can excessive length of proceedings be remedied?<sup>4</sup> (2007)
- No 45 The participation of Minorities in public life<sup>4</sup> (2008)
- No 46 The cancellation of election results<sup>4</sup> (2010)
- No 47 Blasphemy, insult and hatred<sup>4</sup> (2010)
- No 48 Supervising electoral processes<sup>4</sup> (2010)
- No 49 Definition of and development of human rights and popular sovereignty in Europe<sup>4</sup> (2011)

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4. Available in English only.

## Other publications

### Collection “Points of view – points of law”

- Guantanamo – violation of human rights and international law? (2007)
- The CIA above the laws? Secret detentions and illegal transfers of detainees in Europe (2008)
- Armed forces and security services: what democratic control? (2009)

### Collection “Europeans and their rights”

- The right to life (2005)
- Freedom of religion (2007)
- Child rights in Europe (2008)
- Freedom of expression (2009)

### Other titles

- Tackling blasphemy, insult and hatred in a democratic society (2008)
- Electoral Law (2008)
- European Conferences of Electoral Management Bodies
  - 2nd Conference (Strasbourg, 2005)
  - 3rd Conference (Moscow, 2006)
  - 4th Conference (Strasbourg, 2007)
  - 5th Conference (Brussels, 2008)
  - 6th and 7th Conference (The Hague, 2009 and London 2010)<sup>5</sup>

### Bulletin on Constitutional Case-Law

1993-2011 (three issues per year)

### Special Bulletins

- Description of Courts (1999)\*
- Basic texts – extracts from Constitutions and laws on Constitutional Courts – issues Nos 1-2 (1996), Nos 3-4 (1997), No.5 (1998), No.6 (2001), No.7 (2007), No.8 (2011)
- Leading cases of the European Court of Human Rights (1998)\*

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5. Available only in electronic form.

- Freedom of religion and beliefs (1999)
- Special Edition Leading cases 1 – Czech Republic, Denmark, Japan, Norway, Poland, Slovenia, Switzerland, Ukraine (2002)
- Special Edition Leading cases 2 – Belgium, France, Hungary, Luxembourg, Romania, USA (2008)
- Inter-Court Relations (2003)
- Statute and functions of Secretary Generals of Constitutional courts (2006)
- Criteria for Human Rights Limitations by the Constitutional Court (2006)
- Legislative Omission (2008)

### Annual Reports

- 1993-2011

### Brochures

- 10th anniversary of the Venice Commission (2001)
- Revised Statute of the European Commission for Democracy through Law (2002)
- UniDem Campus – Legal training for civil servants (2003)<sup>6</sup>
- 20th Anniversary – Publications (2010)
- Selected studies and reports (2010)
- Key Facts (2011)<sup>7</sup>
- Services provided by the Venice Commission to Constitutional Courts and equivalent bodies (2011)
- Code of Good Practice in Electoral Matters (2011)<sup>8</sup>

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6. Also available in Italian.

7. Also available in Russian and Spanish.

8. Also available in Arabic, Russian and Spanish.

## List of documents adopted in 2011

### 86th plenary session (Venice, 25-26 March 2011)

- CDL-AD(2011)001 Opinion on three legal questions arising in the process of drafting the new Constitution of Hungary
- CDL-AD(2011)002 Opinion on the concept paper on the establishment and functioning of a Constitutional assembly of Ukraine
- CDL-AD(2011)003rev Report on the rule of law
- CDL-AD(2011)004 Opinion on the draft Law on judges and prosecutors of Turkey
- CDL-AD(2011)005 Joint Opinion<sup>1</sup> on the draft Law on “altering and amending the Law on election of members of Parliament” of the Republic of Serbia
- CDL-AD(2011)006 Joint Opinion on the revised draft Law on financing political activities of the Republic of Serbia
- CDL-AD(2011)007 Opinion on the draft Organic Law of the Public Prosecutor’s Office of Bolivia
- CDL-AD(2011)008 Opinion on the draft Law on languages in Ukraine
- CDL-AD(2011)009 Stocktaking on the notions of “good governance” and “good administration”

### 87th plenary session (Venice, 17-18 June 2011)

- CDL-AD(2011)010 Opinion on the draft amendments to the Constitution of Montenegro, as well as on the draft amendments to the Law on courts, the Law on the state prosecutor’s office and the Law on the judicial council of Montenegro
- CDL-AD(2011)011 Joint Opinion on the draft Law on amendments to the Law on election of councillors and members of Parliament of Montenegro
- CDL-AD(2011)012 Joint Opinion on the constitutional Law on the judicial system and status of judges of Kazakhstan
- CDL-AD(2011)013 Joint Opinion on the election code of Bulgaria
- CDL-AD(2011)014 *Amicus Curiae* Brief on three questions related to Article 78 of the Constitution of the Republic of Moldova

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1. Title “Joint Opinion” refers to the opinions drafted jointly by the Venice Commission and the OSCE/ODIHR unless specified otherwise.

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CDL-AD(2011)015	Interim Opinion on the draft decisions of the high judicial council and of the state prosecutorial council on the implementation of the Laws on the amendments to the Laws on judges and on the public prosecution of Serbia
CDL-AD(2011)016	Opinion on the new Constitution of Hungary
CDL-AD(2011)017	Opinion on the introduction of changes to the constitutional Law “on the status of judges” of Kyrgyzstan
CDL-AD(2011)018	Opinion on the draft constitutional Law on the constitutional chamber of the Supreme Court of Kyrgyzstan
CDL-AD(2011)019	Opinion on the draft Law on the council for the selection of judges of Kyrgyzstan
CDL-AD(2011)020	Opinion on the need for a code of good practice in the field of funding of electoral campaigns
CDL-AD(2011)021	Joint interim Opinion on the new draft electoral code of Armenia
CDL-AD(2011)022	Report on out-of-country voting
CDL-AD(2011)023	Opinion on the sixth revised draft Act on forfeiture of assets acquired through criminal activity or administrative violations of Bulgaria
CDL-AD(2011)024	Opinion on the draft Law supplementing the penitentiary code of Armenia
CDL-AD(2011)025	Joint Opinion on the draft Law on presidential and parliamentary elections, the draft Law on elections to local governments and the draft Law on the formation of election commissions of the Kyrgyz Republic
CDL-AD(2011)026	Opinion on the compatibility with universal human rights standards of an official warning addressed by the Ministry of Justice of Belarus to the Belarusian Helsinki Committee

### 88th plenary session (Venice, 14-15 October 2011)

CDL-AD(2011)027	Joint Opinion on the revised electoral code of “the former Yugoslav Republic of Macedonia”
CDL-AD(2011)028	Joint Opinion on the draft Law on freedoms of conscience and religion and on the Laws making amendments and supplements to the criminal code, the administrative offences code and the Law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia
CDL-AD(2011)029	Final Opinion on the amendments to the Law on assembly and manifestations of Georgia

CDL-AD(2011)030	<i>Amicus Curiae</i> Brief for the Constitutional Court of Bosnia and Herzegovina on the Law of the Republika Srpska on the status of state property located on the territory of the Republika Srpska and under the disposal ban
CDL-AD(2011)031	Joint Opinion on the draft Law on freedom of peaceful assembly of Ukraine
CDL-AD(2011)032	Joint final Opinion on the electoral code of Armenia adopted on 26 May 2011
CDL-AD(2011)033	Joint Opinion on the draft Law amending the Law on the judiciary and the status of judges and other legislative acts of Ukraine by the Venice Commission and the Directorate of Justice and Human Dignity within the Directorate General of Human Rights and Rule of Law of the Council of Europe
CDL-AD(2011)034	Joint Opinion on the Law on the protector of human rights and freedoms of Montenegro
CDL-AD(2011)035	Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan
CDL-AD(2011)036	Opinion on the compatibility with universal human rights standards of Article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus
CDL-AD(2011)037	Joint Opinion on the draft Law on election of People's Deputies of Ukraine
CDL-AD(2011)038	Opinion on the draft code of constitutional procedure of Bolivia
CDL-AD(2011)039	Joint Opinion on the draft Law on the bar and practice of law of Ukraine by the Venice Commission and the Directorate of Justice and Human Dignity within the Directorate General of Human Rights and Rule of Law of the Council of Europe
CDL-AD(2011)040	Opinion on the Law on the establishment and rules of procedure of the Constitutional Court of Turkey
CDL-AD(2011)041	<i>Amicus Curiae</i> Brief on the case Santiago Bryson de la Barra et Al (on crimes against humanity) for the Constitutional Court of Peru

### 89th plenary session (Venice, 16-17 December 2011)

CDL-AD(2011)042	Joint Opinion on the electoral law and the electoral practice of Albania
CDL-AD(2011)043	Joint Opinion on the draft election code of Georgia
CDL-AD(2011)044rev	Joint Opinion on the draft Law on amendments and additions to the Organic Law of Georgia on political unions of citizens

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CDL-AD(2011)045	Revised interpretative Declaration to the code of good practice in electoral matters on the participation of people with disabilities in elections
CDL-AD(2011)046	Opinion on the draft Law on amendments to the Law on political parties of the Republic of Azerbaijan
CDL-AD(2011)047	Opinion on the draft Law on principles of the state language policy of Ukraine
CDL-AD(2011)048	Opinion on the draft Law on internal affairs of the Federation of Bosnia and Herzegovina and on the draft Law on internal affairs of the Canton of Sarajevo
CDL-AD(2011)049	Opinion on the draft Law on the legal regime of the state of emergency of Armenia
CDL-AD(2011)050	Opinion on draft amendments and additions to the Law on the Constitutional Court of Serbia
CDL-AD(2011)051	Opinion on the draft Law on amendments and additions to the Law on alternative service of Armenia

## Members – 58

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## Associate member

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## Observers – 6

Argentina (1995), Canada (1991), Holy See (1992), Japan (1993), United States (1991), Uruguay (1995)

## Participants – 3

European Union, OSCE/ODIHR, International Association of Constitutional Law (IACL)

## Special co-operation status – 2

Palestinian National Authority, South Africa

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## Venice Commission

DG-I, Council of Europe – 67075 Strasbourg Cedex France

Tel.: +33 3 88 41 20 67 – Fax: +33 3 88 41 37 38

E-mail : [venice@coe.int](mailto:venice@coe.int)

[www.venice.coe.int](http://www.venice.coe.int)

